

**CONSTITUTION
OF
INTERNET ASSOCIATION OF AUSTRALIA LTD**

ACN: [to be inserted when company is registered]

A Public Company Limited by Guarantee under the *Corporations Act 2001* (Cth)

Constitution of Internet Association of Australia Ltd

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

Appointed Director means a person appointed by the Board as a Director in accordance with rule 10.5.

Annual General Meeting means the general meeting of the Members held in accordance with rule 6.1(c).

Auditor means the auditor of the Company appointed by the Members from time to time.

Board means all or some of the Directors for the time being acting as a board.

Chair means the person appointed under rule 10.11 to that role.

Company means Internet Association of Australia Ltd.

Constitution means this Constitution.

Deputy Chair means the person appointed under rule 10.11 to that role.

Director means a Director of the Company.

Elected Director means a person elected as a Director in accordance with rule 10.4 or a person appointed to fill a casual vacancy in that position under rule 10.6.

General Meeting means a general meeting of the Members held in accordance with rule 6.

IAA Inc means Internet Association of Australia Incorporated (WA registration number A1004987S).

Member or Membership means a Member admitted to Membership of the Company.

Membership Fee means the fee payable by a Member under rule 4.1.

Objects means the Objects of the Company set out in rule 2.3.

Officer means an officer of the Company within the meaning of section 9 of the Act.

Regulation means any regulation, by-law or procedure made by the Board in accordance with rule 13(c).

Register of Members means the register of Members kept by the Company under the Act.

Secretary means a person appointed as secretary of the Company under rule 17.

1.2 Interpretation

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

- (i) The singular includes the plural, and Deputy versa, and a gender includes other genders.
- (ii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (iii) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (iv) A reference to a rule is a reference to a rule in this Constitution.
- (v) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (vi) A word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution.

1.3 Replaceable Rules

The replaceable rules in the Corporations Act do not apply to the Company.

2. COMPANY NAME AND OBJECTS

2.1 Company Name

The name of the Company is Internet Association of Australia Ltd.

2.2 Type of company

- (a) The Company is a public company limited by guarantee.
- (b) The liability of the Members is limited.
- (c) Each Member undertakes to contribute to the assets of the Company in the event of it being wound up while they are a Member, or within one year after they cease to be a Member, for payment of the debts and liabilities of the Company and of the costs, charges and expenses of winding up, such amount as may be required, not exceeding \$1.00.

2.3 Objects of the Company

The Objects of the Company are to lead the internet industry and support its Members by:

- (a) providing peering exchange services and related infrastructure, networks and services for Members;
- (b) advocating on matters of relevance to Members and the industry;
- (c) facilitating education and informed discussion about the internet;
- (d) establishing links with similar organisations; and
- (e) doing anything ancillary or incidental to the attainment of the Objects.

2.4 Powers of the Company

Solely for the purpose of furthering the Objects, the Company has the legal capacity and powers set out in section 124 of the Act.

2.5 Non-profit nature of Company

- (a) The income and property of the Company, from wherever it is derived, must be applied solely toward the promotion of the Objects.
- (b) Subject to rule 2.5(c), no part of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus, or otherwise to the Members.

- (c) Nothing in rule 2.5(a) shall prevent any of the following, provided they are done in good faith:
 - (i) the payment of remuneration to an employee of the Company or a Member or other person in return for:
 - (a) services rendered (including personal services); or
 - (b) any goods supplied to the Company, in the ordinary and usual course of business;
 - (ii) payments to a Director in accordance with rule 11;
 - (iii) the payment to Members of interest on any money borrowed from those Members for the Objects of the Company; and
 - (iv) the benefit of any grant made in furtherance of any of the Objects.

3. MEMBERSHIP

3.1 Classes and criteria of Membership

- (a) The Company has the following classes of Membership:
 - (i) Voting Members; and
 - (ii) Non-voting Members.
- (b) Voting Members include the following categories:
 - (i) Corporate Member - any company, body corporate, sole trader or partnership which:
 - (a) is a potential user of peering services;
 - (b) supports the Objects; and
 - (c) satisfies any further criteria that may be prescribed in the Regulations is eligible to apply to become a Corporate Member.
 - (ii) Professional Member - An individual who:
 - (a) is aged 15 years or older;
 - (b) supports the Objects; and
 - (c) satisfies any further criteria that may be prescribed in the Regulations, is eligible to apply to become a Professional Member.
 - (iii) Honorary Life Members are individuals bestowed Honorary Life Membership by the Board for their contribution to the internet industry and/or the Company. The Board may admit a maximum of 2 new Honorary Life Members per calendar year.
- (c) Organisations, government agencies and not-for-profit entities that that satisfy any further criteria that may be prescribed in the Regulations may apply to become a Non-voting Member.
- (d) The Board may provide for additional categories of Membership within each class on such conditions as the Board determines, provided that the rights of Members shall be in accordance with rule 3.2.

3.2 Rights of Members

- (a) Unless the Members by special resolution decide otherwise, membership of the Company attracts the following rights:
- (b) **Voting Members** – the right to:
 - (i) receive notice of, attend and vote at any General Meeting of the Company;
 - (ii) in the case of individuals - nominate for election as an Elected Director;

- (iii) in the case of Corporate Members – nominate a candidate for election as an Elected Director; and
 - (iv) vote in any election of Directors in accordance with rule 10.4.
- (c) **Non-voting Members** are entitled to receive notices of and to attend general meetings, but are not entitled to speak unless at the invitation of the chair of the meeting. Non-voting Members do not have any voting rights.
- (d) For the purposes of clarity, the Board may extend benefits of membership, including benefits related to access to services provided, that may differ between classes and categories of membership and within categories of membership based on fees paid.

