

13 December 2022

THIRRILI LTD

CONSTITUTION

A public company limited by guarantee under
the *Corporations Act 2001* (Cth)

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THIRRILI LTD
CONSTITUTION

1. PURPOSES OF THE COMPANY

1.1 Principal Purpose

The Principal Purpose of the Company is to contribute to the broader social wellbeing of Aboriginal and Torres Strait Islander people who are disadvantaged by:

- 1.1.1 reducing the high rates of suicide through designing, delivering and operating a critical response system to help affected individuals and their extended families cope with suicides and traumatic incidents in their community;
- 1.1.2 co-ordinating and supporting the provision of social support, practical assistance and advocacy support to affected individuals and their extended families;
- 1.1.3 building the capacity of local Aboriginal and Torres Strait Islander communities and service providers to care for and respond to social disadvantage, including suicides and traumatic incidents in their community;
- 1.1.4 strengthening individual, family and community resilience and social wellbeing; and
- 1.1.5 otherwise assisting Aboriginal and Torres Strait Islander people and communities who are disadvantaged or otherwise in need of support and relief.

1.2 Supporting Purposes

In support of the Principal Purpose, the Supporting Purposes of the Company are to:

- 1.2.1 deliver support, care, coordination and assistance in a responsive and culturally appropriate manner; and
- 1.2.2 do all lawful things consistent with, necessary or desirable to support and further the Principal Purpose.

1.3 Company powers as a body corporate

1.3.1 Solely to carry out the Purposes, the Company may, in any manner permitted by the Act:

- (a) exercise any power;
- (b) take any action; and
- (c) engage in any conduct or procedure,

which under the Act a public company limited by guarantee may exercise, take or engage in if authorised by its constitution.

1.3.2 Without limiting clause 1.3.1, the Company may pursue the Purposes by:

- (a) raising money to further the Purposes and secure sufficient funds to pursue the Purposes; and
- (b) receiving any funds and applying those funds in a manner that best attains the Purposes.

2. BENEVOLENT, CHARITABLE AND NOT-FOR-PROFIT NATURE OF THE COMPANY

2.1 Income applied for the Purposes

2.1.1 The income and property of the Company:

- (a) must be applied solely towards the Purposes; and
- (b) must not be paid or given to a Member, directly or indirectly, by way of dividend, bonus or otherwise.

2.1.2 Clause 2.1.1 does not prevent the Company from making a payment:

- (a) to a Member, Officer or Director for a reasonable and proper amount with the Board's prior approval in good faith for:
 - (1) goods or services supplied to the Company;
 - (2) interest on money lent to the Company; or
 - (3) rent for premises let to the Company;
- (b) to a Member or Director in carrying out the Company's Principal Purpose;
- (c) of premiums for insurance indemnifying Directors to the extent allowed for by law and this Constitution; or
- (d) with the prior approval of the Board, to a Director pursuant to clause 6.11.

2.2 Benevolent and charitable purposes only

Despite anything to the contrary in this Constitution, the Company is established:

2.2.1 solely to be a not-for-profit, charitable and benevolent institution; and

2.2.2 to pursue not-for-profit, charitable and benevolent Purposes principally in Australia.

2.3 Contribution of a Member on winding up

If required, each Member must contribute an amount (not more than the guaranteed amount in clause 3.1.2) to the assets of the Company if it is wound up while they are a Member, or within one year of the Member ceasing to be a Member, for the:

2.3.1 payment of the debts and liabilities of the Company incurred before they ceased to be a Member; and/or

2.3.2 costs, charges and expenses of winding up.

2.4 Distribution of assets on winding up or revocation of endorsement

2.4.1 If the Company is a Deductible Gift Recipient any DGR gifts must be deposited in a separate bank account or otherwise identified so that they can be distinguished from other assets of the Company.

2.4.2 If the Company is a Deductible Gift Recipient and is wound up, or it ceases to be endorsed as a Deductible Gift Recipient, any DGR gifts remaining after satisfying the Company's liabilities and expenses must be transferred to a Charity or Charities endorsed as a Deductible Gift Recipient.

2.4.3 On the winding up of the Company, any assets remaining after complying with clause 2.4.1 and clause 2.4.2 must not be paid or distributed to the Members in their capacity as Members, and must be given or transferred to a Charity or Charities which:

- (a) has a similar purpose to the Principal Purpose, and
- (b) prohibits the distribution of income, profit or assets to its Members in their capacity as Members.

2.4.4 The Members must decide before any winding up or revocation which Charity or Charities will receive a distribution under 2.4.1 or 2.4.2. If the Members fail to decide, the matter must be determined by application to the Supreme Court in the State of incorporation.

3. MEMBERSHIP

3.1 Limited liability of Members / guarantee

3.1.1 A Member's liability is limited to the guaranteed amount in clause 3.1.2.

3.1.2 If the Company is wound up, each Member and former Member in the previous year must contribute up to one dollar (\$1) towards:

- (a) the Company's liabilities contracted before the person ceased to be a Member; and
- (b) costs, charges and expenses to wind up and adjust the rights of the contributories among themselves.

