

**VISCOPY LIMITED**  
**ACN 069 759 922**

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**CONSTITUTION**

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**CONSTITUTION**  
**OF**  
**VISCOPY LIMITED**  
**ACN 069 759 922**

**A COMPANY LIMITED BY GUARANTEE**

**1. INTERPRETATION**

**1.1 Replaceable rules inapplicable**

The replaceable rules in the Corporations Act do not apply to the Company unless repeated in this Constitution or specifically made applicable to this Company by a provision of this Constitution.

**1.2 Definitions**

In this Constitution, unless the context otherwise requires:

**Applicant** means a person applying for membership of the Company pursuant to clause 4.

**Artist** means a creator of an Artistic Work who has copyright in that Artistic Work, including a company through which the creator operates in respect of an Artistic Work over which the creator has copyright.

**Artistic Work** means artistic work as defined in section 10 of the *Copyright Act 1968* as amended from time to time being at the date of drafting this Constitution:

- (a) a painting, sculpture, drawing, engraving or photograph, whether the work is of artistic quality or not;
- (b) a building or a model of a building, whether the building or model is of artistic quality or not; or
- (c) a work of artistic craftsmanship to which neither of the last two preceding paragraphs applies;

but does not include a circuit layout within the meaning of the *Circuit Layouts Act 1989*.

**Board** means the board of Directors.

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

**Committee** means a committee of Directors formed pursuant to clause 69.

**Commonwealth Grant** means the grant given to the Company pursuant to a contract between the Commonwealth of Australia and the Company dated on or about June 1995.

**Company** means VISCOPY Limited ACN 069 759 922.

**Constitution** means this constitution and all supplementary constituted or amending Constitutions for the time being in force.

**Copyright** means copyright as defined in section 31(1)(b) of the *Copyright Act 1968* (Cth.).

**Copyright Act** means the *Copyright Act 1968* (Cth.).

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

**Director** means any person occupying the position of a director of the Company by whatever named called (but not an associate director).

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

**Entitlement** means the proportion of Equitable Remuneration and any other monies received by the Company under this Constitution which accrues to and is payable to a Member in accordance with this Constitution.

**Equitable Remuneration** means all Equitable Remuneration payable to Members under the licences contained in Part VB of the Copyright Act and any other licence under the Copyright Act in respect of which the Company is declared a collecting society.

**Financial Year** means the year commencing on the first of July in one year and ending on the thirtieth of June in the following year, or a part year ending the thirty-first December in the year of the Company's incorporation.

**General Account** means the account established by the Company pursuant to clause 85.

**General Meeting** has the meaning given by clause 16.

**Grant Account** means the account established by the Company pursuant to clause 84.

**Licence Agreement** means the written agreement referred to in clause 5(a).

**Members** means persons admitted as members of the Company pursuant to clause 3.

**NAVA** means the National Association for the Visual Arts Limited, ACN 003 229 285 of P.O. Box 60 Potts Point, NSW 1335 Australia.

**Non-Member** means any person qualified in accordance with clause 3 to be a Member but not in the Register of Members.

**Office** means the registered office for the time being of the Company.

**Officer** has the meaning given by the Corporations Act.

**Register** means the register of Members to be kept pursuant to the Corporations Act.

**Seal** means the common seal (if any) of the Company.

**Secretary** means any person appointed to perform the duties of secretary of the Company or any person appointed to act temporarily as such.

**Special Accounts** means the account established by the Company pursuant to clause 91.

**Subject Rights** means copyright in an Artistic Work as defined in Section 31(1)(b) of the *Copyright Act*, as amended from time to time, and listed in clause 5(c).

**Trust Account** means the trust account established pursuant to clause 91.

**Trust Period** in respect of moneys held in the Trust Account means a period of four years, or such further period not exceeding two years as the Directors may in their discretion determine prior to the expiration of the period of four years, from the end of the Financial Year in respect of which the moneys are deposited into the Trust Account pursuant to clause 91.

### **1.3 Construction**

In this Constitution unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa;
- (b) any gender include(s) the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) “includes” means includes without limitation;
- (e) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) any legislation or subordinate legislation includes any corresponding later legislation or subordinate legislation;
  - (iii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission; and
  - (iv) month means a period commencing on any day of a calendar month and ending on:
    - A. the corresponding day in the next succeeding calendar month; or
    - B. (if a corresponding day does not occur in the next succeeding calendar month), the last day of the next succeeding calendar month.

## **2. MEMBERS**

- (a) The maximum number of Members which the Company proposes to register is unlimited.
- (b) The Members of the Company are:
  - (i) any person who is admitted to membership of the Company; and
  - (ii) signs and forwards to the Secretary a notice agreeing to be bound by the Company’s Constitution.

## **3. PERSONS ELIGIBLE FOR ADMISSION TO MEMBERSHIP**

The following persons are eligible for admission to membership of the Company:

- (a) an Artist;
- (b) an executor, trustee or personal representative of a deceased Artist who holds copyright in the Artistic Work forming part of the Artist's estate;
- (c) a surviving beneficiary who is entitled to the copyright in an Artistic Work under the will of a deceased Artist or by statute;
- (d) any person who has been assigned copyright in an Artistic Work; or
- (e) any person who otherwise owns, controls or is beneficially entitled to copyright in an Artistic Work; or
- (f) an agent appointed by any of the above to act on their behalf.

#### **4. APPLICATION AND ADMISSION TO MEMBERSHIP**

- (a) Any person who is eligible for membership in accordance with the terms of clause 3 may apply to the Company for admission to membership.
- (b) An application is to be made in writing signed by the Applicant and in such form as the Board from time to time prescribes. The Board may require an Applicant to supply such evidence of eligibility as it considers reasonably necessary.
- (c) The Board shall consider each application and, if reasonably satisfied that the Applicant is eligible for membership in accordance with the terms of clause 3, may admit the Applicant to membership of the Company.

#### **5. RIGHTS ADMINISTERED ON BEHALF OF MEMBERS**

- (a) Every Member shall, on admission to the Company, enter into an exclusive written licence agreement (**Licence Agreement**) with the Company allowing the Company to administer and licence, in Australia and overseas, on behalf of that Member in relation to an Artistic Work:
  - (i) Subject Rights; and
  - (ii) any other rights the Company administers pursuant to clauses 5(d) and (e).

A copy of the then current Licence Agreement will be provided to any person applying for admission to membership.

- (b) Any agreement entered into in accordance with clause 5(a) shall cease on the day of cessation of membership by the contracting Member and the provisions of clause 12 apply to that Member.
- (c) Subject to clause 6(a), the Subject Rights which the Company is to administer on behalf of a Member in relation to an Artistic Work are:
  - (i) the right to reproduce the work in a material form;
  - (ii) the right to publish the work;
  - (iii) the right to include the works in a broadcast;
  - (iv) the right to cause an Artistic Work to be communicated to the public within or outside Australia.
- (d) Subject to clause 6(a), the Company shall administer any other rights, in addition to the Subject Rights in respect of the exploitation or use in any way of Artistic Works, whether in the nature of copyright or not, including “droit de suite” and moral rights as the Directors resolve from time to time.
- (e) Subject to clause 6(a), the Company shall administer any other rights connected with an Artistic Work which may come into existence at any time in the future by way of legislation, changes in the law or otherwise, subject to the sole and absolute discretion of the Board of Directors to enforce those rights.
- (f) Prior to entering into a Licence Agreement in terms of clause 5(a) above, every Member shall, on admission grant the Company the power and authority (but not the duty) to:
  - (i) authorise or permit or forbid the exercise of the Subject Rights;
  - (ii) grant licences on the Member’s behalf for the exercise of the Subject Rights;
  - (iii) collect copyright fees, royalties, Equitable Remuneration and other money for the authorised use of any Member’s Artistic Works, or by way of damages or compensation for the unauthorised use of such works;

- (iv) institute and conduct proceedings against all parties infringing the Member's subject rights and to represent the Member in all matters concerning the said rights; and
- (g) generally to protect the Member's rights in the Member's Artistic Works.

## **6. RIGHTS OF MEMBERS UNDER LICENCE AGREEMENTS**

- (a) Every Licence Agreement entered into by a Member pursuant to clause 5(a) must allow the Member to select at the commencement of the Licence Agreement and during its term:
  - (i) any Artistic Works; and/or
  - (ii) any of the categories of rights referred to in clauses 5(c)(i)-(iv), 5(d) and 5(e),  
that will not be subject to the Licence Agreement.
- (b) Subject to clause 6(c), a Member is entitled to vary an existing Licence Agreement that Member has with the Company to give effect to the Member's selection pursuant to clause 6(c).
- (c) A Member must give the Board six (6) months written notice of that Member's intention to vary the Licence Agreement pursuant to clause 6(a).