3.3 Variation or cancellation of class rights

- (a) The rights attached to any class of Membership may only be varied or cancelled by a special resolution of the Company and:
- (i) by special resolution passed at a meeting of the class of Members whose rights are being varied or cancelled; or
 - (ii) with the written consent of Members who are entitled to at least 75% of the votes that may be cast in respect of membership of that class.
- (b) The provisions of this Constitution relating to general meetings apply, with necessary changes, to separate class meetings as if they were general meetings.

3.4 Application for Membership of the Company

An applicant for Membership must:

- (a) submit an application in writing in the form the Board prescribes from time to time;
- (b) promise to pay the Membership Fee in accordance with the time specified in a notice issued to the applicant pursuant to rule 3.7(c);
- (c) agree in writing to be bound by this Constitution and any Regulations set by the Board from time to time;
- (d) agree in writing to be bound by any codes of ethics or conduct applying to the Member;
- (e) comply with the criteria set out in rule 3.1 and any other relevant requirements set by the Board from time to time; and
- (f) be approved for Membership by the Board under rule 3.7.

3.5 Consideration by the Board

Where the Board receives an application for Membership it will consider the application at its next meeting or implement any other procedure for the prompt consideration of the application, which may include delegating the consideration and determination of membership applications.

3.6 Board may require further information

The Board may, in its absolute discretion and without giving any reason, require an applicant for Membership to provide such further information as the Board determines. If the Board asks for more information under this rule 3.6, its determination of the application for Membership is deferred until the information is provided by the applicant.

3.7 Decision on application

- (a) The Board will decide whether to accept or reject an application for Membership and on what conditions.
- (b) The decision of the Board will be final and binding and the Board shall not be required to provide any reasons for its decision.
- (c) If the Board accepts an application for Membership, it must, as soon as practicable notify the applicant as to:

- (i) the Class of Membership (and where applicable, the Category) to which the applicant has been admitted;
- (ii) the amount of any Membership Fee payable by that Member to the Company; and
- (iii) a date by which, and how payment must be made.

3.8 Member rights non-transferable

None of the rights and privileges of a Member in relation to the Company shall be chargeable, transferable or transmissible by their own act or by operation of law or otherwise.

3.9 Entry on Register of Members

If the Company receives payment of the Membership Fee, within the time specified under rule 3.7(c)(iii), the Company must enter the applicant's name (and any other details required by the Act) in the Register of Members.

3.10 Failure to pay the Membership Fee

An application for Membership lapses if the Membership Fee is not paid in full on or before the date specified for its payment in accordance with rule 3.7(c)(iii).

3.11 Register of Members

The Company must keep a Register of Members in accordance with the Act.

3.12 Member to notify changes

A Member must promptly notify the Board of any change to their details as recorded in the Register of Members.

3.13 Representatives of Members

- (a) A Member that is not an individual shall nominate to the Secretary at the time of application for Membership the name of one individual who shall represent that Member at general meetings and may vote on behalf of that Member (**Representative**).
- (b) A Member may by notice to the Secretary change its Representative.
- (c) A Member may only appoint one Representative.
- (d) The Secretary will keep a register of Representatives.

4. MEMBERSHIP OBLIGATIONS

4.1 Membership Fee

- (a) The Board may, from time to time, fix the amount of and time for payment of the Membership Fee payable by each Member.
- (b) The Board shall notify each Member of the amount of the Membership Fee for that Member and the date on which it is payable to the Company.

4.2 Payment of Membership Fee

A Member in receipt of a notice issued pursuant to rule 4.1(b) must pay the Membership Fee by the time specified in that notice.

4.3 Failure or Refusal to Pay

- (a) If any Membership Fee of a Member remains unpaid for a period of 28 days after it becomes due, written notice will be given to the Member of that fact.
- (b) If any Membership Fee remains unpaid for more than 14 days after the date of a notice given under rule 4.3(a), the Board may cancel the membership of the Member and remove the Member's name from the Register of Members.

- (c) The rights of a Member (including the right to vote) who has not paid any Membership Fee by the due date are suspended while the fee remains unpaid.

4.4 Notice of Cancellation of Membership

Where the Board cancels the Membership of a Member under rule 4.3(b), the Company must promptly notify that Member or, as the case may be, former Member, and note the cancellation (together with its date) in the Register of Members.

4.5 Restoration of Membership

On payment of the Membership Fee the Board may restore the Membership of a person whose Membership was cancelled under rule 4.3(b). The Board may impose any terms and conditions it determines on the restoration of Membership.

4.6 Board may waive

The Board may elect not to enforce payment, in whole or in part, of the Membership Fee or make such other arrangements as to payment as it thinks fit.

5. CESSATION OF MEMBERSHIP AND EXPULSION

5.1 Cessation of Membership

A Member shall cease to be a Member:

- (a) if the Member resigns in accordance with rule 5.2;
- (b) if the Member ceases to be eligible for membership in accordance with rule 3.1 unless the Board resolves otherwise;
- (c) in the case of individuals:
 - (i) if the Member dies; or
 - (ii) if the Member becomes an individual who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (d) in the case of Corporate Members and Non-voting Members, if they are wound up or otherwise dissolved or deregistered;
- (e) if the Member is expelled under rule 5.5;
- (f) in any other circumstances prescribed in the terms of membership applicable to the Member or in the failure to satisfy any undertaking given by the Member upon them being admitted as a Member on the date that the Board resolves to cease the membership, unless the Board resolves otherwise;
- (g) if the Member is convicted of an indictable offence, on the date that the Board resolves to cease the membership unless the Board resolves otherwise;
- (h) if the Member's membership is cancelled under rule 4.4; or
- (i) if the Member cannot be found by the Board upon reasonable enquiry.