3.2 Eligibility

3.2.1 To be eligible for membership as a Voting Member:

- (a) a Person:
 - (1) must be an Aboriginal and/or Torres Strait Islander person; and
 - (2) must be committed to the Principal Purpose of the Company.
- (b) an Organisation
 - (1) must be an Aboriginal community controlled organisation that is committed to working towards reducing social disadvantage among Aboriginal and Torres Strait Islander people and strengthening the resilience and social wellbeing of Aboriginal and Torres Strait Islander people and communities; and
 - (2) must be committed to the Principal Purpose of the Company.

3.2.2 To eligible for membership as a non-Voting Member, a Person or an Organisation must be committed to the Principal Purpose of the Company.

3.3 Classes of Members

3.3.1 The Company will have the following Membership Classes:

- (a) Voting Members who are:
 - (1) Persons – being Aboriginal and/or Torres Strait Islander people.

- (2) Organisations being Aboriginal community controlled organisations .
- (b) Non-voting Members being Persons or Organisations who are committed to the Principal Purpose of the Company and whose admission to membership would, in the opinion of the Board, benefit the Company.

3.4 Member rights and obligations

- 3.4.1 Voting Members have the right to receive notice of, attend, speak at and vote at general meetings. Organisational Members will only become Voting Members if they have paid their annual membership subscription.
- 3.4.2 Non-voting Members have the right to receive notice of and attend general meetings, but may not speak or vote at such meetings.

3.5 Rights not transferrable

Membership rights and privileges:

- 3.5.1 apply only whilst the Person or Organisation is a Member; and
- 3.5.2 are personal and may not be transferred or transmitted.

3.6 Membership period / subscription fees

The Board may determine:

- 3.6.1 the membership period (including common expiry dates) and the timing for membership to be renewed;
- 3.6.2 fees payable by Members (other than Directors pursuant to clause 3.2.2), including any application fee to apply for membership, any entrance fee to be admitted as a Member and any annual membership subscriptions; and
- 3.6.3 whether fees are refundable or non-refundable.

3.7 Representatives

- 3.7.1 A Member which is an Organisation:
 - (a) may appoint up to two representatives by name or position held; and
 - (b) must notify the Secretary in writing of the appointed representative(s).
- 3.7.2 A representative of an Organisation cannot be a legal or financial adviser or a Person who:
 - (a) has been or is the subject of disciplinary proceedings under clause 4.4; or
 - (b) is an officer of another Organisation that has been or is the subject of disciplinary proceedings under clause 4.4.
- 3.7.3 If both of a Member's representatives attend a general meeting, each representative will have half a vote.
- 3.7.4 If only one of a Member's representative attends a general meeting, that representative will have one vote.
- 3.7.5 In the case of a circular resolution or postal ballot, one representative will have one vote, being the representative nominated by the Organisation for that purpose or in

the absence of any such direction, the most senior of the two representatives by position held or if no such assessment can be made, alphabetically, by surname first and if necessary, then by first name.

3.7.6 A vote exercised by a representative is valid despite the revocation of their appointment if no knowledge in writing of that fact was received by the Company before the commencement of the meeting at which a vote is exercised or the issuing of a circular resolution or postal ballot.

3.7.7 Subject to clauses 3.7.1 to 3.7.6, the appointment of representatives is to otherwise be regulated in accordance with Part 2G.2 Division 6 of the Act.

3.8 Register of Members, including closure of register

3.8.1 The Secretary must maintain a register of Members in accordance with the Act which contains the following details for current and recent former Members:

- (a) name;
- (b) addresses for notices; and
- (c) membership start and end dates.

3.8.2 The Board may establish Regulations which regulate closure of the register for up to 60 days per year.

3.8.3 Separate to the register, the Company may maintain a database of Members personal and other details which are not used for notices.

3.9 Change of Member details

A Member must notify the Company if the Member's addresses for notices change within 28 days of the change.

4. BECOMING AND CEASING TO BE A MEMBER

4.1 Admission of Members

4.1.1 The Board may admit in its absolute discretion an Organisation or Person as a Member upon application by that Organisation or Person in accordance with any procedure, form and other requirement specified in the Regulations.

4.1.2 The Board must consider all membership applications within a reasonable time after their receipt but need not provide reasons for admitting or refusing to admit a person as Member.

4.1.3 Successful applicants become Members when they are added to the register of Members.

4.2 Resignation of Members

4.2.1 A Member may resign as Member by written notice to the Company.

4.2.2 The resignation takes effect when the Company receives the Member's notice or on a later date specified in the notice.

4.3 Ceasing to be a Member

A person automatically ceases to be a Member if the person:

- 4.3.1 does not renew the membership by the due date;
- 4.3.2 is a Director who was admitted as a Member solely pursuant to clause 3.3.1(a)(1), and ceases to be a Director for any reason;
- 4.3.3 has not paid the annual membership subscription for 3 months after the due date;
- 4.3.4 becomes untraceable for 3 months because the Member cannot be contacted using the address on the register of Members;
- 4.3.5 in the case of an Aboriginal community controlled organisation — ceases to be an Aboriginal community controlled organisation and in the case of any Member, ceases to meet the eligibility criteria for membership;
- 4.3.6 suffers an Insolvency Event;
- 4.3.7 dies; or
- 4.3.8 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.

