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**HELIX MANIFESTATIONS PTY LTD**

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**CONSTITUTION**

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**Corporations Act 2001 (Cth)**

**A Company Limited by Shares**

**CONSTITUTION**

**of**

**HELIX MANIFESTATIONS PTY LTD**

**1. DEFINITIONS AND INTERPRETATION**

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**1.1 Definitions**

In this Constitution, unless the context otherwise requires:

- (a) **Alternate Director** means any person who for the time being holds office as an Alternate Director of the Company by virtue of clause 11.
- (b) **Company** means Helix Manifestations Pty Ltd.
- (c) **Constitution** means this constitution as amended from time to time and for the time being in force.
- (d) **Corporations Act** means the *Corporations Act 2001* (Cth) or any statutory modification, re-enactment or substitution of the *Corporations Act 2001* (whether of the same or any other legislative authority having jurisdiction).
- (e) **Director** means a director of the Company.
- (f) **Enduring Power of Attorney** means an 'enduring power of attorney' within the meaning of the SIS Act.
- (g) **Fund** means the Self Managed Superannuation Fund of which the Company is currently the trustee.
- (h) **in writing** and **written** includes printing and any other mode of reproducing or representing words in a visible form.
- (i) **Legal Personal Representative** means the executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an Enduring Power of Attorney granted by a person.
- (j) **Member** means a Registered Holder of any Share of the Company.
- (k) **Member's Accounts** means all accounts held by the Company as trustee of the Fund in respect of a Member that comprise the Member's interest in the Fund.
- (l) **Office** or **Registered Office** means the registered office of the Company for the time being.
- (m) **Register** means the register of Members of the Company.
- (n) **Registered Holder** means any person for the time being registered in the Register as the holder of any Shares of the Company.

- (o) **Related Body Corporate** means a 'related body corporate' within the meaning of the Corporations Act.
- (p) **Secretary** means and includes the Secretary and any assistant or acting Secretary and any other person presently appointed to perform the duties of the Secretary of the Company whether alone or jointly with any other person.
- (q) **Self Managed Superannuation Fund** means a superannuation fund that is a 'self managed superannuation fund' within the meaning of the SIS Act.
- (r) **Share** means a share in the Company.
- (s) **SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth) or any statutory modification, re-enactment or substitution of the *Superannuation Industry (Supervision) Act 1993* (whether of the same or any other legislative authority having jurisdiction).
- (t) **Special Resolution** has the same meaning given to that expression by the Corporations Act.

## 1.2 Interpretation

- (a) Words or expressions contained in this Constitution will be interpreted in accordance with the provisions of the Corporations Act as in force at the date when such interpretation is required.
- (b) In this Constitution, unless a contrary intention appears:
  - (i) words importing the singular include the plural and vice versa;
  - (ii) words importing any gender include all other genders; and
  - (iii) words importing persons include companies and corporations.
- (c) Any headings or marginal notes inserted in this Constitution are included for convenience and shall not affect its construction.

## 2. SPECIAL PURPOSE COMPANY

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The Company is a 'Special Purpose Company' within the meaning of the *Corporations (Review Fees) Regulations 2003* (Cth) and accordingly:

- (a) the sole purpose of the Company is to act as trustee for a regulated superannuation fund within the meaning of section 19 of the SIS Act; and
- (b) the Members of the Company are expressly prohibited from receiving any distribution from the Company whether or not such a distribution would be income or capital in nature.

## 3. REPLACEABLE RULES

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The 'Replaceable Rules' contained in the Corporations Act shall not apply to the Company.

## **4. SHARES**

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### **4.1 Share Capital**

The Company may only issue ordinary Shares.

### **4.2 Prerequisite to Shareholding**

Shares may only be issued to, or held by or on behalf of, members of the Fund.

### **4.3 No Dividends to Members**

The Company must not pay dividends or make a distribution of any income, property or capital of the Company to its Members.

### **4.4 Transfer of Shares**

- (a) A Member may only transfer Shares in the Company to another person as allowed under this Constitution.
- (b) A person transferring Shares remains the holder of the Shares until the share transfer is registered and the name of the person to whom the Shares are being transferred is entered in the Company's Register as the holder of the Shares.
- (c) The Directors may refuse to register a transfer of Shares unless:
  - (i) a properly completed share transfer form has been provided to the Directors; and
  - (ii) the Directors have been given sufficient information to establish the right of the person to whom the Shares have been transferred to hold those Shares.