5.2 Resignation

A Member wishing to resign from Membership may do so by giving notice in writing to the Secretary. Providing this will not reduce the number of Members to two or less, the resignation shall take effect from the date it is received by the Secretary or such later date specified in the notice of resignation.

5.3 Money owing on cessation

Any money owed by a Member to the Company at the time the Member ceases to be a Member:

- (a) remains owing to the Company; and
- (b) becomes payable immediately upon the Member ceasing to be a Member,

and the Member shall not be entitled to be repaid the whole or any part of any money paid by that Member to the Company, unless the Board determines otherwise.

5.4 Discipline of Members

The Board will set out in the Regulations the procedures relating to the disciplining of Members and the circumstances which give rise to disciplinary proceedings.

- (a) The Board may establish or delegate to a disciplinary committee whose powers will be set out in the Regulations and which may include the power to:
 - (i) investigate any complaints or disciplinary matters about a Member;
 - (ii) determine the outcomes of any investigation or disciplinary hearing; and
 - (iii) recommend to the Board what penalties to impose, if any, against a Member.
- (b) Procedural fairness must be applied to any procedures relating to the disciplining of Members. This includes ensuring that the Member:
 - (i) is informed of the grounds upon which the disciplinary action is proposed to be taken; and
 - (ii) has been given an opportunity to be heard in relation to the matter.

5.5 Expulsion of Member

A Member may only be expelled from Membership subject to the following provisions being fulfilled:

- (a) In the opinion of the Board, the Member:
 - (i) has failed to comply with this Constitution or the Regulations;
 - (ii) has failed to comply with any code of ethics or conduct referred to under rule 3.4(d);
 - (iii) has brought the Company or its Members into disrepute; or
 - (iv) is guilty of any conduct which is unbecoming of a Member or prejudicial to the interests of the Company.
- (b) The Member is given 28 days written notice of the date when the Board will consider the matter of expulsion. The notice is to outline the grounds for expulsion and how the Member may address the Board or provide a written submission in response to the allegations.
- (c) If the Board resolves to expel the Member, the Member is notified within 14 days of the date of the resolution. The notice must state that the Member has 14 days from the date of the notice (or such later time as the Board may decide) to advise the Board in writing that the Member requires the matter to be referred to mediation.
- (d) If the matter is referred to mediation then the mediation must be conducted in such manner as the Board reasonably determines and in accordance with the rules of procedural fairness. Each party must pay an equal share of the cost of any mediation.
- (e) Once the mediation under rule 5.5(d) is concluded or if the Member gives notice in writing under rule 5.5(c) then the Board may decide whether or not to endorse the resolution to expel the Member and it is only at that time that any resolution to expel the Member will be effective.
- (f) The Board's decision in rule 5.5(e) is final.
- (g) There will be no liability for any loss or injury suffered by a Member as a result of any decision made in good faith under this rule 5.5.

6. GENERAL MEETINGS

6.1 Calling General Meetings

- (a) The Board may convene a General Meeting whenever it thinks fit.
- (b) In accordance with the Act, Members with at least 5% of the votes that may be cast at a General Meeting may call a General Meeting.

- (c) Subject to the Act, an Annual General Meeting must be held at least once in each calendar year and within 5 months after the end of the Company's financial year.

6.2 Period of Notice

Subject to the provisions of the Act relating to short notice and special resolutions, at least 21 days' notice of a General Meeting must be given in writing to those persons entitled to receive notice.

6.3 Shorter notice

A General Meeting may be called on shorter notice if:

- (a) in the case of an Annual General Meeting, all Members entitled to attend and vote at that meeting agree beforehand; or
- (b) in the case of any other General Meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand; but
- (c) a shorter notice period is not permitted in the case of a meeting of Members where the meeting is convened to consider a resolution to remove a Director, appoint a replacement Director, or remove an Auditor.

6.4 Persons entitled to notice

Written notice of a General Meeting must be given to:

- (a) each Member entitled to attend or vote at the meeting;
- (b) each Director; and
- (c) the Auditor, if any.

Except as provided in the Act, no other person is entitled to receive notice of General Meetings.

6.5 Contents of notice

A notice of a General Meeting must:

- (a) set out the place, date and time of the meeting;
- (b) if the meeting is to be held in 2 or more places, state the technology that will be used to facilitate this, and any details required to enable a Member to attend that meeting;
- (c) the general nature of the business of the meeting;
- (d) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
- (e) include such statements about the appointments of proxies as required by the Act;
- (f) specify a place and electronic address for the purposes of proxy appointments; and
- (g) comply with any other requirements of the Act.

6.6 Annual General Meetings

- (a) The business of an Annual General Meeting may include any of the following matters, even if not referred to in the notice of meeting:
 - (i) consideration of the annual financial report, directors' report and Auditor's report;
 - (ii) appointment of the Auditor; and
 - (iii) fixing the Auditor's remuneration.
- (b) The business of an Annual General Meeting may also include:
 - (i) any business which under this Constitution or the Act is required to be transacted at an Annual General Meeting; and
 - (ii) any other business which may be lawfully transacted at a General Meeting.