4.4 Disciplining Members

The Board may at any time terminate an Organisation or Person's Membership or warn, fine, censure, suspend or expel a Member if the Member:

- 4.4.1 engages in Terminable Conduct, subject to:
 - (a) the decision being made by two-thirds majority of all Directors whether they are all present and voting; and
 - (b) the Member being afforded a reasonable opportunity to respond, in accordance with any Regulations and requirements for procedural fairness and natural justice, to the Board's allegations.
- 4.4.2 is an Organisation and the governing documents or structure of that Organisation changes to an extent or in a manner which a two-thirds majority of all Directors, whether they are all present and voting, considers to be:
 - (a) inconsistent with the basis upon which that Organisation was first admitted; or
 - (b) otherwise unacceptable having regard to the Purposes of the Company;
- 4.4.3 refuses or neglects to comply with the provisions of this Constitution or the Regulations;
- 4.4.4 is found guilty by a court of an indictable offence; or
- 4.4.5 has a debt to the Company which remains unpaid for one year or more.

5. GENERAL MEETINGS

5.1 Convening meetings — annual / special

- 5.1.1 General meetings other than annual general meetings are called special general meetings.
- 5.1.2 The Board must convene and hold an annual general meeting at least once in every calendar year.

- 5.1.3 The Board or any three Directors may convene special general meetings of the Members.
- 5.1.4 The Board must convene a special general meeting if requested in writing by at least 20% of the total number of Voting Members. The requisition for the meeting must state the business to be conducted at the meeting and must be signed by the Members making the requisition.

5.2 Ordinary and special business

- 5.2.1 The ordinary business of an annual general meeting may include any of the following (even if not stated in the notice of meeting):
- (a) consider the Board's, financial and auditor's report;
 - (b) declare the Director election results;
 - (c) appoint an auditor if that office has or will become vacant at the meeting.
- 5.2.2 Special business means:
- (a) for an annual general meeting — business which is not ordinary business according to clause 5.2.1; and
 - (b) for a special general meeting — all business specified in the notice of meeting.
- 5.2.3 The notice of meeting must:
- (a) be in writing;
 - (b) state the place, day and time of the meeting;
 - (c) provide details of any technology that will be used to facilitate the meeting;
 - (d) state the general nature of the business to be transacted at the meeting;
 - (e) state the wording of any special resolution to be considered (and state that it is proposed as a special resolution);
 - (f) include the information under clause 5.9; and
 - (g) include any proxy form approved by the Board.

5.3 Notice of meeting

- 5.3.1 At least 21 days' notice of any general meeting (other than a meeting to consider a resolution to remove a Director or auditor) unless:
- (a) in the case of an annual general meeting, all the Members entitled to attend and vote agree beforehand; and
 - (b) in the case of any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 5.3.2 Notice of every general meeting must be given in writing in accordance with clause 10.6 to:
- (a) every Director;

- (b) every Member entitled to attend who has supplied an address for notices to the Company; and
- (c) the Company's auditor.

5.3.3 No other person is entitled to receive notices of general meetings.

5.3.4 A general meeting and any resolution passed at the meeting is not invalid merely because of:

- (a) the accidental omission to give notice of the meeting; or
- (b) the non-receipt of any such notice.

5.4 Postponement

5.4.1 The Board may postpone, relocate or cancel a general meeting which it convened by giving at least 5 days' notice to the Members.

5.4.2 Clause 5.4.1 does not apply to a meeting requisitioned by Members or convened by the Members, by individual Directors under clause 5.1.3 or by court order.

5.5 Quorum

5.5.1 A general meeting may not transact business unless a quorum is present when the meeting proceeds to business.

5.5.2 The quorum for general meetings is the greater of:

- (a) three Voting Members; and
- (b) 25% of all the Voting Members,

present in person or by proxy or representative.

5.5.3 If a quorum is not present within 30 minutes of the time scheduled to start the general meeting:

- (a) the meeting, if requisitioned by Members, is dissolved; and
- (b) in any other case, the meeting is adjourned to such other place, date and time as the Board determines and notifies to Members (if required to do so by clause 5.7).

5.5.4 If a quorum is not present within 30 minutes of the time scheduled to start the adjourned general meeting, the meeting is dissolved.

5.6 Meeting chair

5.6.1 The Chair may chair a general meeting.

5.6.2 If the Chair is not present and willing to act the Deputy Chair may chair.

5.6.3 If the Chair and Deputy Chair are not present and willing to act:

- (a) the Directors present may choose one of their number to chair the meeting; and
- (b) if no Director is present, or if all the Directors present decline to chair, the Members present must choose one of their number to chair.