### **4.5 Transfer of Shares on Death**

- (a) If a Member dies, the Company will only recognise the deceased Member's Legal Personal Representative as being entitled to the deceased Member's interest in the Company, unless that interest is held jointly with another person.
- (b) If the Legal Personal Representative of the deceased Member provides sufficient information to the Directors to enable the Directors to establish the Legal Personal Representative's entitlement to be registered as the holder of the deceased Member's Shares, the Legal Personal Representative may:
  - (i) elect, by written notice to the Company, that the Legal Personal Representative be registered as the holder of the deceased Member's Shares until completion of the administration of the estate of the deceased Member; or
  - (ii) by providing a completed share transfer form to the Company to transfer the deceased Member's Shares to another member of the Fund.
- (c) On receiving a notice or share transfer form under clause 4.5, the Company must register the deceased Member's Legal Personal Representative or other member of the Fund, as the case may be, as the holder of the deceased Member's Shares.

#### **4.6 Transfer of Shares on Bankruptcy or Mental Incapacity**

If a Member becomes bankrupt or suffers mental incapacity, the Directors may at their discretion elect to register the Member's Legal Personal Representative as the holder of the Member's Shares or permit the Member's Legal Personal Representative to vote at a general meeting of the Members instead of the Member, provided that the Directors are supplied with sufficient information to establish the Legal Personal Representative's entitlement to be registered as the holder of the Member's Shares.

### **5. SHARE CERTIFICATES**

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#### **5.1 Entitlement to Certificate**

Every person whose name is entered as a Member of the Company in the Register will be entitled (without payment) to receive a certificate in respect of the Shares registered in their name in accordance with the Corporations Act.

#### **5.2 Joint Holders**

In respect of Shares held jointly by multiple persons, the Company will not be bound to issue more than one (1) certificate. The delivery of a certificate for a Share to any one of the joint holders will be sufficient delivery to all the holders.

#### **5.3 Lost or Damaged Certificates**

If a certificate or any other document of title to Shares is lost, defaced or destroyed, a replacement certificate or other document will be issued by the Company, subject to the Corporations Act, on application by:

- (a) the Registered Holder of the Shares; or
- (b) any other person who at the relevant time is the owner of the certificate or other document of title within the meaning of the term "owner" as used in the Corporations Act.

### **6. GENERAL MEETINGS**

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#### **6.1 Holding of General Meetings**

- (a) The Directors may convene a general meeting whenever they think fit. Every general meeting must be specified as a general meeting in the notice calling it.
- (b) The Members may requisition or convene a general meeting in accordance with the procedures for member-initiated general meetings set out in the Corporations Act.

#### **6.2 Notice**

- (a) Subject to clause 6.3 and the Corporations Act, the Directors must give Members at least twenty one (21) days' notice of any general meeting.
- (b) A notice convening a general meeting must comply with the Corporations Act and:
  - (i) specify the place or places, date and time of the general meeting (and if the general meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (ii) state the general nature of the business of the general meeting;

- (iii) (if a Special Resolution is to be proposed at the general meeting) set out an intention to propose the Special Resolution and state the resolution;
- (iv) contain a statement setting out:
  - (A) that the Member has a right to appoint a proxy;
  - (B) who the Member is entitled to appoint as a proxy; and
  - (C) that a Member who is entitled to cast two (2) or more votes may appoint two (2) proxies and may specify the proportion or number of votes each proxy is appointed to exercise;
- (c) A notice convening a general meeting must be given to:
  - (i) every Member except those Members who have ceased to reside at their registered address and have not supplied to the Company an address for the giving of notices to them;
  - (ii) every person entitled to a Share due to the death or bankruptcy of a Member who, but for his or her death or bankruptcy, would be entitled to receive notice of the general meeting; and
  - (iii) the Directors.

No other person is entitled to receive notice of a general meeting.

### **6.3 Meeting Convened with Less than Twenty One Days' Notice**

A general meeting may be convened with less than twenty-one (21) days' notice with the consent of:

- (a) in the case of an annual general meeting, all of the Members entitled to attend and vote; or
- (b) in the case of any other general meeting, a majority in number of the Members having the right to attend and vote at that meeting who together hold at least ninety-five per cent (95%) of the votes that may be cast at the meeting,

or as otherwise permitted by the Corporations Act. Consent by any one joint holder of a Share will be deemed to be consent by all holders of that Share.