- (c) The chair of an Annual General Meeting must allow a reasonable opportunity for the Members as a whole at the meeting to:
 - (i) ask questions about or make comments on the management of the Company; and
 - (ii) ask the Auditor or its representative (if any), questions relevant to the conduct of the audit and preparation and content of the auditor's report for the Company.

6.7 Technology

The Company may hold a General Meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate. Anyone using this technology is taken to be present in person at the meeting.

6.8 Omission to give notice

- (a) The accidental omission to give notice of a General Meeting to or the non-receipt of notice of the General Meeting by a person entitled to receive notice, shall not invalidate the meeting or any resolution passed at that meeting.
- (b) Failure to give notice to any Member or non-receipt of notice by any Member of cancellation does not affect the validity of the cancellation of a proposed General Meeting.
- (c) Failure to give notice to any Member or the non-receipt of notice by any Member does not affect the validity of the postponement or variation of venue of a proposed General Meeting.

6.9 Cancellation or postponement of General Meeting

The Board may cancel, postpone or change the venue of any General Meeting convened by them by notice in writing to all persons who are entitled to receive notice of that meeting, except where the cancellation, postponement or change of venue would be contrary to the Act. Any failure to give notice of cancellation, postponement or change of venue does not invalidate the cancellation, postponement or change of venue or any resolution passed at a postponed meeting.

6.10 Adjournment of meetings

The chair of a General Meeting at which a quorum is present:

- (a) in their discretion may adjourn the General Meeting; and
- (b) must adjourn the General Meeting if so directed by the meeting by ordinary resolution.

6.11 Adjourned meeting

- (a) An adjourned General Meeting may only deal with the business that was left unfinished from the original General Meeting.
- (b) Notice of an adjourned General Meeting must only be given if a General Meeting has been adjourned for 30 days or more.

7. PROCEEDINGS AT GENERAL MEETINGS

7.1 Representation of Members

A Member is taken to be present at a general meeting if the Member is present:

- (a) in person;
- (b) by proxy or attorney;
- (c) by a Representative; or
- (d) when applicable, by direct vote.

7.2 Quorum

For all General Meetings a quorum is the number of Voting Members present equal to twice the number of Directors in office at the time. For example, if there are eight Directors in office then the quorum will be sixteen Voting Members who are present (see rule 7.1).

7.3 Failure of quorum

If a quorum is not present within 30 minutes from the time appointed for a General Meeting:

- (a) where the meeting was convened upon the requisition of Voting Members, the meeting is dissolved; or
- (b) in any other case:
 - (i) the meeting stands adjourned to the day, time and place, that the Directors may determine and notify to the Members or, if no determination is made, the same day in the next week at the same time and place; and
 - (ii) at the adjourned meeting, if a quorum is not present within 30 minutes from the time notified for the meeting, the meeting is dissolved.

7.4 Chair of General Meetings

- (a) The Chair is entitled to preside as Chair of any General Meeting.
- (b) Where a General Meeting is held and the Chair is unable to be present or is not present within 15 minutes after the time appointed for the meeting, or if the Chair is unable or unwilling to act as chair of the meeting, the following applies (in order of entitlement):
 - (i) the Deputy Chair will chair the meeting;
 - (ii) the Directors present may choose one of their number to chair the meeting; or
 - (iii) in the absence of all Directors or if none of the Directors present wish to act, the Voting Members present may elect one of their number to be Chair of the meeting.

7.5 Method of voting

- (a) A resolution put to the vote of a General Meeting shall be decided on a show of hands unless a poll is demanded or required under this Constitution or the Act.
- (b) On a show of hands, a declaration by the Chair of the General Meeting is conclusive evidence of the result.
- (c) A poll may be demanded on any resolution by the Chair or at least three Voting Members present in person or by proxy or attorney. A demand for a poll may be withdrawn.
- (d) The Chair of the meeting does not have a casting vote.

7.6 Conduct of poll

If a poll is properly demanded for a resolution:

- (a) and the resolution is for the adjournment of the General Meeting, the poll must be taken immediately at the place and in the manner that the chair of the meeting determines and declares;
- (b) in all other cases, the poll must be taken at the time and place and in the manner that the Chair of the meeting determines and declares;
- (c) the result of the poll, as disclosed by the Chair of the meeting at which the result is declared, is a resolution of the meeting at which the poll is demanded; and
- (d) an entry in the book containing the minutes of the meeting at which the result is declared recording that declaration is conclusive evidence of the fact that the declaration was made as so recorded.

7.7 Resolutions determined by majority

Whether on a show of hands, on a poll or on a ballot, an ordinary resolution is passed if the number of votes cast in favour of that resolution is greater than one half of the total number of votes cast.

8. ENTITLEMENT TO ATTEND AND VOTE

8.1 Entitlement to Vote

- (a) A Member is not entitled to vote at a General Meeting if the Membership Fee payable by the Member is overdue at the date of the meeting or the postponed or adjourned meeting.
- (b) Subject to this Constitution, each Member entitled to vote has one vote, either on a show of hands or a poll.

8.2 Appointment of a proxy

A Member may appoint a proxy to attend, speak and vote (as the case may be) at a General Meeting in their place by executing an instrument of proxy in any form that the Board may prescribe or accept.

8.3 Proxy must vote as directed

Where a Member's instrument of proxy directs the appointee to vote in a specified way in respect of a particular item of business, the appointee must vote on that item of business in accordance with that direction.