## **7. ENTITLEMENT OF MEMBERS**

- (a) Except as otherwise provided by this Constitution, each Member of the Company is entitled to notice of and to attend and vote at General Meetings.
- (b) If during any ten (10) consecutive Financial Years any Member has not had money collected by the Company on behalf of that Member:
  - (i) pursuant to the Licence Agreement referred to in clause 5(a); and
  - (ii) in respect of the Subject Rights and other rights referred to in clauses 5(a)(i) and 5(a)(ii),

then that Member is not entitled to notice of, or to attend to vote at any further General Meeting until that Member has had money collected by the Company on behalf of that Member.

**8. MONEY PAYABLE BY MEMBERS**

The Board may resolve at any time to impose annual fees or special levies on Members of the Company if the Board considers it is reasonably necessary to impose the fees or levies.

**9. SPECIAL CONTRIBUTIONS BY MEMBERS**

(a) If the Board resolves at any time that the administration of the rights of a Member requires:

- (i) action which is different to the terms of the written agreement between the Member and the Company;
- (ii) action that differs from what is required to administer the rights of other Members,

then, subject to clause 9(b) the Board may require that Member to make a financial contribution to the Company and a monetary limit may be determined from time to time by ordinary resolution of the Members in General Meeting.

(b) Before requesting a financial contribution pursuant to clause 9(a), the Board must resolve that the action required under clause 9(a) will entail a significant increase in the general level of administration expenses of the Company.

The financial contribution to be made by the Member pursuant to clause 9(a) shall be deducted from moneys distributable to that Member by the Company.

**10. TERMINATION OF MEMBERSHIP**

(a) A Member may give written notice to the Board of the Member's intention to terminate membership on a proposed date, the period of notice being no less than six (6) months prior to the proposed date of termination.

(b) If the Board accepts in writing the Member's notice given under clause 10(a), then that Member's membership ceases on the proposed date of termination by that Member.

**11. CESSATION OF MEMBERSHIP**

The membership of any Member shall cease:

- (a) if the Member ceases to hold or be entitled to copyright in the Artistic Work entitling that Member to participate in the allocation of moneys collected by the Company, in any country which is:
  - (i) a signatory to the Berne Convention for the Protection of Literary and Artistic Works (Paris Text 1971); or
  - (ii) a party to the Universal Copyright Convention 1952 (as revised in Paris, 24 July 1971);
- (b) upon a Member assigning the copyright in the Artistic Work which entitled that Member to participate in the allocation of moneys collected by the Company;
- (c) in the case of a Member being an executor, administrator or trustee of a deceased Artists estate, upon that executor, administrator or trustee having disposed of copyright in an Artistic Work in accordance with the terms of the deceased Artist's will or statutory provisions;
- (d) upon a Member failing to pay, for a period of time determined by the Board, fees or levies which are imposed pursuant to clause 8; or
- (e) if the Licence Agreement between the Company and the Member terminates for any reason.

## **12. EFFECT OF CESSATION OF MEMBERSHIP**

Upon the day of cessation of membership by a Member and subject to any written agreement between a Member and the Company:

- (a) all rights, privileges and obligations of membership shall cease, subject to clause 12(d);
- (b) if the Licence Agreement between the Company and the Member has not terminated, then the Licence Agreement terminates;
- (c) the Member is not entitled to participate in any further allocation of moneys held by the Company, subject to clause 12(d);
- (d) the Member continues to be entitled to receive any allocation of moneys by the Company to which that Member becomes entitled in respect of any period during which that Member was a Member of the Company;

- (e) a Member is not entitled to reimbursement of fees or levies imposed pursuant to clause 8;
- (f) subject to any written agreement between the Company and a Member, that Member is entitled to reimbursement of that portion of any financial contribution made pursuant to clause 9(a) which the Company has not used;
- (g) if a Member ceases to be a Member during the pendency of proceedings instituted by or against the Company either in the name of the Company or the Member in respect of an Artistic Work of a Member entitling that Member to participate in the allocation of money collected by the Company, any rights the subject of those proceedings which the Company administers on behalf of that Member will continue to be administered by the Company until the proceedings are finalised or until the Board decides otherwise;
- (h) any money collected by the Company on behalf of a Member, arising from the administration of rights referred to in clause 12(g) will be paid to the Member as soon as the Company has received it.

### **13. CAPACITY**

Subject to the Corporations Act, the Company has the legal capacity of a natural person including the capacity to exercise the powers set out in section 124 of the Corporations Act. It is the intention that this Constitution will not restrict or prohibit the exercise by the Company of any of these powers.

### **14. OBJECTS**

Notwithstanding clause 13, the objects for which the Company is established are:

#### **14.1 Protection of rights in artistic works**

To encourage, promote and advance the understanding and appreciation in Australia and overseas of Artistic Works.

#### **14.2 Representation and defence**

To ensure the representation and defence of the professional, economic, legal and moral interests of the originators and authors or owners (**Proprietors**) of Artistic Works.

#### **14.3 Means of Representation, Defence and Protection**

To carry out the objects in clauses 14.1 and 14.2 by:

- (a) admitting to membership of the Company:
  - (i) creators of Artistic Works who have copyright in those Artistic Works including a company through which the creator operates in respect of an Artistic Work cover which the creator has copyright (**Artists**);
  - (ii) an executor, trustee or personal representative of a deceased Artist for as long as they hold copyright in the Artistic Work forming part of the Artist's estate; and
  - (iii) a surviving beneficiary who is entitled to the copyright in an Artistic Work under the will of a deceased Artist or by statute;
  - (iv) any person who has been assigned copyright in an Artistic Work;
  - (v) an agent appointed by any of the above to act on their behalf;
- (b) controlling, exercising and enforcing the following rights and associated remedies in Australia and overseas on behalf of members of the Company and Proprietors:
  - (i) the right to reproduce an Artistic Work in a material form;
  - (ii) the right to publish an Artistic Work;
  - (iii) the right to include an Artistic Work in a broadcast;
  - (iv) the right to cause an Artistic Work to be communicated to the public within or outside Australia;
  - (v) any other rights connected with an Artistic Work which may come into existence at any time in the future by way of legislation changes in the law or otherwise, subject to the sole and absolute discretion of the Board of Directors to enforce those rights; and
  - (vi) any other rights in respect of the exploitation or use in any way of Artistic Works, whether in the nature of copyright or not, including "droit de suite" and moral rights;

#### **14.4 Collection and distribution of moneys**

To exercise reasonable diligence in the collection and recovery of all copyright fees, royalties, Equitable Remuneration and other moneys due to Members and Proprietors by reason of the exploitation and enforcement of the rights of those Members and Proprietors and to distribute copyright fees, royalties, Equitable Remuneration and other moneys to those Members and Proprietors in accordance with this Constitution having regard to the expenses likely to be incurred in the collection of these monies.

#### **14.5 Research**

To carry out research and to enter into negotiations with governments and all other authorities and bodies for the purpose of legislative and other reforms to improve the legal, financial and moral rights of artists.

#### **14.6 Accept assignments and grant licences**

To accept assignments, licences, powers of attorney or other authorities from Members which the Directors consider necessary to exercise and enforce the rights and associated remedies of Members to enter into licences, contracts and arrangements with any other person, organisation or company in respect of the rights referred to in clause 14.3(b) above.

#### **14.7 Agents for Members and Proprietors**

To act as agents for Members and Proprietors in the enforcement of their rights relating to their Artistic Works including prosecution and defence of court proceedings or the recovery of damages, fees, royalties or Equitable Remuneration as required to effect the objects of the Company.

#### **14.8 Hold monies on trust for Proprietors**

To hold on trust copyright fees, royalties, Equitable Remuneration and other moneys collected by the Company on behalf of Proprietors who are not Members of the Company.

#### **14.9 Carry on business**

To carry on any business which may seem to the Directors capable of being conveniently carried on in connection with the above objects or calculated directly or indirectly to enhance the value of or render profitable any of the property or rights of the Company or Members.

#### **14.10 Acquire business, property or liabilities**

To acquire or undertake the whole or any part of the business, property or liabilities of any person or company carrying on any undertaking or business which the Company is authorised to carry on.

#### **14.11 Partnerships and arrangements**

To enter into partnership or into any arrangement for sharing profits, union or interests, co-operation, joint venture, reciprocal concession or otherwise with any person, association or company carrying on or engaged in or about to carry on or engage in any business or transaction capable of being conducted so as directly or indirectly to benefit the Company.

#### **14.12 Purchase, lease, exchange**

Generally to purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property and any rights or privileges which the Company may think necessary or convenient for the purposes of the Company's undertaking or business.

#### **14.13 Invest**

To invest and deal with the moneys of the Company not immediately required in such manner as may be determined from time to time by the Directors.

#### **14.14 Borrowing and security**

To borrow or raise or secure the payment of money in such manner as the Directors may determine and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the Company in any way.

#### **14.15 Negotiable instruments**

To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, debentures and other negotiable or transferable instruments.

#### **14.16 Dispose of undertaking of company**

To sell or dispose of the undertaking of the Company or any part for a consideration the Directors determine and in particular, to issue debentures or securities to any other company having objects altogether or in part similar to those of the Company.