### **6.4 Failure to Give Notice**

The accidental omission to send notice of a general meeting or the postponement of a general meeting or the non-receipt of a notice by any person entitled to receive such notice will not invalidate the proceedings at the general meeting or any resolution passed at the general meeting.

### **6.5 Quorum**

- (a) No business will be transacted at any general meeting unless the required quorum is present at the commencement of that business. A quorum will be two (2) Members personally present or, where the Company has only one Member, that Member. All business transacted at a general meeting will be deemed special business.

- (b) If a quorum is not present at a general meeting within fifteen (15) minutes from the time appointed for its commencement:
  - (i) if the general meeting was convened upon the requisition of Members, the general meeting must be dissolved;
  - (ii) in any other case, the general meeting will stand adjourned to the same day in the next calendar month at the same time and place or to such other day, time and place as the Directors may appoint by notice to the Members;
  - (iii) any one or more of the Directors or Members must give at least twenty one (21) clear days' notice of the adjourned general meeting; and
  - (iv) if at the adjourned general meeting a quorum is not present within fifteen (15) minutes from the time appointed for the general meeting, those persons who are present being Members entitled to vote or proxies, attorneys or representatives of Members will be a quorum and may transact the business for which the general meeting was called.

#### **6.6 Chairman**

- (a) The Chairman of Directors, or in his or her absence the Deputy Chairman (if any), will preside at every general meeting, unless there is no Chairman or Deputy Chairman of Directors, or neither of them is present within fifteen (15) minutes after the time appointed for holding the general meeting, or a Chairman or Deputy Chairman is unwilling to act as Chairman of the general meeting.
- (b) If the Chairman or Deputy Chairman does not preside pursuant to clause 6.6(a), the Directors present must choose a Chairman and in default of their doing so, the Members present must choose one of the Directors present to be Chairman of the general meeting.
- (c) If no Director is present or if all the Directors then present decline to take the chair, the Members personally present must choose a Member to be Chairman of the general meeting.

#### **6.7 Adjournment**

- (a) The Chairman of a general meeting may with the consent of any general meeting at which a quorum is present (and must if so directed by the general meeting) adjourn the general meeting to another time and place.
- (b) No business may be transacted at any adjourned general meeting other than the business left unfinished at the general meeting from which the adjournment took place.
- (c) If any general meeting or adjourned general meeting of the Company is adjourned for more than fourteen (14) days, notice of the adjournment must be given to the Members in the same manner in which the notice is directed to be given to Members in respect of the original general meeting.
- (d) It will not be necessary to specify in the notice the nature of the business to be transacted at the adjourned general meeting.

#### **6.8 Resolutions**

Unless the Corporations Act or this Constitution requires a resolution to be passed as a Special Resolution or otherwise, any resolution that is put to a vote at a general meeting shall be passed if a majority of the votes cast on the resolution are in favour of the resolution.



## **6.9 Method of Voting**

Any resolution that is put to a vote at a general meeting shall be decided on a show of hands unless a poll is demanded by:

- (a) the Chairman of the general meeting;
- (b) at least two (2) Members entitled to vote on the resolution;
- (c) any Member or Members who have the right to exercise at least five percent (5%) of all the votes that may be cast on the resolution on a poll; or
- (d) any Member or Members holding Shares on which an amount has been paid up or credited as paid up equal to at least five percent (5%) of the total amount paid up or credited as paid up on all Shares conferring the right to vote on the resolution.

## **6.10 Evidence of Resolution**

Unless a poll is duly demanded:

- (a) a declaration by the Chairman of the general meeting that a resolution has been carried, carried by a specified majority, or lost; and
- (b) an entry to that effect in the minutes of the general meeting,

are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

## **6.11 Polls**

- (a) A poll may be demanded:
  - (i) before a vote is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.
- (b) If a poll is duly demanded, it must be taken in such manner and at such time (within fourteen (14) days) and place as the Chairman of the general meeting directs.
- (c) The result of the poll will be deemed to be a resolution of the general meeting at which the poll was demanded.
- (d) No notice need be given of a poll not taken immediately.
- (e) The demand for a poll will not prevent the continuance of a general meeting for the transaction of any business other than the question for which a poll has been demanded.
- (f) The demand for a poll may be withdrawn.
- (g) A poll cannot be demanded in respect of the election of a Chairman of a general meeting.
- (h) A poll demanded on a question of adjournment must be taken at the general meeting and without adjournment.