5.6.4 In addition to powers conferred by law, the meeting chair may:

- (a) determine the meeting's conduct and procedures to ensure proper and orderly discussion or debate;
- (b) make rulings without putting a question to the vote, or terminate discussion or debate and require that matter to be put to a vote;
- (c) refuse to allow debate or discussion on any matter which is not ordinary or special business; and
- (d) refuse any person admission to a general meeting (including for causing offence or disruption), or expel the person from the general meeting and not permit them to return.

5.6.5 All procedural decisions by the meeting chair are final.

5.7 Adjournment

5.7.1 The meeting chair:

- (a) may, with the consent of any general meeting at which a quorum is present; and
- (b) must, if so directed by the meeting,
adjourn the meeting to some other time or place.

5.7.2 The adjourned meeting may only transact unfinished business from the original meeting.

5.7.3 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as required for the original meeting. It is not otherwise necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

5.8 Voting – show of hands / poll

5.8.1 A resolution put to the vote of the general meeting must be decided by a show of hands unless a poll is demanded pursuant to clause 5.8.3.

5.8.2 A declaration by the meeting chair that a resolution has on a show of hands been carried, carried unanimously, carried by a particular majority or lost, and an entry to that effect made in the minutes is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

5.8.3 A poll must be held on a resolution before the general meeting if demanded on or before the meeting chair declaring the result by:

- (a) at least three Members present in person or by representative and entitled to vote; or
- (b) Members representing 10% or more of all Members entitled to vote.

5.8.4 The demand for a poll may be withdrawn.

5.8.5 If a poll is demanded:

- (a) when electing a meeting chair under clause 5.6 or on a question of adjournment, it must be taken immediately; and

- (b) otherwise, it must be taken at the general meeting at which it is demanded (or at its adjournment), in such manner as the meeting chair directs.

5.8.6 Any dispute regarding voting must be referred to the meeting chair, whose decision is final.

5.9 Proxies

5.9.1 A Member may appoint a proxy to act on the Member's behalf at any general meeting at which that Member may attend and vote.

5.9.2 A proxy must be a Member.

5.9.3 For the instrument appointing a proxy to be valid, it must be:

- (a) in writing and signed by the appointor;
- (b) in the Board approved form; and
- (c) lodged with the Company at least 48 hours before the time for holding the meeting or adjourned meeting.

5.9.4 A vote given according to the proxy instrument is valid despite:

- (a) the death, or unsoundness of mind, of the appointor; or
- (b) revocation of the instrument or of the authority under which the instrument was executed,

if no knowledge in writing of that fact was received by the Company before commencing the meeting or adjourned meeting at which the instrument is used.

5.10 Use of technology

General meetings may be held at more than one place, provided that the technology that is used enables each Member present at all places the meeting is held to clearly and simultaneously communicate with every other such Member.

5.11 Circular resolution

5.11.1 This clause does not apply to a special resolution, a resolution to remove a Director or a resolution to appoint or remove an auditor. A resolution may be passed without a meeting if notice is given to all Members entitled to vote and a majority of Members entitled to vote responding within 72 hours approving the resolution in writing.

5.11.2 The Board may determine in the Regulations:

- (a) the form of the circular resolution;
- (b) the polling date;
- (c) the method for responding to the circular resolution; and
- (d) whether voting on the circular resolution is to be by secret ballot.

6. BOARD

6.1 Structure of board / Number of directors

6.1.1 The Board will comprise between 6 and 10 Directors as follows:

- (a) 6 Directors elected by the Members in accordance with clause 6.2 (“**Elected Directors**”); and
- (b) up to 4 Directors appointed by the Board in accordance with clause 6.3 (“**Technical Expert Directors**”).

6.1.2 All Directors must be Aboriginal and/or Torres Strait Islander people.

6.2 Elected Directors

- 6.2.1 Nominations of candidates for election as a Director must be called for by the Board, and submitted in a form and manner determined by the Board, and the Board has the power to make Regulations for election purposes.
- 6.2.2 If the number of nominations of eligible candidates for election does not exceed the number of vacancies, those candidates will be declared elected in accordance with the procedures notified to Members under clause 6.2.1.
- 6.2.3 If the number of nominations of candidates exceeds the number of vacancies, balloting lists must be printed containing in alphabetical order the names of the candidates nominated and sent to each Member in accordance with the procedures notified to Members under clause 6.2 .
- 6.2.4 The returning officer appointed by the Board must declare the election result at the annual general meeting or, at the Board’s discretion, in accordance with the procedures notified to Members under clause 6.2.1.

6.3 Technical Expert Directors

- 6.3.1 Subject to this Constitution, the Board must determine any other procedures or matters in relation to the conduct of the appointment of Technical Expert Directors and has the power to make Regulations for that purpose.
- 6.3.2 Unless the Board resolves otherwise, the Secretary:
 - (a) is responsible for the conduct of the selection process of Technical Expert Directors; and
 - (b) may decide all matters in relation to the conduct of the selection process, subject to this Constitution and the Regulations.
- 6.3.3 The Regulations pursuant to clause 6.3.1 must be consistent with the following:
 - (a) Before each annual general meeting in a year in which the office of a Technical Expert Director is vacant or to be vacated, the Secretary must publicly call for Technical Expert Director candidates who need not be Members.
 - (b) The Secretary must convene a committee for the purpose of conducting the selection process.
 - (c) The committee may, but is not required to, interview all candidates for becoming a Technical Expert Director.
 - (d) The committee must recommend candidates to be appointed as Technical Expert Directors on the basis of their skills, background and expertise deemed necessary or desirable by the Board (including, without limitation, to complement the Elected Directors) for the effective operation of the Board. When assessing candidates, the committee must give priority to the individual’s Aboriginality (if any).