#### **14.17 Attorney General**

To apply for or acquire a notice from the Attorney General declaring that the Company is a collecting society under the *Copyright Act* as amended or other relevant copyright legislation for the purpose of collecting and distributing copyright fees, royalties, Equitable Remuneration and other moneys on behalf of Proprietors and such other classes of persons or organisations that may be specified in the notice.

#### **14.18 Registration**

To procure the Company to be registered or recognised in any foreign country or place.

#### **14.19 Dealings**

To sell, improve, manage, develop, exchange, lease, mortgage, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company.

#### **14.20 Appointment of Agents**

To appoint any agent or agents for the collection and recovery of any moneys receivable by the Company in the exercise of its powers or otherwise for the purpose of the exercise of any such powers.

#### **14.21 Publicity**

To publicise the Company's activities through print, radio, television or other media.

#### **14.22 Acceptance of gifts**

To take and accept any gift, grant or contribution of money or property of any kind for the furtherance of any one or more of the objects of the Company.

#### **14.23 Arrangements with governments and authorities**

To enter into any arrangements with any government or authority, supreme, municipal, local or otherwise, that may seem conducive to the Company's objects or any of them, and to obtain from those governments or authorities any rights, privileges and concessions which the Company may think it desirable to obtain, and to carry out, exercise and comply with any of those arrangements, rights, privileges and concessions.

#### **14.24 Legislative comment**

To support or oppose any legislation which is relevant to the objects of the Company.

#### **14.25 Membership and co-operation with similar organisations**

To subscribe to, become a member of and co-operate with any other company, institution, association or organisation, whether incorporated or not, in the United States of America, United Kingdom, Europe or elsewhere in the world and whose objects are altogether or in part similar to those of the Company, under this Constitution to further the objects of the Company.

#### **14.26 Appointment and removal of persons**

To appoint, employ, remove or suspend any person as may be necessary or convenient for the purposes of the Company.

To do, all such other acts, matters and things as are in the opinion of the Directors incidental or conducive to the attainment of the objects of the Company.

#### **14.27 Raising funds, donations and annual subscriptions**

To take such steps by personal or written appeals, public meetings or otherwise, as may from time to time be determined by the Directors for the purpose of raising funds, by donation, annual subscription or otherwise.

#### **14.28 Carrying out of objects worldwide**

To do all or any of the above things in any part of the world and as principals, agents, contractors, trustees or otherwise, and by or through trustees, agents or otherwise, and either alone or in conjunction with others.

#### **14.29 Donations for cultural and benevolent purposes**

To make donations for cultural and benevolent purposes related to the maintenance and development of the visual arts industry including, but not limited to:

- (a) benevolent funds for Artists; and
- (b) Artists' organisations,

provided that the total funds available for donation in any one year during the period of the Commonwealth Grant does not exceed one per cent (1%) of the collections received in the previous year and on the expiration of the Commonwealth Grant the Directors of the Company shall determine the percentage amount of total of funds available in any one year for the donations referred to in this clause.

**14.30 Publications**

To print and publish any newsletters, periodicals, books or catalogues or leaflets that the Directors think are desirable for promotion of the Company's objects.

**14.31 Administrative Expenses**

To meet the payment of the administrative costs of the Company out of amounts received by it.

**14.32 Support facilities**

To develop where practicable, supporting facilities and services for artists consistent with the objects of the Company.

**14.33 Participation in fund raising**

To organise, participate in and derive or accept the proceeds from any event, sales or other legal fund raising activity.

**14.34 Terms of membership**

To admit to membership of the Company, persons, organisations and corporations upon terms and with privileges in accordance with the Constitution of the Company.

**14.35 Activity incidental to attainment of objects**

Each of the above objects of the Company shall be separate and distinct objects and none of them shall be in any way limited by reference to any other or others of them.

## **GENERAL MEETINGS**

### **15. ANNUAL GENERAL MEETING**

The Board shall convene a General Meeting at least once in every calendar year and within the period of five months after the end of the Company's Financial Year, at such time and place anywhere in the world as the Board prescribes.

### **16. TYPES OF MEETINGS**

A general meeting convened under clause 15 is an "Annual General Meeting" and any other meeting of the Company is a "General Meeting".

### **17. CONVENING OF GENERAL MEETING**

The Directors may whenever they think fit and must upon a requisition made in accordance with Section 249D of the Corporations Act convene a general meeting of the Company.

### **18. MEETINGS OF MEMBERS BY INSTANTANEOUS COMMUNICATION DEVICE**

#### **18.1 Definitions**

For the purposes of this clause "instantaneous communication device" includes telephone, television or any other audio or visual device which permits instantaneous communication.

#### **18.2 Conditions to be satisfied**

For the purposes of this Constitution, the contemporaneous linking together by instantaneous communication device of a number of consenting Members not less than the quorum, whether or not any one or more of the Members is out of Australia, is taken to constitute a General Meeting and all the provisions of this Constitution about General Meetings apply to meetings held by instantaneous communication device provided that:

- (a) all the Members for the time being entitled to receive notice of a General Meeting are entitled to notice of the meeting by instantaneous communication device and to be linked by instantaneous communication device for the purposes of a meeting and notice of a meeting by instantaneous communication is to be given on the instantaneous communication device or in any other manner permitted by this Constitution;
- (b) each of the Members taking part in the meeting by instantaneous communication device can hear each of the other Members taking part at the commencement of the meeting; and

- (c) at the commencement of the meeting each Member acknowledges to all the other Members taking part his or her presence for the purpose of a General Meeting.

### **18.3 Leaving the meeting**

A Member shall not leave the meeting by disconnecting the instantaneous communication device unless the Member has previously obtained the express consent of the chairperson. A Member is conclusively taken to have been present and to have formed part of the quorum at all times during the meeting by instantaneous communication device unless the Member has previously obtained the express consent of the chairperson of the meeting to leave the meeting.

### **18.4 Minutes**

A minute of the proceedings at such meeting by instantaneous communication device is sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting.

## **NOTICE OF GENERAL MEETINGS**

### **19. NOTICE OF GENERAL MEETINGS**

At least twenty-one (21) days notice must be given of a meeting of Members unless the Corporations Act provides otherwise. The notice must specify the place, day and hour of the meeting and in the case of:

- (a) special business, the general nature of that business; and
- (b) an election of directors, the names of candidates for election.

### **20. SPECIAL BUSINESS**

All business will be special that is transacted at:

- (a) a general meeting not being an annual general meeting; or
- (b) an annual general meeting with the exception of:
  - (i) the confirmation of the minutes of the proceeding meeting;
  - (ii) the receipt and consideration of the balance sheet, profit and loss statement and the reports of the Directors and the auditors;

- (iii) the election of Directors; and
- (iv) the transaction of any business which under the Corporations Act or this Constitution is required to be transacted.

**21. PERSONS TO WHOM NOTICE IS TO BE GIVEN**

- (a) The Company shall give notice of every General Meeting in the manner authorised by this Constitution to:
  - (i) every Member subject to clause 5(b); and
  - (ii) the auditor for the time being of the Company.
- (b) No other person is entitled to receive notices of General Meetings.

**22. OMISSION TO GIVE NOTICE DOES NOT INVALIDATE MEETING**

The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled to receive a notice does not invalidate the proceedings at the meeting.

**PROCEEDINGS AT GENERAL MEETINGS**

**23. QUORUM OF MEMBERS**

Subject to clause 24, no business is to be transacted at any General Meeting unless a quorum of Members is present when the meeting proceeds to business. A quorum consists of five Members present in person or by proxy or attorney (or in the case of a corporation, by representative).

**24. CHAIRPERSON OF GENERAL MEETINGS**

The chairperson of the Board is entitled to take the chair at every General Meeting or if there is no chairperson or if he or she is not present within ten (10) minutes after the time appointed for holding such meeting or is unwilling to act as chairperson the Members present shall choose another Director as chairperson. If no Director is present or if all the Directors present decline to take the chair then the Members present shall choose one of their number to be Chairperson.

**25. ADJOURNMENT WHERE QUORUM NOT PRESENT**

If within thirty (30) minutes from the time appointed for the meeting (or such longer time as a majority of the Members present think fit) a quorum is not present, the meeting stands adjourned

to the same day in the next week at the same time and place (except if that day is a public holiday in which case the meeting is adjourned to the same time and place on the next business day after that).

If at such adjourned meeting a quorum is not present the meeting stands adjourned again to the same day in the next week at the same time and place (except if that day is a public holiday in which case the meeting is adjourned to the same time and place on the next Business Day after that public holiday).

If at the second adjourned meeting, a quorum is not present then any Member or Members present constitute a quorum and may transact the business for which the meeting was called and any other business the Member or Members present agree to transact.

## **26. ADJOURNMENT OF MEETING**

The chairperson of a General Meeting may with the consent of the Members present adjourn the meeting from time to time and from place to place. Business other than the business left unfinished at or for which notice was given for the meeting of which the adjournment took place and which might have been transacted at the meeting shall not be transacted at any adjourned meeting.