#### **6.12 Signed Resolution**

- (a) Subject to the provisions of the Corporations Act, a resolution signed by all the Members of the Company entitled to vote will be as valid and effectual as if it had been passed at a duly convened and constituted general meeting of the Company.
- (b) Such a resolution will have effect pursuant to this clause even if the Members entitled to vote sign separate copies of the resolution.
- (c) Where the Company has only one Member and that Member records in writing his, her or its decision to a particular effect, the recording of the decision counts as the passing by the Member of a resolution to that effect. The record will have the effect of a minute of the resolution.

### **7. VOTES OF MEMBERS**

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#### **7.1 Rights**

Subject to any contrary provision of this Constitution and to the terms upon which any Share is issued, a Member is entitled:

- (a) to be present and to vote on any question either personally, by proxy or as proxy for any other Member at any general meeting, or on any poll or resolution passed in accordance with clause 6.12; and
- (b) to be counted in a quorum in respect of any fully paid-up Share and any Shares upon which all calls or instalments due and payable to the Company have been paid.

#### **7.2 Number of Votes**

- (a) Subject to the other provisions of this Constitution, every Member personally present or present by attorney has one vote on a show of hands.
- (b) Subject to the other provisions of this Constitution, every Member present by proxy shall:
  - (i) where the Member has appointed only one (1) proxy, have one vote on a show of hands; or
  - (ii) where the Member has appointed two (2) proxies, not have a vote on a show of hands.
- (c) Upon a poll:
  - (i) every Member has one vote for every whole dollar of balance held in their Member's Account in the Fund at the time of the poll (whether present in person or by proxy); or
  - (ii) if a Member does not hold a Member's Account in the Fund, such a Member has one vote for every whole dollar of balance held in the Member's Account of the member of the Fund they represent at the time of the poll (whether present in person or by proxy).

### 7.3 Joint Holders

Where there are joint holders of any Share, the vote of the senior of them who tenders a vote (whether in person or by proxy) will be accepted to the exclusion of the votes of the other joint holders of that Share. For the purpose of this clause, seniority will be determined by the order in which the names of the joint holders stand in the Register.

### 7.4 No Casting Vote

In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the general meeting is not entitled to a second or casting vote.

### 7.5 Proxies

- (a) The instrument appointing a proxy must be in writing:
  - (i) under the hand of the appointor;
  - (ii) under the hand of an attorney duly authorised in writing; or
  - (iii) if the appointor is a corporation, executed by the corporation or under the hand of a duly authorised officer or attorney.
- (b) A proxy need not be a Member of the Company.

### 7.6 Instrument Appointing Proxy

- (a) To be valid, the instrument or a notarially certified copy appointing a proxy and the power of the attorney or other authority, under which it is signed must be deposited at the Registered Office or other place specified in the notice convening the general meeting at least forty-eight (48) hours before the time for holding the meeting or adjourned general meeting at which the person named in the instrument proposes to vote.
- (b) In the case of a poll, the instrument must be deposited at least twenty-four (24) hours before the time appointed for the taking of the poll.
- (c) No instrument of proxy will be valid after the expiration of twelve (12) months from the date of its execution except at an adjourned general meeting or on a poll demanded at a general meeting or adjourned general meeting where the general meeting was originally held within twelve (12) months from that date.

### 7.7 Form of Proxy

An instrument appointing a proxy will be in the following form or a form which is substantially the same as the circumstances permit:

*I/We, \_\_\_\_\_ of \_\_\_\_\_ being a  
Member/Members of the above named Company hereby appoint \_\_\_\_\_  
or failing him/her, the Chairman of the meeting, of \_\_\_\_\_ as my/our  
proxy to vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be)  
general meeting of the Company to be held on the \_\_\_\_\_ day of  
20\_\_\_\_, and at any adjournment of the meeting.*

*Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.*

*This form is to be used [in favour of/against]\* the resolution.*

*\*Strike out whichever is not desired. (Unless otherwise instructed the proxy may vote as they think fit or they may abstain from voting).*

Clauses 7.6 and 7.7 shall not derogate from any other method of appointment, notice or exercise of a proxy permitted by the Corporations Act.

#### **7.8 Poll**

The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.