8.4 Deposit of instruments

Any appointment of a representative is effective in respect of a particular General Meeting if, and only if, the following instruments are actually received (which includes receipt of a copy of those instruments by legible electronic transmission) by the Company at its registered office (or another place notified by the Board) at least 48 hours (or any shorter time that the Board determines) before the time notified for that meeting:

- (a) in the case of a proxy, the instrument of proxy and, if it is executed pursuant to a power of attorney, the relevant power of attorney or an office copy or certified copy of the power of attorney; and
- (b) in the case of a person appointed pursuant to a power of attorney, the power of attorney or an office copy or certified copy of the power of attorney.

8.5 Multiple Appointments

Where the Company has received an instrument of proxy from a Member the appointment made by that instrument is and remains valid until the Company receives:

- (a) a power of attorney entitling the nominated person to attend and vote at the meeting;
- (b) written notification of either the revocation of the appointment of the proxy; or
- (c) another instrument of proxy from the Member bearing a later date.

8.6 Objections to Right to Vote

An objection may be raised with the chair of a General Meeting as to the qualification of a purported voter or the admission or rejection of a vote by any person present and entitled (or claiming to be entitled) to vote. That objection may be made only at the General Meeting or adjourned meeting at which the purported voter wishes to vote or the vote objected to is given or tendered. In relation to that objection:

- (a) the decision of the Chair of the meeting is final and conclusive; and
- (b) a vote that is not disallowed is valid and effective for all purposes.

9. DIRECT VOTING

The Board may determine that at any General Meeting, a Voting Member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A "direct vote" includes a vote delivered to the Company by any means approved by the Board, which may include post or electronic means. The Board may prescribe Regulations in relation to direct voting, including specifying the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

10. BOARD OF DIRECTORS

10.1 Number of Directors

- (a) There will be a maximum of eight (8) Directors comprising:
 - (i) Six (6) Directors elected by the Voting Members (**Elected Directors**); and
 - (ii) no more than two (2) Directors appointed by the Board under rule 10.5 (**Appointed Directors**).
- (b) There must not be less than four (4) Elected Directors.

10.2 Qualification and eligibility to be a Director

- (a) In addition to the circumstances which disqualify a person from managing a corporation under the Act, no person who has been an insolvent under administration within the previous five years is eligible to become a Director.
- (b) The election or appointment of a Director will have no effect unless the person provides the Secretary with a written consent to act for the purposes of section 201D of the Act.
- (c) An Elected Director must be a:
 - (i) Professional Member;
 - (ii) Honorary Life Member; or
 - (iii) director or employee of a Corporate Member.
- (d) To be eligible to stand for election or appointment as a Director, an individual:
 - (i) must not be subject to any circumstance in accordance with rule 10.8 that would result in them ceasing to be a Director once elected or appointed;
 - (ii) if a Member, must not have any overdue fees payable under rule 12; and
 - (iii) If an employee or director of a Corporate Member, that Corporate Member must not have any overdue fees payable under rule 12.

10.3 Term and retirement of Directors

- (a) Subject to rule 10.6:
 - (i) the term of office for Elected Directors will be from the conclusion of the relevant Annual General Meeting at which their election is announced until the conclusion of the third following Annual General Meeting. Subject to rule 10.3(c), a retiring Elected Director may be eligible for re-election;
 - (ii) the terms of Elected Directors will be staggered so that elections for two (2) Elected Director positions will normally be conducted in conjunction with each Annual General Meeting.
- (b) The term for an Appointed Director shall be such period up to the end of the next Annual General Meeting as determined by the Board, but the person may be reappointed subject to rules 10.3(c) and 10.3(f).
- (c) The Maximum Continuous Period for which a person may hold office:
 - (i) as an Elected Director is nine (9) years;
 - (ii) as an Appointed Director is five (5) years.
- (d) The Maximum Continuous Period does not include any period from a person's appointment to fill a casual vacancy under rule 10.6.
- (e) A person who has held office as an Elected Director for the Maximum Continuous Period is eligible for re-election or reappointment after a period of two (2) years from the date the person last held office as a Director.
- (f) A person who has held office as an Appointed Director for the Maximum Continuous Period is not eligible for reappointment as a Director.

10.4 Election of Elected Directors

- (a) Subject to this rule 10.4, the Board may make Regulations regarding the procedures for the conduct of elections and the nomination process.
- (b) At least 6 weeks before the Annual General Meeting, the Board must give notice to the Voting Members of the number of vacancies that may be filled with reference to rule 10.1(a)(i) and call for nominations of candidates for election as an Elected Director.
- (c) Nominations of candidates for election as an Elected Director must be received by the Secretary in the time prescribed in the Regulations.
- (d) The nomination form must:
 - (i) be in writing in the form determined by the Board from time to time;
 - (ii) include any required information (such as the candidate's skills and experience) as determined by the Board from time to time;
 - (iii) include a consent to act for the purposes of section 201D of the Act signed by candidate.
- (e) At the close of nominations if there are more candidates for election than there are vacant positions to be filled, then a ballot will be conducted in accordance with the Regulations set by the Board.
- (f) The result of ballot shall be calculated in a manner so that the candidate with highest number of votes will get the longest term (i.e full term) first progressing to shortest term (i.e filling up of casual vacancies with reference to rule 10.6).
- (g) The Board will appoint a returning officer who must not be a Director or a candidate.
- (h) If at the close of nominations there are the same number or fewer candidates for election than there are vacant Elected Director positions to be filled, then all eligible candidates shall be deemed to have been elected and no ballot will be held. Any resulting vacancies in the position of Elected Directors shall be casual vacancies to which rule 10.6 applies.
- (i) The results of an election will be announced at the relevant Annual General Meeting.