## **27. NOTICE OF ADJOURNED MEETING**

Where a meeting is adjourned for thirty (30) days or more, the Secretary shall give notice of the place and hour of the adjourned meeting as in the case of an original meeting. It is not necessary to give any notice of an adjournment or of the business to be transacted at any meeting adjourned for less than thirty (30) days.

## **28. VOTES OF MEMBERS**

- (a) At any General Meeting a show of hands decides a resolution put to the vote of the meeting unless a poll is (before or on the declaration of the result of the show of hands) demanded:
  - (i) by the chairperson of the meeting;
  - (ii) by at least three Members present in person or by proxy; or
- (b) Unless a poll is so demanded a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost, an entry to that effect in the minute book of the Company is conclusive evidence of the fact

without proof of the number or proportion of the votes recorded in favour of or against the resolution.

- (c) On a show of hands and on a poll each Member present in person or by proxy or by attorney or representative has one vote.
- (d) No Member shall be entitled to vote at any general meeting if any fees or levies are in arrears at the date of the meeting, for a period of time which the Board may determine from time to time.

## **29. PROCEDURE FOR POLL**

- (a)
  - (i) If a poll is duly demanded it is to be taken in such manner and (subject to clause 29(a)(ii)) either at once or after an interval or adjournment or otherwise as the chairperson directs and the result of the poll is the resolution of the meeting at which the poll was demanded;
  - (ii) a poll demanded on the election of a chairperson or on a question of adjournment is to be taken immediately.
- (b) The demand for a poll may be withdrawn.

## **30. CASTING VOTE**

In the case of an equality of votes whether on a show of hands or on a poll, the chairperson of the meeting shall have a second casting vote in addition to a deliberative vote.

## **31. VOTES BY PROXIES, ATTORNEYS OR REPRESENTATIVES**

- (a) A Member may vote personally or by proxy, attorney or representative appointed under the Corporations Act.
- (b) The instrument appointing a proxy, attorney or representative is taken to confer authority to demand or join in demanding a poll.
- (c) A proxy, attorney or representative of a Member need not be a Member.

## **32. VOTING BY EXECUTOR, ADMINISTRATOR OR TRUSTEE**

A person who becomes entitled to copyright in the Artistic Work of a Member other than in accordance with this Constitution including, without limitation, by reason of the death of a

Member, has no entitlement to vote pending acceptance by the Board of such person's application for membership under clause 4, unless the Board decides otherwise.

**33. VOTING BY PERSON OF UNSOUND MIND**

- (a) Subject to clause 33(b), if a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, that Member's committee or trustee or such other person as properly has the management of that Member's estate, may exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.
- (b) Any committee, trustee or person proposing to exercise the rights of a Member under clause 33(a), must lodge proof of the validity of that power to act with the Secretary at the Office at least twenty four (24) hours prior to the meeting at which the power is intended to be exercised: otherwise the committee, trustee or person is not entitled to exercise the rights of a Member.

**34. VALIDITY OF VOTES**

- (a) No objection is to be made to the validity of any vote except at the meeting or poll at which such vote is tendered.
- (b) Every vote whether given personally or by proxy or attorney not disallowed at a meeting or poll is taken to be valid for all purposes of such meeting or poll.
- (c) The chairperson of any meeting is the sole judge of the validity of every vote tendered at such meeting.
- (d) The chairperson present at the taking of a poll is the sole judge of the validity of every vote tendered at such poll.

**POWER OF ATTORNEY, REPRESENTATIVE OF A BODY CORPORATE AND PROXY**

**35. APPOINTMENT OF PROXIES AND ATTORNEY**

Subject to section 249X(3) of the Corporations Act, any Member may by proxy or power of attorney duly executed by that Member appoint any proxy or attorney to act on its behalf at all or any meetings and as to all or any other matters connected with the Company or any of its affairs.

### **36. APPOINTMENT OF A REPRESENTATIVE OF A BODY CORPORATE**

Any corporation which is a Member of the Company may appoint by writing under seal such person as it thinks fit to represent and act for it in accordance with section 250D of the Corporations Act to demand or join in demanding a poll, to vote at such poll and to attend and vote at meetings of the Company as though that appointee was the Member. Any new appointment of a representative may be revoked from time to time and a new appointment made.

### **37. DEPOSIT OF POWER OF ATTORNEY**

In the case of a Member wishing to vote under power of attorney, the Member shall leave the instrument creating the power (and such evidence of the validity and non-revocation of the power of attorney as the Board requires) with the Secretary at the Office at least twenty four (24) hours prior to the meeting at which the vote is intended to be given: otherwise the attorney is not entitled to vote.

### **38. ATTORNEY MAY ATTEND MEETINGS AND VOTE**

An attorney may (while the power of attorney remains in force and in the absence of the appointing Member) attend at and take part in the proceedings of and vote at all meetings and at any poll and demand a poll in the same manner as a Member could do if present.

### **39. SPECIAL AND GENERAL PROXIES**

#### **39.1 Special and general proxies**

A Member may give a special proxy for a specified meeting and a general proxy for all meetings until notice or revocation is received.

#### **39.2 Content and delivery of special proxies**

A special proxy is to specify the day upon which the meeting at which it is intended to be used is to be held and is available only at the meeting so specified and any adjournment of such meeting. A special proxy is to be deposited at the Office at least twenty four (24) hours before the time appointed for the meeting at which the person named in such instrument proposes to vote otherwise the person so named is not entitled to vote under the proxy at the meeting. No special proxy is valid after the expiration of three months from the date of its execution.

**39.3 Deposit of general proxy**

A general proxy is to be deposited at the Office at least twenty four (24) hours before the time appointed for the meeting at which the person named in such proxy first proposes to vote otherwise the person is not entitled to vote under the proxy at that meeting.

**40. EXECUTION OF INSTRUMENT OF PROXY**

The instrument appointing a proxy is to be in writing under the hand of the appointor or the appointor's attorney or if such appointor is a corporation, under the common seal of the corporation or under the hand of a duly authorised officer or attorney.

**41. FORM OF PROXY**

An instrument appointing a proxy shall be in or to the effect of the following form or in any other form acceptable to the Directors generally or in a particular case:

**VISCOPY Limited**

**FORM OF PROXY**

I/We

.....

of .....

being a Member or Members of VISCOPY Limited, hereby appoint as my proxy to vote on my behalf at the \*Annual General Meeting/General Meeting of the Company to be held on the day of and at any adjournment thereof,

..... of  
..... or if my proxy does not attend, it may be exercised by the chairperson of the meeting.

This Form of Proxy is to be used \*in favour of/against the resolution.

If this proxy is signed under power of attorney, the signatory declares that there has been no notice of revocation thereof.

DATED this day of .

.....

.....

Signature(s)

**42. DEPOSIT BY FACSIMILE**

A Member may deliver a form of proxy, power of attorney or appointment of representative required to be deposited at the Office by this Constitution to the Office by facsimile transmission to the facsimile number of the Company if the Member delivering a proxy, power of attorney or appointment of representative forwards an original of the document to the Company as soon as possible following transmission.

**43. VALIDITY OF VOTE PURSUANT TO PROXY ETC.**

A vote given or act done in accordance with the terms of an instrument of proxy or of a power of attorney is valid despite:

- (a) the previous death or unsoundness of mind of the principal;
- (b) the revocation of the instrument (or of the authority under which the instrument was executed), the revocation of proxy or power of attorney in respect of which the instrument or power is given if no intimation in writing of the death, unsoundness of mind or revocation has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

**DIRECTORS**

**44. NUMBER OF DIRECTORS**

Unless otherwise determined by the Company in general meeting, the minimum number of Directors shall be seven.

**45. APPOINTMENT OF DIRECTORS**

- (a) The first Directors shall be appointed in writing by a majority of the subscribers to the Constitution of the Company.

- (b) The Directors may appoint other Directors in accordance with section 201H of the Corporations Act and clause 46 to fill a casual vacancy or to appoint an additional Director at any time, such appointment to be confirmed by Members by resolution at the next Annual General Meeting.
- (c) A Director may retire from that Director's office upon giving notice in writing to the Company of that Director's intention to do so. Such resignation takes effect upon the date specified in the notice.

#### **46. COMPOSITION OF BOARD**

- (a) The Board shall be comprised as follows:
  - (i) at least two Directors who are Members and who are elected by Members of the Company (**Member Directors**);
  - (ii) three Directors who are Members of NAVA and who shall be appointed by NAVA (**the NAVA Directors**); and
  - (iii) at least two independent Directors who shall be appointed by the other Directors (**the Independent Directors**).
- (b) At least one Director of the Board appointed in accordance with clause 46(a)(ii) or 46(a)(iii) shall be an Aboriginal or Torres Strait Islander.
- (c) At least one of the Member Directors shall be a Member admitted to membership pursuant to clause 3(a), (b) or (c).

#### **47. MEMBERSHIP PREREQUISITE**

Subject to clause 46(a)(i), a Director is not required to be a Member of the Company.