#### **7.9 Power of Attorney**

A Member may, by power of attorney duly executed in the presence of at least one (1) witness, appoint an attorney to act on the Member's behalf at all, or any, general meeting of the Company. This power of attorney, or a properly certified copy of it, must at least forty-eight (48) hours before the time for holding the general meeting be deposited with the Secretary or at the Registered Office together with evidence (if any) of the due execution and the non-revocation of the power of attorney as the Directors may require.

#### **7.10 Validity of Vote**

A vote at a general meeting in accordance with the terms of an instrument of proxy or a power of attorney will be valid notwithstanding:

- (a) the prior death of the principal; or
- (b) the principal is mentally incapacitated;
- (c) the subsequent revocation of the proxy or power of attorney; or
- (d) the transfer of the Share in respect of which the vote is given,

**PROVIDED THAT** no intimation in writing of the death, revocation, or transfer has been received at the Registered Office before the general meeting.

### **8. DIRECTORS**

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#### **8.1 Number**

- (a) The number of Directors must not be less than one (1) **PROVIDED THAT** the Company in general meeting may by ordinary resolution increase that minimum requirement.
- (b) The number of Directors must not exceed four (4) **PROVIDED THAT** the Company in general meeting may by ordinary resolution either increase or decrease that number.

#### **8.2 Shareholding Requirement**

Unless otherwise determined by the Company in general meeting, there will be no shareholding requirement for a Director.

#### **8.3 Appointment and Removal**

Subject to the provisions of this Constitution, the Company in general meeting may by ordinary resolution:

- (a) appoint additional Directors, whether to fill a casual vacancy or otherwise; and

- (b) remove any Director from office and appoint another person as a replacement.

#### **8.4 Vacation of Office**

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act or by virtue of any order made under the Corporations Act, the office of a Director immediately becomes vacant if he or she:

- (a) becomes bankrupt or insolvent or suspends payment or compounds with his or her creditors;
- (b) is convicted of an indictable offence;
- (c) dies;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under any law relating to mental health; or
- (e) resigns from office by notice in writing to the Company.

#### **8.5 Death**

If a Director, who is also a member of the Fund, ceases to be a Director by operation of clause 8.4(c) above (**Former Director**), the Legal Personal Representative of the Former Director shall automatically be appointed as a Director (**Replacement Director**), in place of the Former Director, subject to the following conditions:

- (a) the appointment of the Replacement Director as a Director shall take effect from the date the Replacement Director provides the Company with a signed consent to act as a Director;
- (b) if there is more than one Legal Personal Representative in respect of a Former Director, and more than one Legal Personal Representative provides the Company with a signed consent to act as a Director in accordance with this clause 8.5, for the purposes of this Constitution those Legal Personal Representatives shall be collectively treated as only 'one' Director with respect to voting powers, quorum, etc; and
- (c) the office of the Replacement Director shall immediately become vacant upon commencement of the payment of death benefits by the Company in respect of the Former Director's membership interest in the Fund.

#### **8.6 Incapacity**

If a Director, who is also a member of the Fund, ceases to be a Director by operation of clause 8.4(d) (**Former Director**), the Legal Personal Representative of the Former Director will be appointed as a Director, in place of the Former Director (**Replacement Director**), subject to the following conditions:

- (a) the appointment of the Replacement Director as a Director shall take effect from the date the Replacement Director provides the Company with a signed consent to act as a Director;
- (b) if there is more than one Legal Personal Representative in respect of a Former Director, and more than one Legal Personal Representative provides the Company with a signed consent to act as a Director in accordance with this clause 8.6, for the purposes of this Constitution those Legal Personal Representatives shall be collectively treated as only 'one' Director with respect to voting powers, quorum, etc; and

- (c) the office of the Replacement Director shall immediately become vacant upon the earliest occurrence of the following events:
  - (i) the Former Director regaining legal capacity and the Replacement Director being notified as such, in writing, by the Former Director; and
  - (ii) the Former Director ceasing to have a membership interest in the Fund.

#### **8.7 Legal Disability Due To Age**

- (a) If a member of the Fund is under a legal disability due to age (**Minor Member**), a parent or guardian of the Minor Member (as the case may be) shall be entitled to be appointed as a Director (**Parent/Guardian Director**) on behalf of the Minor Member upon providing the Company with a signed consent to act as a Director.
- (b) The office of the Parent/Guardian Director shall immediately become vacant upon the Minor Member ceasing to be under a legal disability due to age.