- (e) At the board meeting preceding each annual general meeting, the Board may appoint Technical Expert Directors after considering the recommendations from the committee conducting the selection process.
- (f) The meeting chair must announce the Technical Expert Directors at the annual general meeting. Appointments take effect at the end of the annual general meeting at which the appointments are announced.

6.4 Eligibility to be a Director

A person is eligible to become a Director if he or she:

- 6.4.1 is over the age of 18 years;
- 6.4.2 consents in writing to become a Director;
- 6.4.3 is not prohibited or disqualified or otherwise prevented from being a director of a company under the Act or a responsible person of a registered charity under the ACNC Act; and
- 6.4.4 except for the Chief Executive Officer, is not an employee of the Company.

6.5 Limits on period of office as a Director

- 6.5.1 Subject to clause 6.5.2, if a Director has served 9 years or more continuously, then the Director may finish serving his or her current term of office but does not become eligible to be elected or appointed (whether or not to a casual vacancy) until he or she has not been a Director for a subsequent continuous period of 3 years.
- 6.5.2 If a Director has served 18 years or more (whether or not continuously) then the Director may finish serving his or her current term of office but is not eligible to serve as a Director.

6.6 Term of office of Directors

6.6.1 An Elected Director holds office:

- (a) from immediately after the annual general meeting or any other time at which his or her election was declared; and
- (b) until the end of the third annual general meeting after the one at which his or her election was declared.

6.6.2 A Technical Expert Director holds office:

- (a) for a term of three years between annual general meetings;
- (b) until no later than the end of the third annual general meeting after his or her appointment was declared.

6.6.3 The Board may appoint a Technical Expert Director for a shorter term than under clause 6.6.2 if the Board so determines at the time of appointment.

6.6.4 If there is no annual general meeting in a year in which a term of office is to occur, a person's term of office expires at the time re-elections are to take effect in that year pursuant to the procedures notified to Members under clause 6.2.1.

6.7 Casual vacancies

- 6.7.1 If a casual vacancy occurs for any Elected Director office, the Board may appoint another eligible person in his or her place until the end of the next annual general meeting or election process under clause 6.2.1. The Members must then elect a person to fill the Elected Director in accordance with clause 6.2. The person elected will serve only for the balance of the term of the original Elected Director.
- 6.7.2 If a casual vacancy occurs for any Technical Expert Director office, the Board may appoint another eligible person in his or her place until the end of the next annual general meeting or election process under clause 6.2.1.
- 6.7.3 The Board may continue to act despite vacancies on the Board. However, if there are less than four Directors, the Board may only:
- (a) act in the case of emergencies;
 - (b) appoint persons to fill casual vacancies; or
 - (c) convene a general meeting.

6.8 Office bearers

The Board may elect and remove the following office bearers from amongst the Directors:

- 6.8.1 Chair;
- 6.8.2 Deputy Chair; and
- 6.8.3 such other office bearer roles as determined by the Board.

6.9 Resignation of directors

- 6.9.1 A Director may resign as Director by written notice to the Company.
- 6.9.2 The resignation takes effect when the Company receives the Director's notice or on a later date specified in the notice.

6.10 Ceasing to be a director

- 6.10.1 The Members may remove any Director in accordance with the Act.
- 6.10.2 A directorship automatically ceases if the Director:
- (a) dies or is physically incapable of fulfilling his or her duties as a Director;
 - (b) becomes disqualified from being a director pursuant to the Act or ACNC Act;
 - (c) for more than 6 months is absent without permission of the Board from meetings of the Board held during that period;
 - (d) becomes a bankrupt or makes any arrangement or composition with personal creditors generally; or
 - (e) 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.

6.11 Director remuneration and reimbursements

With the approval of the Board, Directors may be paid fees or remuneration for undertaking

the ordinary duties of a Director as follows:

6.11.1 Directors may be paid fair and reasonable Director's fees;

6.11.2 Directors may be reimbursed for reasonable travel and other expenses incurred by them when engaged in the Company's business, attending meetings or otherwise in carrying out the duties of a Director where payment does not exceed any amount previously approved by the Board;

6.11.3 Directors or an associated or related entity of a Director may be paid for any service rendered to the Company in a professional or technical capacity outside the scope of the ordinary duties of a Director, including the provision of project management and administrative support services, where:

- (a) the service and amount payable is on reasonable and proper terms; and
- (b) the provision of that service has the Board's prior approval or is provided for under a government grant application or funding agreement concerning the activities of the Company; and

6.11.4 the Chief Executive Officer is entitled to receive remuneration as provided for in clause 7.3.3.