#### **48. NOMINATION OF NAVA DIRECTORS**

- (a) Not less than thirty five days prior to the Annual General Meeting of the Company in each year in which the NAVA Directors (or any of them) are due to retire, NAVA shall notify the Board of the Company, in writing, of the Directors it is appointing to the Board, such appointment to commence at the Annual General Meeting.
- (b) An appointment in accordance with clause 48(a) must be confirmed by Members by resolution at the Annual General Meeting.

**49. ELECTION OF MEMBER DIRECTORS**

- (a) Not less than thirty five days prior to the Annual General Meeting of the Company in each year in which the Member Directors (or any of them) are due to retire any two Members may nominate another Member to serve as a Member Director, by notifying the Board of the Company in writing.
- (b) At the Annual General Meeting balloting lists shall be prepared (if necessary) containing the names of the candidates referred to in clause 49(a) and each Member may vote for the election of the Director in clause 49(a).
- (c) For the purpose of elections of Member Directors, Members shall elect a chairperson and in the case of an equality of votes the chairperson shall have a single casting vote both on a show of hands and on a poll in addition to the vote to which that Member may be entitled on such election.

**50. NOMINATION OF INDEPENDENT DIRECTORS**

- (a) Not less than thirty five days prior to the Annual General Meeting of the Company in each year in which the Independent Directors (or any of them) are due to retire the Directors shall convene a Directors meeting and shall appoint the Independent Directors, such appointment to commence at the Annual General Meeting..
- (b) An appointment in accordance with clause 50(a) must be confirmed by Members by resolution at the Annual General Meeting.

**51. DIRECTORS RETIREMENT**

- (a) Each Director shall be elected for a term of two years, such term to expire at the conclusion of the second Annual General Meeting after that Director's appointment. For the avoidance of doubt, where a Director is appointed at any time other than at an Annual General Meeting, that Director's term will expire at the conclusion of the second Annual General Meeting after the Annual General Meeting at which that Director's appointment is confirmed by the Members by resolution.
- (b) All Directors shall retire from office at the end of their term, but shall be eligible for re-election subject to clauses 51(c) and (d).
- (c) A Director will not be eligible for re-election as a Director after a sixth consecutive year in office as a Director of the Company.

- (d) A Director who has held office as a Director of the Company for six consecutive years is entitled to stand for re-election as a Director two years after vacating office as a Director pursuant to clause 51(b).

**52. VACATION OF OFFICE OF DIRECTOR**

- (a) The office of Director becomes vacant if the Director:
  - (i) becomes an insolvent under administration or suspends payment or compounds with his or her creditors or makes any assignment for the benefit of his or her creditors or is convicted of a felony;
  - (ii) ceases to be a Director by virtue of the Corporations Act or becomes prohibited from being a Director by reason of any order made under the Corporations Act;
  - (iii) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (iv) resigns from office by notice in writing to the Company;
  - (v) is absent from the meetings of the Directors for a continuous period of three months without leave of absence from the Directors;
  - (vi) is removed from office under the provisions contained in this Constitution; or
  - (vii) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of his or her interest as required by the Corporations Act.
- (b) Attendance by the Directors alternate shall be deemed to be attendance by that Director for the purposes of clause 52(a)(v).
- (c) If the office of a Director becomes vacant in accordance with the provisions of this clause, then that vacancy may be filled at any time as follows:
  - (i) in the case of a Member Director - by appointment by the Board of another Member to be a Director;
  - (ii) in the case of a NAVA Director - by nomination in writing by NAVA;

- (iii) in the case of an Independent Director - by appointment of another person by a majority of the remainder of the Board,

such appointment to be confirmed by Members by resolution at the next Annual General Meeting.

- (d) The Company may, by ordinary resolution, remove any Director from office.

### **53. REMUNERATION OF DIRECTORS**

- (a) The Directors are entitled to be paid remuneration for their services from the General Account whether by way of a Directors' fee or any other benefit or emolument as determined by the Members from time to time in general meeting.
- (b) All Directors' fees shall accrue on a day to day basis and be apportionable accordingly.

### **54. DIRECTORS' EXPENSES**

The Company shall pay a Director, from the General Account, all reasonable travelling, accommodation and other expenses reasonably and properly incurred by the Director for the purpose of attending meetings or otherwise in and about the business of the Company.

### **55. DIRECTORS DISCLOSURE OF INTEREST**

If a Director holds any office or possesses any property such that he or she might have duties or interests which directly or indirectly conflict with his or her duties or interest as Director, that Director must declare at a meeting of the Directors the fact, nature, character and extent of the conflict.

Subject to the Corporations Act, a Director who has a material personal interest in a matter that is being considered at a meeting of Directors must not be present while the matter is being considered at the meeting and must not vote on the matter unless:

- (a) the matter applies to an interest that the Director has as a Member in common with the other Members; or
- (b) the Directors have passed a resolution that specifies the Director, the interest and the matter, and states that the Directors voting for the resolution are satisfied that the interest does not disqualify the Director from considering or voting on the matter.

## **56. OTHER COMPANIES**

- (a) A Director may exercise the voting power conferred by the shares in any other corporation held or owned by the Company or exercisable as a Director of such other corporation in any manner thought fit (including the exercise of such voting power in favour of any resolution appointing him or herself a director or other officer of such corporation).
- (b) Any Director may vote in favour of the exercise of the voting rights notwithstanding that he or she may be or is about to be appointed a director or other officer of a corporation in which the Company owns or holds shares and as such is or may become interested in the exercise of the voting rights.

## **57. APPOINTMENT OF DIRECTOR AS PROXY**

Any Director may appoint any other Director to act as that Director's proxy at meetings of the Board and to sign resolutions under clause 66. That appointment is to be made in writing under the hand of the appointor and delivered to the Secretary and may at any time be revoked in writing and may be for a general or for a specified resolution. A proxy is entitled to vote for the appointor when the appointor is not present at any such meeting and to exercise the functions and stand in the place of the appointor.

## **58. ALTERNATE DIRECTOR**

### **58.1 Appointment**

Any Director may from time to time appoint in writing any person to be an Alternate Director of that Director, to act at meetings of the Directors and to sign resolutions under clause 66. A Director may appoint a second Alternate Director to act when the first Alternate Director is unable to do so. An Alternate Director may be any person whether an existing Director or not.

### **58.2 Powers of Alternate Director**

An Alternate Director is entitled to notice of meetings of Directors and to attend and vote at meetings of Directors as a Director and is otherwise entitled to exercise the functions and stand in the place of the Director who made the appointment unless that Director is present at any meeting of Directors. An Alternate Director does not require any qualification and is not entitled to be remunerated by the Company however such Alternate Director is entitled to be reimbursed by the Company for all travelling and other expenses incurred by that Alternate Director in attending meetings of the Company or otherwise on the Company's business.

### **58.3 Revocation of appointment**

Any appointment of an Alternate Director may be revoked at any time by the appointor and any appointment or revocation under this clause is effective, by notice in writing under the hand of the appointor delivered to the Secretary. Any appointment ceases to be effective if the Director in whose place the person is appointed vacates office as a Director.

### **58.4 Alternate Director is an officer of the Company**

Every person acting as a proxy or an Alternate Director is, whilst so acting, taken to be an officer of the Company and not the agent of the appointor.

## **PROCEEDINGS OF DIRECTORS**

### **59. MEETING OF DIRECTORS**

#### **59.1 Regulation of meetings**

The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit.

#### **59.2 Quorum**

At any Board meeting the number of Directors whose presence is necessary to constitute a quorum is three.

#### **59.3 Convening of meetings**

A Director may at any time and the Secretary upon the request of a Director shall convene a meeting of Directors.

### **60. MEETINGS OF DIRECTORS BY INSTANTANEOUS COMMUNICATION DEVICE**

#### **60.1 Definitions**

For the purposes of this clause “instantaneous communication device” includes telephone, television or any other audio or visual device which permits instantaneous communication.

## **60.2 Conditions to be satisfied**

For the purposes of this Constitution, the contemporaneous linking together by instantaneous communication device of a number of consenting Directors not less than the quorum, whether or not any one or more of the Directors is out of Australia, is taken to constitute a meeting of the Board and all the provisions of this Constitution about meetings of the Directors apply to meetings held by instantaneous communication device provided that:

- (a) all the Directors for the time being entitled to receive notice of a meeting of Directors (including, any Alternate Director) are entitled to notice of the meeting by instantaneous communication device and to be linked by instantaneous communication device for the purposes of a meeting and notice of a meeting by instantaneous communication is be given on the instantaneous communication device or in any other manner permitted by this Constitution;
- (b) each of the Directors taking part in the meeting by instantaneous communication device can hear each of the other Directors taking part at the commencement of the meeting; and
- (c) at the commencement of the meeting each Director acknowledges to all the other Directors taking part his or her presence for the purpose of a meeting of the Board.

## **60.3 Leaving the meeting**

A Director shall not leave the meeting by disconnecting the instantaneous communication device unless the Director previously obtained the express consent of the chairperson. A Director is conclusively taken to have been present and to have formed part of the quorum at all times during the meeting by instantaneous communication device unless the Director has previously obtained the express consent of the chairperson of the meeting to leave the meeting.