#### **8.8 Enduring Power of Attorney**

- (a) If a member of the Fund has granted an Enduring Power of Attorney to a person, the member may appoint that person as a Director on behalf of, or in place of, the member.
- (b) If a member of the Fund has granted an Enduring Power of Attorney to multiple persons, the member may appoint one of those persons as a Director on behalf of, or in place of, the member.
- (c) The appointment of the person as a Director under this clause 8.8 shall take effect from the date that person provides the Company with a signed consent to act as a Director.

#### **8.9 Compliance with the SIS Act**

- (a) The appointment of a person as a Director under clauses 8.5 to 8.8 is subject to the Fund satisfying the definition of Self Managed Superannuation Fund.
- (b) If the appointment of a person as a Director under clauses 8.5 to 8.8 would result in the Fund failing to satisfy the definition of Self Managed Superannuation Fund, the purported appointment of the person as a Director will not be effective.

#### **8.10 Vacancy**

- (a) The Directors may act notwithstanding any vacancy in their body, but if their number falls below any minimum required by clause 8.1 (or if no minimum is fixed, below the number required to constitute a quorum of Directors pursuant to clause 10.5) the Directors may only act in an emergency or for the purpose of filling up vacancies or to summon a general meeting of the Company.
- (b) Any Director appointed pursuant to clause 8.10(a) will only hold office until the next following general meeting of the Company, but will then be eligible for re-election.

#### **8.11 Eligibility**

- (a) A person shall not be eligible for election to the office of a Director at any general meeting unless:
  - (i) the person is a Director who was appointed pursuant to clause 8.5 or has been nominated by the Directors for election at that general meeting; or

- (ii) the person is proposed by a Member, and the proposing Member or the person leaves a notice at the Registered Office which nominates the person for the office of Director and includes the written consent of the person nominated to act as a Director.
- (b) A notice given in accordance with clause 8.11(a)(ii) must be left at the Registered Office at least thirty (30) days before the relevant general meeting.
- (c) Notice of each person standing for election to the office of Director must be given to all persons entitled to receive notice of general meetings at least seven (7) days prior to the relevant general meeting.

#### **8.12 Remuneration**

No remuneration will be paid to any Director.

### **9. POWERS OF DIRECTORS**

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#### **9.1 Powers and Restrictions**

The Company is to be managed by the Directors who may pay all expenses included in registering the Company. The general powers given by this clause 9 shall not be limited or restricted by any special authority or power given to the Directors by any other clause of this Constitution.

#### **9.2 Validity**

No regulation made by the Company will invalidate any prior act of the Directors which would have been valid if that regulation had not been made.

#### **9.3 Power of Attorney**

- (a) The Directors may by power of attorney appoint any corporation, firm, person or body of persons to be the attorney or attorneys of the Company for any purpose and with such powers, authorities, and discretions, not exceeding those vested in or exercisable by the Directors under this Constitution, for such period and subject to such conditions as they may think fit.
- (b) Any powers of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit.
- (c) The Directors may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

### **10. PROCEEDINGS OF DIRECTORS**

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#### **10.1 Notice**

At least two (2) clear days' notice must be given of all Directors' meetings, unless all of the Directors waive this requirement. A Director may, and the Secretary must at the request of any Director, at any time summon a meeting of the Directors.

## **10.2 Format**

- (a) The Directors may meet together either in person or (provided that all persons participating in the meeting are able to hear and be heard by all other participants) by telephone or any other form of instantaneous communication for the dispatch of business and adjourn and otherwise regulate their meetings and proceedings as they think fit.
- (b) Any person not present in person at any meeting but participating in the meeting will be deemed for the purpose of this Constitution to be present at that meeting.
- (c) A resolution passed at a meeting will be deemed to have been passed at a meeting of the Directors held on the day and time the conference was held.

## **10.3 Minutes**

- (a) The Directors must cause minutes to be duly entered in books provided for that purpose stating:
  - (i) the names of the Directors present at each meeting of Directors or any committee of Directors;
  - (ii) all appointments of officers made by the Directors; and
  - (iii) all resolutions and proceedings of all meetings of the Directors and of any committee of Directors.
- (b) The Directors must cause the minutes of every meeting of Directors or of the Company to be signed by the Chairman of the meeting or by the Chairman of a succeeding meeting. If the minutes are signed, they will be evidence of the proceedings to which the minutes relate.