7. BOARD POWERS

7.1 Management vests in Board

7.1.1 The Board is responsible for the governance, business and affairs of the Company and Board may exercise all the Company's powers, other than those powers to be exercised by the Members in general meeting.

7.1.2 The powers under clause 7.1.1 are subject to:

- (a) this Constitution;
- (b) the Act and the ACNC Act; and
- (c) any resolution which may be passed by the Members in general meeting.

7.1.3 A resolution under clause 7.1.2(c) does not invalidate any prior act of the Board which would have been valid before the resolution was passed or made.

7.2 Power to delegate

7.2.1 The Board may delegate its powers and functions in writing to:

- (a) an officer or employee of the Company; or
- (b) a committee under clause 9.

7.2.2 The Board may amend or revoke the terms of its delegation at any time.

7.3 Power to appoint Chief Executive Officer

7.3.1 The Board may appoint a Chief Executive Officer on such terms and conditions as the Board determines from time to time.

7.3.2 Subject to the Board's decisions or directions to the contrary, the Chief Executive Officer will be responsible for the day to day operations of the Company in

accordance with any policies and strategies set by the Board, and will have the responsibilities determined by the Board.

- 7.3.3 Notwithstanding any other provisions in this Constitution, the Chief Executive Officer is entitled to be paid such reasonable remuneration for his or her services as may from time to time be fixed by the Board.
- 7.3.4 Subject to the terms of any agreement between the Company and the Chief Executive Officer and the Act, the Board may remove the Chief Executive Officer, however the person will remain a Director unless also removed in accordance with clause 6.10.1.
- 7.3.5 The Board may remove a Chief Executive Officer, subject to the terms of any agreement between the Company and the Chief Executive Officer.
- 7.3.6 The Chief Executive Officer is entitled to attend Board meetings and general meetings, if so directed by the Board from time to time.

7.4 Power to appoint Secretary

- 7.4.1 The Board must appoint at least one Secretary on such terms and conditions as the Board determines from time to time.
- 7.4.2 A Secretary, if not a Director, may attend Board meetings and general meetings, if so directed by the Board from time to time.
- 7.4.3 The Secretary will have the responsibilities set out in the Act and the ACNC Act.

7.5 Power to make Regulations

- 7.5.1 The Board may from time to time make, vary and rescind Regulations in relation to the Company.
- 7.5.2 The Regulations for the time being in force, and which are not inconsistent with this Constitution, are binding on Members and have full effect accordingly.

8. BOARD MEETINGS

Subject to this clause 8, the Board may meet to consider business, adjourn and otherwise regulate its meetings as it thinks fit.

8.1 Number of meetings

The Board must meet at least 4 times per year.

8.2 Convening meetings

The Secretary must arrange a Board meeting:

- 8.2.1 at the request of the Chair or Chief Executive Officer; or
- 8.2.2 on the requisition of 2 or more Directors.

8.3 Notice of meeting

- 8.3.1 At least 5 days' notice of any Board meeting must be given unless the Board decides otherwise or in emergencies.
- 8.3.2 The notice must specify the business to be transacted. The Board may only transact business of a routine nature unless notice of any other business has been given

either in the notice convening the meeting or in some other notice given at least 3 days' before the meeting.

8.3.3 The decision of the meeting chair as to whether business is routine is conclusive.

8.4 Quorum

8.4.1 Subject to clause 6.7.3, the quorum for a Board meeting is four. A meeting at which a quorum is present may exercise all powers and discretions of the Board.

8.4.2 If a Board meeting is adjourned due to lack of quorum, the Chair must set a further date for the adjourned meeting.

8.5 Chair

8.5.1 The Chair may chair a Board meeting.

8.5.2 If the Chair is absent the Deputy Chair may chair.

8.5.3 In the absence of the Chair and the Deputy Chair, the Directors may appoint a meeting chair from among their number.

8.6 Voting

8.6.1 Each Director present and entitled to vote at a Board meeting has one vote. Proxy voting and alternate Directors are not permitted.

8.6.2 In the event of an equality of votes the meeting chair has a second or casting vote.

8.7 Use of technology

The Board may hold a technology enabled meeting if:

8.7.1 all Directors (other than any Director on leave of absence) have access to the technology to be used for the meeting; and

8.7.2 those Directors participating by technological means can hear, or can hear and read the communications of all other participating Directors.

8.8 Circulating resolutions

8.8.1 A written resolution signed or approved by technological means (other than any Director on leave of absence) is taken to be a decision of the Board passed at a Board meeting convened and held.

8.8.2 The written resolution may consist of:

(a) several documents in the same form, each signed by one or more Directors and, such a resolution takes effect when the last Director signs such a document; or

(b) permanent records indicating the identity of each Director, the text of the resolution and the Director's agreement or disagreement to the resolution, as the case may be, and such a resolution takes effect when the last Director indicates his or her approval.

8.9 Conflicts and personal interests

- 8.9.1 A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors written notice of the interest unless the ACNC Act or section 191(2) of the Act require otherwise.
- 8.9.2 A Director who has a material personal interest in a matter that is being considered by the Board must not be present while the matter is being considered, or vote on the matter, unless permitted to do so under the ACNC Act or section 195 of the Act.