10.5 Appointed Directors

- (a) The Board may appoint up to two individuals to hold office as Appointed Directors upon such terms and conditions as the Board determines.
- (b) An Appointed Director will have specific skills, experience, perspectives or capabilities that the Board considers desirable.

10.6 Casual vacancies

If a casual vacancy in the position of an Elected Director occurs, the Board may appoint an eligible individual to fill the vacancy and the individual so appointed is to hold office, until the end of the first annual general meeting following the appointment, at which, if the predecessor's term would not then have expired, an election will be held to fill the position for the remainder of the predecessor's term, or if the term would have expired a normal vacancy election would proceed. The individual appointed to fill the casual vacancy, if otherwise eligible, shall be entitled to nominate to be elected to fill the position.

10.7 Alternate Directors

Alternate Directors are not permitted.

10.8 Vacation of Office

The office of a Director immediately becomes vacant if the Director:

- (a) becomes ineligible to be a Director under the Act;
- (b) becomes bankrupt or makes any general arrangement or composition with his or her creditors;

- (c) becomes an individual who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (d) resigns from their office of Director by notice in writing to the Company;
- (e) is removed by a resolution of the Voting Members;
- (f) is absent without the consent of the Board from three (3) consecutive Board meetings, unless the Board resolves otherwise;
- (g) is convicted of an indictable offence and the Board does not within two (2) months after that conviction resolve to confirm the Director's appointment to the office of Director;
- (h) is an Elected Director who ceases to be a Voting Member;
- (i) is an Elected Director who ceases to be an employee or director of the Corporate Member that they were employed by or were a director of at the time of their election;
- (j) is an Elected Director and the Corporate Member that they were employed by or were a director of at the time of their election, ceases to be a Corporate Member.
- (k) becomes a paid employee of the Company; or
- (l) dies.

10.9 Removal of Director by Company

The Voting Members may by ordinary resolution remove a Director before the expiration of the Director's period of office.

10.10 Less than Minimum Number of Directors

Where the office of a Director becomes vacant, the continuing Directors may continue to act except where the number of Directors falls below the minimum number set by rule 10.1(b), in which case the continuing Directors may act only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a General Meeting; or
- (c) in an emergency.

10.11 Office bearers – Chair & Deputy Chair

- (a) There are to be two office bearers, a Chair and a Deputy Chair, each elected by the Board at a meeting of the Board.
- (b) An office bearer must be a Director.
- (c) No Director may serve as Chair for more than 5 consecutive years.
- (d) No Director may serve as Deputy Chair for more than 5 consecutive years.
- (e) A Director who holds the office of Chair or Deputy Chair holds that office until:
 - (i) the first meeting of the Board following the next Annual General Meeting after their election to that office;
 - (ii) the Board resolves to remove that Director from that office;
 - (iii) that Director retires from that office;
 - (iv) that Director ceases to be a Director; or
 - (v) otherwise in accordance with the rules decided by the Board.
- (f) As soon as practicable after the office of Chair or Deputy Chair becomes vacant, the Board must elect a Director to that office. If an election of both office bearers is to be held at the same meeting of the Board, then the election of the Chair must be completed before the election of the Deputy Chair.

11. DIRECTORS' REMUNERATION

- (a) The Directors may be paid for reimbursement of out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board.
- (b) A Director may be paid for any service rendered to the Company by the Director 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 for the service.

12. MATERIAL PERSONAL INTEREST

12.1 Director's Duty to Disclose

- (a) Unless an exception under section 191 of the Act applies, if a Director has a material personal interest in a matter relating to the affairs of the Company, the Director must give the other Directors notice of that interest.
- (b) The notice required by rule 12.1(a) must be given at a Board meeting as soon as practicable after the Director becomes aware of their interest in the matter and must include:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company.

12.2 Standing Notice of Interest

A Director with a material personal interest in a matter relating to the affairs of the Company may give standing notice of that ongoing interest in accordance with the Act.

12.3 Directors' Interests

- (a) A Director is not disqualified by reason only of being a Director (or the fiduciary obligations arising from that office from:
 - (i) being a member, creditor or otherwise being interested in any body corporate (including the Company), partnership or entity, except as auditor of the Company;
 - (ii) entering into any agreement or arrangement with the Company; or
 - (iii) acting in a professional capacity (or being member of a firm which acts in a professional capacity) for the Company, except as auditor of the Company.
- (b) If a Director has a material personal interest (**interest**) in a matter, then subject to this Constitution:
 - (i) that Director may not be counted in a quorum at the Board meeting that considers the matter that relates to the interest;
 - (ii) that Director may not participate in or vote on matters that relate to the interest;
 - (iii) the Company can proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
 - (iv) the Director may retain the benefits under the transaction that relates to the interest even though the Director has the interest; and
 - (v) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (c) If a material personal interest is required to be disclosed, rule 12.3(iv) applies only if the interest is disclosed before the transaction is entered into.
- (d) A contract or arrangement entered into by or on behalf of the Company in which a Director is in any way interested is not invalid or voidable merely because the Director holds office as a Director or because of the fiduciary obligations arising from that office.