## **10.4 Voting**

- (a) Questions arising at any meeting of the Directors are to be determined by a majority of votes.
- (b) Unless the Directors unanimously agree otherwise, each Director present at, or participating in, a meeting (or if absent, his or her Alternate Director if any) and competent to vote will:
  - (i) if the Director is a member of the Fund - have one vote for every whole dollar of balance held in their Member's Account in the Fund; or
  - (ii) if the Director is not a member of the Fund – have one vote for every whole dollar of balance held in the Member's Account of the member of the Fund whom the Director represents.; or
  - (iii) if the Director is not a member of the Fund and does not represent a member of the Fund – have one vote.
- (c) In the event of an equality of votes, the Chairman will not have a second or casting vote.

## **10.5 Quorum**

- (a) If the Company has only one Director, the quorum necessary for the transaction of the business of the Directors shall be one.



- (b) Where the number of Directors exceeds one, the quorum necessary for the transaction of the business of the Directors may be fixed from time to time by the Directors and unless so fixed will be two.
- (c) An Alternate Director will be counted in a quorum at a meeting at which the Director appointing him or her is not present.
- (d) A Director or Alternate Director interested in any business of the meeting may be counted in a quorum notwithstanding his or her interest.
- (e) If the quorum is two or more, it must not be constituted solely by a Director who is also acting as an Alternate Director for one or more other Directors.

#### **10.6 Competency**

A meeting of the Directors at which a quorum is present will be competent to exercise all or any of the authorities, powers and discretions by, or under, this Constitution presently vested in, or exercisable by, the Directors generally.

#### **10.7 Chairman**

- (a) The Directors may elect any one of their number to be Chairman of their meetings and may determine the period for which the Chairman is to hold office.
- (b) If no Chairman is elected or if at any meeting the Chairman is not present within fifteen (15) minutes of the time appointed for holding the meeting or is not willing to act, the Directors present must choose one of their number to be Chairman of that meeting.
- (c) If the Company has only one Director, that Director will act as Chairman.

#### **10.8 Validity of Acts**

- (a) All acts done at any meeting of the Directors, by a committee of Directors or by any person acting as a Director will be as valid as if every person had been duly qualified and appointed, had continued in office, and had been entitled to be a Director.
- (b) A subsequent discovery that there was some defect in the appointment or continuance in office of any of the Directors or other persons acting as Directors or that they, or any of them, were disqualified or had vacated office or were not entitled to vote will not affect the validity of any such acts.

#### **10.9 Signed Resolution**

- (a) The Directors may pass a resolution without a Directors' meeting being held if a majority of the Directors entitled to vote on the resolution (and being not less than the number required for a quorum at a meeting of Directors) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) The resolution is passed when the last Director required to constitute a majority signs.
- (c) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (d) A document referred to in this clause 10.9 must be sent to every Director who is entitled to vote on the resolution (whether or not the director signs the document).
- (e) If the Company has only one Director and that Director records in writing his or her decision to a particular effect, the recording of the decision counts as the passing by

the Director of a resolution to that effect. A record of the Director's decision will have the effect as minutes of the passing of that resolution.

## **11. ALTERNATE DIRECTORS**

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### **11.1 Appointment**

Each Director has the power to appoint any person (whether a Member or not) to be an Alternate Director in his or her place during any time and from time to time as the Director appoints. Each Director has the power at his or her discretion to remove the Alternate Director appointed by that Director.

### **11.2 Powers**

- (a) An Alternate Director may act in the place of the Director by whom he or she was appointed and will be entitled to notice of every meeting of the Directors as if he or she was a Director.
- (b) An Alternate Director may attend any meetings and vote as a Director except while the Director by whom the Alternate Director was appointed is also present (without prejudice to the Alternate Director's right to vote on his or her own account if he or she is a Director).
- (c) An Alternate Director shall exercise and discharge all the rights, powers, and duties of the Director by whom he or she was appointed, including the power granted for the appointment of an Alternate Director, and shall be subject in all respects to the conditions existing with reference to the other Directors except that he or she:
  - (i) will not be required to hold qualification shares (if any); and
  - (ii) will not be entitled to be remunerated otherwise than out of the remuneration of the Director by whom he or she was appointed. In respect of remuneration (if any), the rights of the Alternate Director will be against the Director by whom he or she was appointed only, and not against the Company.