## **60.4 Minutes**

A minute of the proceedings at such meeting by instantaneous communication device is sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting.

## **61. VOTING AT DIRECTOR'S MEETINGS**

- (a) At any meeting of the Board each Director has one vote.
- (b) Questions arising at any Board meeting are decided by a majority of votes. At any meeting of the Board, Directors may give their votes either personally or by an alternate

or proxy appointed in the manner provided in this Constitution. A Director who is also all alternate or proxy has a vote in that capacity in addition to a vote as a Director. Where there is an equality of votes the chairperson shall have a second or casting vote.

**62. CHAIRPERSON OF DIRECTORS AND TREASURER**

- (a) The Directors may elect a chairperson and deputy chairperson of their meetings and determine the periods of office of the chairperson and deputy chairperson.
- (b) The Directors may elect a treasurer and determine the periods of office of the treasurer.
- (c) If at any meeting the chairperson or deputy chairperson is not present at the time appointed for holding that meeting the Directors present may choose one of their number to be a chairperson of such meeting.

**63. DIRECTORS MAY ACT NOTWITHSTANDING VACANCY**

The continuing Directors may act notwithstanding any vacancy in their body but if the number falls below the number necessary to form a quorum the Directors shall not act except in emergencies or for the purpose of filling up vacancies or convening general meetings.

**64. POWER OF MEETING**

A meeting of the Board is competent to exercise all or any of the authorities, powers and discretions by or under this Constitution for the time being vested in or exercisable by the Directors generally. Any resolution properly passed at a Board meeting at which a quorum is present is taken to be a determination by all the Directors for the purposes of this Constitution.

**65. DEFECT IN APPOINTMENT**

All acts done at any Board meeting or by any person acting as a Director are valid as if every such person had been duly appointed and was qualified to be a Director even if it is discovered later that there was some defect in the appointment of such Director or person acting or that they or any of them were disqualified.

**66. RESOLUTION IN WRITING**

**66.1 Resolution**

Subject to this Constitution, if all the Directors sign a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document a resolution in those

terms is taken to have been passed at a meeting of the Directors held on the day on which and at the time at which the document was last signed by a Director.

#### **66.2 Document**

A document referred to in clause 66.1 may constitute two or more separate documents containing statements in identical terms each of which is signed by one or more Directors.

#### **66.3 Signature**

The signature of a proxy or an Alternate Director may be substituted for the signature of his or her appointor on a document referred to in clause 66.1.

#### **66.4 Director not ordinarily resident in Australia**

A Director who is overseas shall be deemed to have signed any such resolution if after receiving a copy of it including by electronic mail, or having the contents of it read over by telephone and that Director signifies consent to it by telegram, telex, cablegram, radio message, electronic mail or facsimile addressed or transmitted to the secretary.

### **POWERS OF DIRECTORS**

#### **67. POWERS OF COMPANY VESTED IN DIRECTORS**

##### **67.1 Management and control**

- (a) The management and control of the business and affairs of the Company is vested in the Directors. In addition to the process and authorities conferred on the Directors by this Constitution or otherwise, the Directors may exercise all the powers and do, everything that the Company may exercise or do and not required to be exercised or done by the Company in a general meeting.
- (b) The powers of the Directors are subject to the Corporations Act, this Constitution and to any Regulations (not being inconsistent with this Constitution) from time to time made by the Company in a general meeting. No Regulation made by the Company in a general meeting invalidates any prior act of the Directors which would have been valid if that Regulation had not been made.

## **67.2 Cancel or postpone Members' meetings**

Despite anything express or implied in this Constitution, the Board may cancel or postpone a meeting of Members.

## **67.3 Sale of Company's main undertaking**

Any sale or disposal by the Directors of the Company's main undertaking is subject to ratification by the Members.

## **68. DIRECTOR'S POWER TO BORROW AND GIVE SECURITY**

### **68.1 General Powers**

The Board has the power to:

- (a) raise or borrow from time to time at its absolute discretion any sum of money for the purposes of the Company or for any debt, liability or obligation of the Company or of any other person;
- (b) secure the repayment of any sum and guarantee and give indemnities for the repayment of money for the performance of contracts or obligations of any other persons;
- (c) secure or undertake in any way the repayment of moneys lent to or the liabilities incurred by any such persons in such manner and on such terms as they think fit;
- (d) issue debentures, debenture stock, bonds or notes of the Company charged upon all or any of the property of the Company (both present and future) including its goodwill, undertaking and uncalled capital for the time being.

### **68.2 Debentures, debenture stock and other securities**

- (a) Any debentures, debenture stock or other securities may be framed so that they may be assigned free from all equities between the Company and the person by or to whom the same are held or issued.
- (b) Any debentures, debenture stock, bonds or other securities may be issued at a discount, premium or otherwise and with any special privileges as to redemption, surrender, drawings, attending and voting at general meetings of the Company, appointment of Directors and otherwise.

**69. APPOINTMENT OF COMMITTEES**

The Board may delegate any of its powers to committees consisting of such persons as it thinks fit. Any committee so formed is to conform to any regulations in the exercise of the powers delegated to it that may be imposed upon the committee by the Board.

**70. PROCEEDINGS OF COMMITTEES**

The meetings and proceedings of any committee consisting of two or more persons are governed by the provisions contained in this Constitution for regulating the meetings and proceedings of the Directors so far as those clauses are applicable and are not superseded by any regulations made by the Directors under the last preceding clause. The provisions of clause 66 apply with any necessary changes to documents of any such committee.

**71. POWER TO OPEN BANK ACCOUNTS**

The Board has power to open any bank accounts necessary for the operation of the Company and to sign, draw, accept, make or endorse all cheques, bills of exchange and promissory notes.

**72. CHEQUES AND NEGOTIABLE INSTRUMENTS**

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be sign, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two Directors or in such other manner as the Directors from time to time determine.

**73. USE OF SEAL**

The Board may exercise all the powers of the Company in relation to any official seal for use outside the State and in relation to branch registers.

**74. APPOINTMENT OF ATTORNEY**

The Board may by power of attorney appoint any corporation, firm or person or body of persons whether nominated directly or indirectly by the Board to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under this Constitution) and for such periods and subject to such conditions as it thinks fit.

Any powers of attorney may contain such provisions for the protection and convenience of persons dealing with any attorney as the Board thinks fit and authorise an attorney to delegate all or any of the powers authorities and discretions so vested.

## **SECRETARY**

### **75. APPOINTMENT OF SECRETARY**

The Directors may appoint one or more persons to act as a Secretary and may appoint a substitute for any Secretary and that appointment shall not in any way affect or impair the rights of such appointee as a Director. Every such Secretary is to be a natural person.

## **MINUTES**

### **76. MINUTE BOOKS**

(a) The Directors shall cause minutes of each meeting to be duly entered in books provided for the purpose within thirty (30) days after the relevant meeting is held including details of all:

- (i) appointments of officers appointed by the Board;
- (ii) names of the Directors present at each Board meeting, any committee meeting of the Board and all meetings of the Company;
- (iii) orders made by the Board and committees of the Board;
- (iv) resolutions and proceedings of General Meetings and of meetings of the Board and committees; and
- (v) declarations made or notices given by any Director (either generally or specially) of that Director's interest in any contract or proposed contract or of that Director's holding of any office or property by which means any conflict of duty or interest may arise, and

such minutes shall be signed by the chairperson of the meeting at which the proceedings were held or by the chairperson of the next succeeding meeting.

(b) The Secretary shall keep the books containing the minutes of General Meetings at such location as the Secretary from time to time determines and shall keep the books open for inspection by Members without charge.

## **77. MANAGING DIRECTORS**

- (a) The Directors may appoint from time to time one or more of their number to be a managing Director of the Company for such period and on such terms and conditions as they think fit and, subject to the terms of any agreement entered into between the Company and the managing Director may revoke, any such appointment.
- (b) The managing Director's appointment automatically ceases if she or he ceases for any reason to be a Director.
- (c) The remuneration of an executive Director (including a managing Director) shall, subject to the terms of any agreement between the Company and that Director be determined by the Directors in such manner and on such terms and conditions as they think fit (whether by way of salary, bonus, commission or participation in profits or revenue or a combination of all or any of such ways).
- (d)
  - (i) The Directors may confer upon a managing Director for the time being, such of the powers conferred on and exercisable by the Directors on such terms and conditions and with such restrictions as they think fit.
  - (ii) Any of those powers may be conferred collaterally with but not to the exclusion of the powers of the Directors and may be revoked, withdrawn or varied at any time by the Directors.
- (e) A managing Director shall (subject to the provisions of any contract between him or her and the Company) be subject to the same provisions as to vacation of office as the other Directors of the Company and if he or she ceases to hold the office of Director from any cause he or she shall ipso facto immediately cease to be a managing Director.