8.10 Minutes

- 8.10.1 The Board must ensure that minutes of all proceedings of general, Board, committee meetings (and meetings of any other Board entity) are recorded in a minute book within one month after the relevant meeting is held.
- 8.10.2 The minutes must be signed by the meeting chair at which the proceedings took place or by the meeting chair of the next succeeding meeting.
- 8.10.3 Minutes entered and signed are prima facie evidence of the proceedings to which they relate.

8.11 Validity of acts / procedural defects

- 8.11.1 An act or decision of the Board will not be invalid by reason only of a defect or irregularity in connection with the election or appointment of a Director.
- 8.11.2 For entered and signed minutes, unless the contrary is proved:
- (a) the meeting is deemed to have been convened and held;
 - (b) all proceedings that are recorded in the minutes as having taken place are deemed to have taken place; and
 - (c) all appointments that are recorded in the minutes as having been made are deemed to have been validly made.

9. COMMITTEES

9.1 Board's power to establish committees

The Board may establish committees as follows:

- 9.1.1 a committee will comprise two or more committee members, of which at least one must be a Director;
- 9.1.2 the committee members otherwise need not be a Director or Member;
- 9.1.3 the committee has the purpose set out in its charter approved by the Board, and may undertake the powers and functions delegated to it by the Board; and
- 9.1.4 in the absence of any provision in the committee charter, meetings and proceedings of any committee are governed by the provisions of clause 8.

10. ADMINISTRATION

10.1 Change of name

- 10.1.1 The Members may change the Company's name by special resolution in accordance with the Act.

10.2 Amendment of Constitution

10.2.1 The Members may amend this Constitution by special resolution in accordance with the Act.

10.2.2 The Members must not pass a special resolution that amends this Constitution if passing it causes the Company to no longer be a Charity.

10.3 Accounts

The Board must cause:

10.3.1 proper accounting and other records to be kept in accordance with the all legal and regulatory requirements, and

10.3.2 financial statements to be made and prepared before each annual general meeting.

10.4 Audits

10.4.1 If required by law, the Company must appoint and remunerate an auditor.

10.4.2 Any auditor is entitled to attend any general meeting and to be heard by the Members on any business of the meeting that concerns the auditor in their capacity as auditor.

10.4.3 The Company must/may give any auditor all communications relating to the general meeting that the Members of the Company are entitled to receive.

10.5 Records and inspection

10.5.1 A Member (other than a Director) is not entitled to inspect any document of the Company, except as provided by law or authorised by the Board.

10.5.2 The Company must retain its records for at least seven years.

10.6 Service of notices

10.6.1 Notices must be in writing and may be given by the Company to any Member:

- (a) in person;
- (b) by sending it by post to the Member at the Member's registered address; or
- (c) by sending it to the address, facsimile number, e-mail address or other address supplied for receiving notices.

10.6.2 A notice sent by post is deemed to have been given 6 business days after it was posted. A notice sent by fax, or by other electronic means, is deemed to have been given on the next business day after it was sent.

10.7 Indemnity of officers

10.7.1 To the Relevant Extent, the Company indemnifies current and former Officers out of its assets against any Liability incurred by the Officer in or arising out of:

- (a) the conduct of the Company's affairs or business; or
- (b) the discharge of the Officer's duties,

unless the Liability arises out of conduct involving a lack of good faith.

10.7.2 To the Relevant Extent, the Company may execute any deed in favour of any current or former Officer to confirm the indemnities conferred by clause 10.7.1 in relation to that person to the extent the law does not preclude the Company from doing so.

10.7.3 Clause 10.7.1 applies whether or not any deed is executed under clause 10.7.2.

10.7.4 In this clause 10.7 and clause 10.8:

- (a) “**Liability**” includes cost, charge, loss, damage, expense or penalty; and
- (b) “**To the Relevant Extent**” means to the extent the Company is not precluded from doing so by law (including the Act).

10.8 Insurance

To the Relevant Extent:

10.8.1 the Company may pay or agree to pay premiums for directors and officers insurance to insure current or former Officers against any Liability incurred by the Officer in or arising out of:

- (a) the conduct of the Company’s affairs or business; or
- (b) the discharge of the Officer’s duties; and

10.8.2 the Company may execute any deed in favour of any current or former Officer to take out insurance referred to in clause 10.8.1, on such terms as the Board considers appropriate.

10.9 Company seal

10.9.1 The Company does not have a common seal.

10.10 Execution of documents

10.10.1 The Company may execute documents by the signature of:

- (a) two Directors;
- (b) one Director and the Secretary; or
- (c) such other persons appointed by the Board for that purpose.

10.11 Definitions

In this Constitution:

“**Aboriginal community controlled organisation**” means an Organisation:

- (a) that is established as an Indigenous corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth); or
- (b) any other organisation, association, partnership, body corporate or unincorporated body with written governing documents mandating the majority of board members/directors are Aboriginal and/or Torres Strait Islander people and which are otherwise on terms acceptable to the Board,

delivering holistic and culturally appropriate health and wellbeing services to the Community which controls it, in a manner considered appropriate by the Board;

“ACNC Legislation” means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (Cth).