### **11.3 Officer**

An Alternate Director will be an officer of the Company and will not be deemed to be the agent of the Director by whom he or she was appointed.

### **11.4 Cessation**

If any Director who has for the time being appointed an Alternate Director ceases to be a Director, the Alternate Director will cease to be a Director.

### **11.5 Notice**

Any appointment or removal of an Alternate Director may be made by notice in writing delivered (by means including the ordinary postal services) to the Registered Office or to the Secretary personally and will take effect from the time the notice is delivered.

## **12. SECRETARY**

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The Directors may appoint and remove a Secretary. The Directors may at any time appoint a person as an additional Secretary or as acting Secretary or as a temporary substitute for the Secretary, who will for the purposes of this Constitution be deemed to be, and may be referred to as, the Secretary.

## **13. NOTICES**

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### **13.1 General**

A notice may be given by the Company to any Member either personally or by sending it by post to the Member's registered address or to the address (if any) supplied by the Member to the Company for the giving of notices.

### **13.2 Service by Post**

Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and will be deemed to have been effected:

- (a) on the day after the date of its posting in the case of a notice of a meeting; or
- (b) at the time at which the letter would be delivered in the ordinary course of post in any other case.

### **13.3 Advertisement**

Any notice required or allowed to be given by the Company to the Members or any of them by advertisement will be sufficiently advertised if it is advertised once in one daily newspaper circulating in the capital city and metropolitan area in the state of incorporation of the Company.

### **13.4 Joint Holders**

A notice may be given by the Company to the joint holders of a Share by giving the notice to the joint holder first named on the register in respect of the Share.

### **13.5 Deemed Service**

- (a) Any notice or document sent by post to, or left at, the registered address of any Member in pursuance of this Constitution will be deemed to have been fully served in respect of any Shares whether held solely or jointly with other persons by the Member and, despite the Member being deceased or bankrupt, and whether or not the Company had, at the time of giving the notice, notice of the Member's death or bankruptcy. This will apply until some other person is registered in the Member's stead as the holder or joint holder of the Shares.
- (b) Service will for all purposes be deemed a sufficient service of the notice or document on all persons interested (whether jointly with or as claiming through or under the Member) in any Share.

## **14. WINDING UP**

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- (a) The Company shall not be wound up while it is the trustee of the Fund.
- (b) On the winding up of the Company any income and property of the Company will be distributed to charities as agreed by Members at a general meeting.

## **15. INDEMNITY AND INSURANCE**

### **15.1 Indemnity to Officers**

- (a) To the extent permitted by the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against any liability (other than a liability for legal costs) incurred by that person as such an officer of the Company but the Company or a Related Body Corporate must not indemnify an officer (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an officer of the Company:
- (i) a liability owed to the Company or a Related Body Corporate;
  - (ii) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the Corporations Act; or
  - (iii) a liability that is owed to someone other than the Company or a Related Body Corporate and did not arise out of conduct in good faith.
- (b) To the extent permitted by the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against liability for legal costs incurred by that person as such an officer of the company except in the circumstances prohibited by the Corporations Act.

### **15.2 Insurance**

The Company may pay the premium in respect of a contract insuring an officer of the Company against any liability incurred by the officer as an officer and against any liability for costs and expenses incurred by the officer in prosecuting or defending proceedings, whether civil or criminal, and whatever the outcome of the proceedings, except in circumstances prohibited by the Corporations Act.

### **15.3 Definition of Officer**

For the purposes of clauses 15.1 and 15.2, "officer" means any person who is or has been a Director, Secretary or executive officer of the Company.


**WE, THE PERSONS TO BE SPECIFIED IN THE COMPANY'S APPLICATION FOR REGISTRATION AS THE PERSONS WHO CONSENT TO BECOME A MEMBER OF THE COMPANY, AGREE TO THE TERMS OF THIS CONSTITUTION.**

**DATED** the 9<sup>th</sup> day of March 2021

**EXECUTED by STEVEN RODNEY PRATT** in the presence of: )  
)  
)

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
**STEVEN RODNEY PRATT**

  
\_\_\_\_\_  
Full Name of Witness

**EXECUTED by FIONA DAWN MANLEY )**  
**in the presence of: )**

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
**FIONA DAWN MANLEY**

  
\_\_\_\_\_  
Full Name of Witness