## **REGISTERS**

### **78. BRANCH REGISTERS**

The Company may exercise the powers conferred by the Corporations Act and may cause to be kept in any Country or State outside New South Wales a branch register of Members. The Directors may subject to the Corporations Act make from time to time such provisions as they think fit respecting the keeping of any such branch register and may comply with the requirements of any local law.

## **SEAL**

**79. CUSTODY AND USE OF SEAL**

- (a) The Board is responsible for care and custody of any Seal.
- (b) The seal is to be used only by the authority of the Board, or of a committee of the Board authorised by the Board to authorise the use of the Seal, and every document to which the seal is affixed must be executed by two Directors or a Director and Secretary, provided that the Board may nominate a particular person as the corporate representative for the purpose of executing any documents as alternate to any Director.

**80. OFFICIAL SEAL**

The Company may have for use in any place outside the State an official Seal which is a facsimile of the Seal with the addition on its face of the name of every place where it is to be used.

**81. APPLICATION OF PROFITS**

The profits of the Company shall be applied solely towards the promotion of the objects of the Company and no portion of the profits shall be applied or transferred directly or indirectly by way of dividend, bonus or otherwise to Members.

**MEMBERS OBLIGATIONS**

**82. MEMBERS TO PROVIDE INFORMATION AND CLARIFICATION**

- (a) The Directors may require from time to time each Member to submit to the Company relevant details of any Artistic Work entitling the Member to be a Member of the Company.
- (b) The Directors may require from each Member prior to the distribution of money allocated pursuant to clause 91:
  - (i) evidence of the entitlement of that Member to money payable under clause 91(d) in respect of the rights entitling the Member to be a Member of the Company; and
  - (ii) an indemnity in a form reasonably required by the Directors against any liability of the Company to any person with an interest in the rights in respect of which money is to be paid to a Member under clause 91.

**83. DONATIONS FOR BENEVOLENT PURPOSES**

- (a) If the Directors so determine, and subject to clause 83(b), such amounts as the Directors may consider proper may be given as donations, to be paid from the General Account, for cultural and benevolent purposes associated with the maintenance and development of the visual arts industry including, but not limited to:
  - (i) benevolent funds for artists; and
  - (ii) artists' organisations.
- (b) The total funds available in any one Financial Year, for donations pursuant to clause 83(a) shall not exceed 1% of the money deposited in the Trust Account in the previous Financial Year.

**ACCOUNTS AND AUDIT**

**84. GRANT ACCOUNT**

- (a) The Company shall establish and maintain the Grant Account with a bank, building society or credit union operating in Australia and to which shall be paid all money received by the Company pursuant to the Commonwealth Grant.
- (b) All money deposited into the Grant Account shall be used strictly in accordance with the terms of the Commonwealth Grant.
- (c) The Company shall do all acts and things necessary to comply with the operating, accounting and reporting requirements of the Commonwealth Grant, and otherwise comply with the terms of the Commonwealth Grant in respect of the money deposited into the Grant Account.

**85. GENERAL ACCOUNT**

- (a) The Company shall establish and maintain a General Account into which shall be paid:
  - (i) all fees and levies received by the Company pursuant to clause 8;
  - (ii) all special contributions made by a Member pursuant to clause 9;
  - (iii) all money transferred from the Trust Account pursuant to clauses 91(i), 91(l) and 91(n).

- (b) Money in the General Account shall be used to:
- (i) pay for all expenses and other amounts reasonably and properly incurred and chargeable by the Company;
  - (ii) pay the Directors reasonable and proper remuneration in accordance with clause 53;
  - (iii) pay the Directors reasonable expenses in accordance with clause 54;
  - (iv) to make donations in accordance with clause 83; and
  - (v) to ensure the representation and defence of the professional, economic, legal and moral interests of the originators and authors and owners of artistic works.

## **86. STATUTORY ACCOUNTS**

### **86.1 Records and Account**

The Board shall cause to be kept records and accounts of the sums of money received and expended by the Company, including without limitation the Equitable Remuneration collected and distributed by the Company, together with the assets and liabilities of the Company for each Financial Year of the Company which gives a true and fair view of the financial position of the Company and a balance sheet as at the end of each Financial Year of the Company which gives a true and fair view of the state of affairs of the Company.

### **86.2 Attributing receipts and expenditure**

The Company must follow a consistent practice in attributing the receipts and expenditure of the Company to a Financial Year.

### **86.3 Director's Report**

The Board shall cause to be attached, to each balance sheet a report signed by behalf of the Board with respect to the state of the Company's affairs stating various matters required by the Corporations Act to be stated in a Director's report. The Board shall cause every balance sheet and profit and loss account accompanied by the statement required by the Corporations Act to be signed on behalf of the Board and verified as required by the Corporations Act.

#### **87. INSPECTION OF ACCOUNTING RECORDS**

- (a) The Members of the Company shall be entitled to inspect the accounting and other records of the Company at such times and places and under such reasonable conditions or regulations that the Directors shall from time to time (subject to the provisions of the Corporations Act) determine. No Member (not being a Director of the Company) shall be entitled to require or receive any information concerning the business trading or customers of the Company or any trade secret or secret process of or used by the Company.
- (b) The Members of the Company shall be committed to inspect the records of the Company as they relate to an Artistic Work in respect of which the Member is a Member of the Company. Inspection shall be at such times and places and under such reasonable conditions or regulations that the Directors shall from time to time determine, provided that any such Member notifies the Company that they wish to do so. The Notice by the Member must specify the day of inspection as an ordinary day and the Notice must be given at least seven working days before the proposed date of inspection.

#### **88. APPOINTMENT OF AUDITORS**

The Company will appoint an auditor and the auditor may be removed and the auditor's remuneration, rights and duties are regulated in accordance with the Corporations Act.

#### **89. RIGHTS OF AUDITORS**

The auditor of the Company or agent authorised by the auditor in writing for the purpose, is entitled to attend general meetings, to receive all notices of and other communications relating to general meetings which a Member is entitled to receive and to be heard at any general meeting which that auditor or agent attends on any part of the business of the meeting which concerns the auditor in the auditor's capacity as auditor, but does not have the right to vote at general meetings.

#### **90. PREPARATION AND DELIVERY OF ACCOUNTS**

The Company shall keep proper books of accounts as required by the Corporations Act and shall:

- (a) furnish to the Members as soon as available and in any event within five months after the end of each Financial Year of the Company, copies of the balance sheet of the Company as of the end of that Financial Year and of the profit and loss statement of the business of the Company during that Financial Year in all reasonable detail and prepared in conformity with generally accepted accounting principles consistently maintained and

applied in accordance with the Corporations Act including without limitation the Directors' and auditor's reports on such accounts; and

- (b) furnish to the Members as soon as available all other financial accounts, projections, budgets and reports that are prepared on the Company's behalf from time to time as well as any other information as may be required by the Directors from time to time.

**91. TRUST ACCOUNT**

- (a) The Company shall establish and maintain the Trust Account, the trustee of which is to be the Company and to which shall be paid:

- (i) all copyright fees, royalties, Equitable Remuneration and other money received by the Company on behalf of Members and Non-Members by reason of enforcement of Members and Non-Members Subject Rights; and
- (ii) all copyright fees, royalties, Equitable Remuneration and other money received by the Company on behalf of a particular Member or Non-Member in respect of particular Artistic Works.

- (b) All expenses, administrative costs and other amounts payable under clause 91(c) must be reasonable.

- (c) Subject to clauses 91(d) and 91(e), all money paid into the Trust Account pursuant to clause 91(a) shall be dealt with in the following order:

- (i) to pay for all reasonable usual expenses and other amounts reasonably and properly chargeable by the Company; and
- (ii) by way of a special financial contribution in accordance with clause 9; and
- (iii) the remainder for payment to each Member in accordance with their Entitlement as soon as reasonably practicable after determination of the amount of that Entitlement under clause 91(d).

Money paid into the Trust Account on behalf of Non-Members will be credited to them in accordance with clause 91(m).

The administrative costs and other outgoings of the Company that are paid out of the Trust Account must be reasonable.

- (d) The Company must determine each Member's Entitlement at least once in each Financial Year. The Company must, in determining the scheme of allocation of the Entitlements, have regard to all relevant matters including without limitation the following:
  - (i) records of use of Artistic Works;
  - (ii) information provided under a sampling procedure; and
  - (iii) any information obtained by the Company designed to assist in ascertaining the nature and extent of use of the Artistic Works.

Once the Board has determined the Entitlement accrued to a Member in accordance with this clause 91(d) the Directors shall transfer to the General Account the Member's Entitlement in accordance with that Member's Licence Agreement.