“Act” means the *Corporations Act 2001* (Cth);

“Board” means the board of Directors of the Company with a quorum to transact business;

“Chair” means the Director and office bearer under clause 6.8.1;

“Charity” means a charity registered under the ACNC Legislation.

“Company” means the company named on page 1 of this Constitution;

“Constitution” means this constitution of the Company;

“Director” means a person for the time being who performs the role of director of the Company;

“Deputy Chair” means the Director and office bearer under clause 6.8.2.

“Deductible Gift Recipient” means an entity to which tax deductible gifts may be made pursuant to Division 30 of the ITAA 97.

“DGR Gifts” means:

- (a) gifts of money or property for the Principal Purpose received during any time that the Company is endorsed as a Deductible Gift Recipient;
- (b) contributions described in item 7 or 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event (as defined by section 995-1 of the ITAA 97) held for that purpose during any time that the Company is endorsed as a Deductible Gift Recipient; and
- (c) money received by the Company because of such gifts or contributions during any time that the Company is endorsed as a Deductible Gift Recipient.

“Elected Director” means a Director elected for the purposes of clause 6.1.1(a);

“Insolvency Event” means any of the following events:

- (a) in respect of an Organisation:
 - (1) a receiver, receiver and manager, trustee, other controller as defined in section 9 of the Act or similar official is appointed over any of the assets or undertaking of the body corporate;
 - (2) the body corporate suspends payment of its debts generally;
 - (3) the body corporate is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the Act;
 - (4) the body corporate enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
 - (5) the body corporate ceases to carry on business or threatens to cease to carry on business;

- (6) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or
 - (7) an application or order is made for the winding up or dissolution of the body corporate or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the body corporate, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the other body corporate; or
- (b) in respect of a Person, they become bankrupt or enter into any arrangement or composition with his or her creditors or proposes to do so;

“**ITAA**” means the *Income Tax Assessment Act 1997* (Cth);

“**Chief Executive Officer**” means a person appointed under clause 7.3 to be Chief Executive Officer of the Company;

“**Member**” means an Organisation or Person who is a member of the Company pursuant to clauses 3 and 4;

“**Non-voting Member**” means a Member who is not entitled to exercise a voting right in a general meeting of the Company;

“**Officer**” has the meaning given in the Act;

“**Organisation**” means a company under the Act, Indigenous corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), association, partnership, body corporate or other unincorporated body with written governing documents on terms acceptable to the Board and an Australian Business Number (ABN);

“**Person**” means a natural person who is at least 18 years of age;

“**Principal Purpose**” means the principal purposes set out in in clause 1.1;

“**Purposes**” means the Principal Purpose and the Supporting Purposes;

“**Regulations**” means regulations made by the Board under clause 7.5;

“**Secretary**” means a secretary appointed under clause 7.3.6;

“**Supporting Purposes**” means the supporting purposes set out in clause 1.2;

“**Technical Expert Director**” means a Director with technical expertise appointed for the purposes of clause 6.1.1(b);

“**Terminable Conduct**” means conduct of a Member which, in the reasonable opinion of the Board:

- (a) is, has been or will be prejudicial to the Company’s interests;
- (b) is not that of a fit and proper person or a person of good fame and character;
- (c) is unbecoming of Members; or
- (d) is conduct similar to the above which is set out in the Regulations; and

“**Voting Member**” means a Member who is entitled to exercise a voting right in a general meeting of the Company.

10.12 Interpretation rules

Unless the contrary intention appears in this Constitution:

- 10.12.1 words importing the singular include the plural, and words importing the plural include the singular;
- 10.12.2 words importing a gender include every other gender;
- 10.12.3 a reference to a Person includes in the event that a Person ceases to have capacity, that person's legal personal representatives (excluding a legal or financial adviser);
- 10.12.4 a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- 10.12.5 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- 10.12.6 headings and bold text are for convenience only and do not affect its interpretation; and
- 10.12.7 a Member is to be taken to be present at a general meeting if the Member is present in person, by proxy or by any representative permitted under this Constitution.

10.13 Application of Act

- 10.13.1 This Constitution is to be interpreted subject to the Act. However, the rules that apply as replaceable rules to companies under the Act do not apply to the Company.
- 10.13.2 Unless the contrary intention appears, a word or expression in a clause that is defined in section 9 of the Act has the same meaning in this Constitution as in that section.

10.14 Application of ACNC Act

This Constitution is to be interpreted subject to the ACNC Act.

11. TRANSITIONAL PROVISIONS

11.1 Members

The Members immediately following the adopting of this Constitution will be those Members listed on the register of Members at the time of adoption.

11.2 Directors

- 11.2.1 The Directors immediately following the adoption of this Constitution will be those in office at the time of adoption.
- 11.2.2 Directors appointed prior to the adoption of this Constitution may complete their term of office under the previous Constitution. Time served prior to the adoption of this Constitution will be taken into account for the purposes of clauses 6.5 and 6.6.