13. POWERS OF THE BOARD

- (a) The business of the Company is to be managed by or under the direction of the Board who may exercise all powers of the Company that this Constitution and the Act do not require to be exercised by the Company in general meeting.
- (b) The Board must decide on the responsible financial management of the Company including:
 - (i) any suitable written delegations of power under rule 14, and
 - (ii) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- (c) The Board may make and from time to time revoke or amend regulations or by-laws not inconsistent with this Constitution to govern procedures and activities of the Company and its organisation (**Regulations**). The Regulations, as they are in effect from time to time, bind the Directors and the Members.
- (d) A Regulation made or resolution passed by the Company does not invalidate any prior act of the Directors which would have been valid if that Regulation or resolution had not been made or passed.

14. DELEGATION OF POWERS

14.1 Delegation to Committees and others

- (a) The Board may delegate any of its powers to:
 - (i) a Committee;
 - (ii) a Director;
 - (iii) an employee of the Company; or
 - (iv) any other person,and may revoke that delegation.
- (b) The delegate must exercise the powers delegated in accordance with any directions, terms and conditions as set by the Board.

15. PROCEEDINGS OF THE BOARD

15.1 Board Meetings

- (a) The Board may meet together for the despatch of business and adjourn and otherwise regulate its meetings as it sees fit.
- (b) The Chair or any 2 or more Directors may at any time request a Board meeting, and the Secretary upon the request of the Chair or any 2 or more Directors, must convene a Board meeting.
- (c) Reasonable notice must be given to every Director of the place, date and time of every Board meeting. Notice of a Board meeting must be given by such means as have been agreed by all the Directors. Non-receipt of any notice of a Board meeting by a Director does not affect the validity of the convening of the meeting.
- (d) Unless the Board determines otherwise, the quorum for a Board meeting is a majority (more than 50%) of Directors. The quorum must be present for the whole Board meeting.
- (e) For the purposes of the Act, each Director, by consenting to be a Director consents to the use of each of the following technologies for holding a Board meeting:
 - (i) video;
 - (ii) telephone;
 - (iii) any other technology that permits each Director to communicate with every other Director; or

- (iv) any combination of those technologies.
- (f) A Director may withdraw the consent given under rule 15.1(e) in accordance with the Act, any notice of withdrawal to be provided within a reasonable time before the Board meeting.

15.2 Chair of Board meetings

The Chair will act as Chair at all meetings of the Board. If the Chair is not present or is unable or unwilling to act within 15 minutes after the time appointed for a meeting or has notified an intention not to be present and able and willing to act, the following may act as chair (in order of entitlement):

- (a) the Deputy Chair; or
- (b) a Director chosen by the majority of Directors present at the meeting.

15.3 Exercise of powers by Board

Subject to rule 14, a power of the Board is exercisable only:

- (a) by resolution at a meeting of the Board at which a quorum of Directors is present; or
- (b) by a written resolution of the Directors under rule 15.4.

15.4 Written resolution of Directors

- (a) If a majority of the Directors entitled to vote on a resolution have signed a document to the effect that they support the resolution (the terms of which are set out in the document), then a resolution in those terms is taken to have been passed by the Board without a meeting. The resolution is passed when the document is last signed by the Directors who constitute such a majority.
- (b) For the purposes of rule 15.4(a):
 - (i) two or more separate documents in identical terms, each of which is signed by one or more Directors, is to be treated as one document; and
 - (ii) any form of electronic transmission including an email, containing the text of the document expressed to have been signed by a Director and sent to the Company is a document signed by that Director at the time of its receipt by the Company.
- (c) Any document referred to in this rule 15.4 must be sent to every Director who is entitled to vote on the resolution.

15.5 Validity of acts of Directors

All acts done by a meeting of the Board or of a committee appointed by the Board or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

16. COMPANY ADMINISTRATION

16.1 Minutes

- (a) The Company must keep minute books in which it records:
 - (i) proceedings and resolutions of general meetings;
 - (ii) proceedings and resolutions of Board meetings;
 - (iii) proceedings of committee meetings;
 - (iv) resolutions passed by Members without a meeting; and
 - (v) resolutions passed by the Board without a meeting.
- (b) The Company must ensure that the minutes of a meeting are signed by the Chair of the meeting at which the proceedings were held or by the Chair of the next succeeding meeting, within a reasonable time after the meeting.

16.2 Inspection of Records

The Board may determine whether and to what extent, at what times and places and under what conditions, the accounting records and other documents of the Company, will be open to the inspection of Members other than Directors. A Member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Board.

16.3 Execution of documents

- (a) The Company may execute a document only if authorised:
 - (i) by the Directors; or
 - (ii) in accordance with any delegation made by the Directors.
- (b) Without limiting the manner in which the Company may execute any approved contract, including as permitted under the Act, the Company may execute any agreement, deed or other document by:
 - (i) 2 Directors signing the same; or
 - (ii) 1 Director and 1 Secretary signing the same.
- (c) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be executed effectively by the Company.

16.4 Common Seal

The Company may have a common seal. If the Company has a seal:

- (a) It may only be used with the authority of the Board; and
- (b) Every document to which the seal is affixed must be signed by a Director and countersigned by another Director, the Secretary, or a person appointed by the Board to countersign that document or class of documents in which that document is included.

17. SECRETARY

The Company must have at least one Secretary who is to be appointed by the Board. A Secretary holds office on the terms and conditions (including as to remuneration) determined by the Board.

18. ACCOUNTS AND AUDIT

18.1 Company to keep accounts

The Board must cause:

- (a) the Company to keep the accounting records and prepare the financial statements required by the Act; and
- (b) the accounts and any other documents required by the Act to be sent to Members and laid before General Meetings as required by the Act.