- (e) The Company may request a Member to supply the Company with any details, including without limitation details relating to an Artistic Work for any purpose including without limitation verification that the Member is a copyright owner.
- (f) Except as provided in Clauses 91(g) and (h) the allocation of Entitlements by the Company is final and binding.
- (g) If a person claims to be entitled to a share in the Trust Account and has not been allocated any Entitlement, the Company may if satisfied that the person is entitled to a payment, make any payment to the person that they consider fit, from the Trust Fund.
- (h) If the Company determines that an Entitlement paid to a Member constitutes an over-allocation or a mistake, the amount of the excess or mistake may be deducted from any subsequent allocation by the Company to that person or, in the event that there is no subsequent allocation, the Company may demand a repayment of the amount of the excess or mistake.
- (i) The Entitlement shall be distributed to the Members as soon as reasonably possible after a transfer to the General Account has been effected in accordance with clause 91(d).
- (j) A Member cannot direct the Company to pay Entitlements at any particular time.
- (k) Money deposited in the Trust Account shall be held upon trust for a period not exceeding the Trust Period where the money is:

- (i) money to which a Member or Non-Member is entitled where the Member or Non-Member cannot be located;
  - (ii) money the entitlement to which is disputed;
  - (iii) money to which a Member or Non-Member is entitled, where the amount of all accumulated entitlements due to that Member or Non-Member is less than fifty dollars (\$50.00) or such other sum as is determined by the Directors from time to time; and
  - (iv) any money collected on behalf of Members under clause 91(k)(i) where the Directors consider that the information available is insufficient or not sufficiently accurate to enable an equitable allocation to be made.
- (l) During the Trust Period, if the circumstances referred to in clause 91(k)(i), (ii) or (iii) cease to apply, the money referred to in clause 91(k)(i), (ii) or (iii) shall be distributed to the Member or Non-Member entitled to the money in accordance with clauses 91(d) and (i).
- (m) The Company will make the following provisions for copyright fees, royalties, Equitable Remuneration and other money (**funds**) received by the Company on behalf of Non-Members:
- (i) the funds paid into the Trust Account that are attributable to Non-Members will be credited to the Special Account;
  - (ii) the Company will take all reasonable steps to locate the relevant Non-Member or an agent for the Non-Member;
  - (iii) if located, the Non-Member will then be invited to apply to become a Member of the Company and on acceptance of such application all funds credited to that Non-Member in the Trust Account will be released for payment as soon as is reasonably possible after Non-Member or its agent becomes a member of the Society;
  - (iv) if the Non-Member is identified as a member or copyright owner belonging to any other company institution, association or organisation, whether incorporated or not, elsewhere in the world with the same or similar objects to the Company (**similar organisation**), then all funds will be forwarded to the similar organisation as soon as is reasonably possible after the Non-Member or its agent becomes a Member.

- (n) If the Company cannot locate the Non-Member or an agent for the Non-Member all funds due to that Non-Member will be paid into the Special Account for the Trust Period. At the Directors' discretion, any money remaining in the Special Account after the expiration of the Trust Period shall be transferred to the General Account.
- (o) During the Trust Period, if the circumstances referred to in clause 91(k)(iv), cease to apply, the moneys referred to in clause 91(k)(iv) shall be allocated to the Members entitled in such proportions as the Directors determine, and distributed in accordance with clauses 91(d) and (i).
- (p) At the Directors' discretion, any money remaining in the Trust Account after expiration of the Trust Period shall be transferred to the General Account.
- (q) Interest earned on the money held in the Trust Account shall be transferred to the General Account as soon as practicable after the interest has been credited to the Trust Account.
- (r) For the purposes of clauses 91(l) and 91(o) the determination of the Directors that:
  - (i) the circumstances which led to the retention of any money in the Trust Account cease to apply; and
  - (ii) the persons who are entitled to the money,
 shall be final and binding on all persons.
- (s) Disputes over the entitlement to money which has been retained in the Trust Account pursuant to clause 91(k)(ii) shall be resolved as follows:
  - (i) by submitting the disputes to mediation in accordance with the rules of the Arts Law Centre Mediation Service, a program of the Arts Law Centre of Australia; and
  - (ii) if mediation pursuant to clause 91(s)(i) is unsuccessful, then the disputes shall be resolved by the Board of Directors of the Company.

## **NOTICES**

### **92. MEMBERS TO NOTIFY ADDRESSES**

Every Member shall from time to time notify in writing to the Office an address to be registered as an address for service of all notices. The Company may serve notices upon any Member either

personally or by sending them through the post in a prepaid letter, or by delivery, addressed to the Member at that Member's registered address.

**93. DEEMED ADDRESS**

If any Member does not provide an address under clause 92, the Office is taken to be that Member's address for the service of notices.

**94. SERVICE ON OVERSEAS MEMBERS**

Without limiting the effectiveness of a notice served under clause 92, when a notice is being sent by post to an address outside Australia and the Member has notified the Company of a telex or facsimile number of that Member overseas, the Company shall on the same day by telex or facsimile transmission to that Member notify that Member that a notice has been given and give brief details of the contents of that notice.

**95. PROOF OF SERVICE**

Any notice sent by post is taken to have been served on the day following that on which the envelope or wrapper containing the notice is posted. In proving service it is sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted and a certificate in writing signed by any employee of the Company that the envelope or wrapper containing the notice was addressed and posted is conclusive evidence of that fact.

**96. SUFFICIENT SERVICE WHERE MEMBER DECEASED**

Any notice or document delivered or sent by post to or left at the registered address of any Member pursuant to this Constitution has been duly served, notwithstanding that such Member is deceased and whether or not notice of that Member's death has been given to the Company and service is for all purposes sufficient service of a notice or document on the deceased Member's executors.

**97. EXECUTION OF NOTICE**

Any notice requiring authentication by the Company or by authorised officers of the Company is properly signed if the signature is written, printed or stamped.

**INDEMNITY**

## **98. INDEMNITY TO OFFICERS**

### **98.1 Indemnity**

Subject to the Corporations Act, a person who is or has been an officer (as defined in the Corporation Act) or auditor of the Company is indemnified, (to the maximum extent permitted by law), out of the assets of the Company against any liability incurred by the person as such an officer or auditor:

- (a) to another person (other than the Company or a related body corporate) unless the liability:
  - (i) is for a pecuniary penalty order under section 1317G of the Corporations Act or a compensation order under section 1317H of the Corporations 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 he or she could not be indemnified under the Corporations Act;
  - (ii) in defending or resisting criminal proceedings in which the person is found guilty;
  - (iii) in defending or resisting proceedings brought by Australian Securities and Investments Commission 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 to the person under the Corporations Act in which the court denies the relief.

### **98.2 Insurance**

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

- (a) incurred by the person as such an officer or auditor 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 Corporations Act; or
- (b) for costs and expenses incurred by the person in defending proceedings as such an officer or auditor, whether civil or criminal and whatever their outcome.

### **98.3 Indemnity and Premium Payments**

All indemnity and premium payments to be made by the Company pursuant to clauses 98.1 and 98.2 shall be paid from the General Account.

## **SECRECY CLAUSE**

### **99. OFFICERS TO OBSERVE SECRECY OF COMPANY'S AFFAIRS**

Every Officer of the Company is bound to observe secrecy with respect to all the affairs and transactions of the Company and shall not make improper use of information acquired by virtue of their positions to gain directly or indirectly an advantage for themselves or for any other person or to cause detriment to the Company. Each Officer shall (if required by the Board) prior to entering upon his or her duties or employment or at any time afterwards sign and make a declaration in writing that the Officer will not reveal or make known any of the matters, affairs or concerns which may come to that Officer's knowledge as Officer to any person except in the course and in the performance of that Officer's duties or under compulsion or obligation of law or when officially required so to do by the Board or by the auditors for the time being or by any General Meeting of Members.

### **100. WINDING UP**

If the Company is wound up or dissolved and, after the satisfaction of all its debts and liabilities, any assets whatsoever remain, the remaining assets must not be paid or distributed to the Members but must be given or distributed to:

- (a) some other fund, authority or institution determined:
  - (i) in general meeting; or (failing which)
  - (ii) by a Judge of the Supreme Court of New South Wales,

having objects or purposes similar to the purposes of the Company and which is a named fund, authority or institution known to have been approved under subdivision 30-B of the *Income Tax Assessment Act 1997*; or

- (b) any fund, authority or institution falling under one or more of the items listed in the tables in sub-division 30-B.

#### **101. NON-PROFIT**

The income and property of the Company must be applied solely towards the promotion of the objects of the Company as set out in this Constitution and no portion of it is to be paid or transferred directly or indirectly by way of profit to Members. This does not prevent the payment in good faith:

- (a) of remuneration to any officers or servants of the Company in return for any services rendered to the Company, if such payment is approved by the Board;
- (b) for goods supplied in the ordinary and usual course of business;
- (c) of interest at a reasonable and proper rate on money borrowed from any Member; or
- (d) of reasonable and proper rent for premises leased or licensed by any Member to the Company.

#### **102. LIMITED LIABILITY**

The liability of the Members is limited.

#### **103. MEMBERS' GUARANTEE**

Every Member undertakes to contribute an amount not exceeding \$2.00 to the property of the Company if it is wound up while he or she is a Member or within one year afterwards for:

- (a) payment of the debts and liabilities of the Company contracted before the time when he or she ceased to be a Member;
- (b) the costs, charges and expenses of winding up; and
- (c) for an adjustment of the rights of contributories among themselves.