18.2 Audit

The Board must cause:

- (a) the accounts of the Company to be audited as required by the Act; and
- (b) the auditor's report to be sent to Members and laid before General Meetings of the Company as required by the Act.

19. NOTICES

19.1 Services of Notices

A notice may be given by the Company to a Member:

- (a) by serving it on the Member personally;

- (b) by sending it by post to the Member's address as shown in the Register;
- (c) by sending it to the electronic contact address (such as an email address) the Member has supplied to the Company for the giving of notices;
- (d) by making a copy of it accessible electronically (for example on a website of, or related to, the Company) and advising the Member of its availability via the electronic contact address.

19.2 Where Member has not provided address or electronic contact address

Any Member who has not provided to the Company a place of address or electronic contact address for inclusion in the Register as the place at or via which notices may be given to the Member shall not be entitled to receive any notice.

19.3 Time of service of notices

- (a) Where a notice is sent by post, service of the notice is taken to be effected three (3) days after it is posted.
- (b) Where a notice is sent by email or other electronic means, service of the notice is taken to be effected on the day it is sent.
- (c) Where the Company gives a notice under rule 19.1(d), service of the notice is taken to be effected when the notice was first so made accessible.

20. INDEMNITY

Subject to Part 2D.2 of the Act, a person who is or has been an Officer (as defined in the Act) of the Company is indemnified (to the extent permitted by law), out of the assets of the Company against any liability incurred by the person as an Officer:

- (a) to another person (other than the Company or a related body corporate) unless the liability:
 - (i) is for a pecuniary penalty order made under section 1317G of the Act or a compensation order made under section 1317H of the Act; or
 - (ii) arises out of conduct involving a lack of good faith; and
- (b) for legal costs and expenses incurred by the person, unless the costs and expenses are incurred:
 - (i) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under section 199A(2) of the Act;
 - (ii) in defending or resisting criminal proceedings in which the person is found guilty;
 - (iii) 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; or
 - (iv) in connection with proceedings for relief of the person under the Act in which the court denies the relief.

21. INSURANCE

Except to the extent precluded by the Act (including under section 199B), the Company may pay or agree to pay a premium in respect of a contract insuring the person who is or has been an Officer (as defined in the Act) of the Company or a related body corporate of the Company against any liability:

- (a) incurred by the person as such an Officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Act; or
- (b) for costs and expenses incurred by the person in defending proceedings as such an Officer, whether civil or criminal and whatever their outcome.

22. GENERAL AUTHORISATION

Where the Corporations Act authorises or permits a company to do any thing if so authorised by its Constitution, the Company is authorised by this rule to do that thing.

23. WINDING UP

- (a) In the event of the winding up or dissolution of the Company, any remaining assets, after deduction of liabilities, must be transferred as determined by the Voting Members to a fund, authority or institution whose constitution:
 - (i) requires it to have objects or purposes similar to those of the Company; and
 - (ii) prohibits it from making distributions to its members to at least the same extent as set out in rule 2.5(b) of this Constitution.
- (b) The determination as to the fund, authority or institution to be given the surplus assets must be made by a special resolution of Voting Members at or before the time of winding up. If the Voting Members do not make this determination, the Company may apply to the Supreme Court of New South Wales to make this decision.

24. TRANSITIONAL PROVISIONS

24.1 Transition - Membership

Upon registration of the Company, members on the register of members of IAA Inc. will become Members of the Company under this Constitution as follows:

- (a) Corporate Members, Professional Members and Honorary Life Members will continue in these categories and will be classified as Voting Members; and
- (b) Associate members will be classified as Non-voting Members.

24.2 Transition - Board of Directors

- (a) Upon registration of the Company, the board members of IAA Inc in office immediately before the adoption date will:
 - (i) continue as Elected Directors under this Constitution, even if that results in more Elected Directors than is allowed under rule 10.1(a)(i); and
 - (ii) comprise the Initial Board of the Company.
- (b) Directors on the Initial Board under rule 24.2 will agree which Directors are to retire at either the first, second or third annual general meeting following registration of the Company. Retiring Directors may be nominated for re-election or reappointment if eligible under this Constitution. If the Directors cannot agree among themselves then the drawing of lots will determine when Directors are to retire.
- (c) A Director on the Initial Board under rule 24.2 who remains in office as a Director after the next annual general meeting at which they retire and are re-elected or reappointed, the calculation of the Maximum Continuous Period under rule 10.3(c) will commence only after that next annual general meeting at which they are re-elected or reappointed.

24.3 Appointed Directors

Upon registration of the Company, the Board may only appoint Appointed Directors under rule 10.5 if that results in there being no more than the maximum number of 8 Directors under rule 10.1.

24.4 Transition – Office bearers

Upon registration of the Company:

- (a) the chairperson under the IAA Inc constitution will continue as Chair under this Constitution until their term ceases in accordance with rule 10.11(e);
- (b) the Board may appoint a Deputy Chair at any time in accordance with rule 10.11(a);
- (c) the secretary under the IAA Inc constitution will cease to be in this role. For clarity, the individual in the secretary role under the IAA Inc constitution will remain as a Director in accordance with rule 24.2.

24.5 Committees of the Board

Upon registration of the Company, any existing committee established under the IAA Inc constitution will continue.

24.6 By-laws

Upon registration of the Company, any existing by-laws established under the IAA Inc constitution will continue as Regulations under this Constitution.

24.7 Deletion of transition rule when no longer applicable

When there are no Directors in office to which rule 24.2(c) applies, then this rule 24 will have no application and shall be removed from the Constitution and replaced with the word 'deleted (date)'.

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