

Constitution

Victorian Tourism Industry Ltd

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PREAMBLE

- The Victorian Tourism Industry Ltd (the **Company**) was incorporated following extensive consultation with stakeholders from the tourism, hospitality and events industry (the **Industry**).
- The primary focus of the Company is the provision of policy, advocacy and representation services to businesses in the Industry. In addition, the Company will provide services and/or products to assist businesses in the Industry to be commercially sustainable, profitable and innovative and at times to the State or Federal Government where relevant to the Industry.
- The Company has been developed as a vehicle for bringing together businesses from all sectors of the Industry into a single peak body that has the capacity to provide robust, professional and strategic policy, advocacy, representation and services to all businesses in the Industry.
- The Industry includes businesses that contribute to, engage with or provide products or services to tourism, hospitality or events businesses.

Chapter 1 – Interpretation**1. This Constitution**

- 1.1 This Constitution contains clauses setting out the manner in which the Members have agreed to conduct the internal administration of the Company.
- 1.2 This Constitution takes the place of the replaceable rules contained in the Act.

2. Definitions

- 2.1 In this Constitution unless the contrary intention appears:

Accounting Standards has the meaning given to it in the Act;

Act means the *Corporations Act 2001 (Cth)* as amended from time to time;

Annual General Meeting means an annual general meeting of the Company held in accordance with clause 46;

Auditor means the auditor for the time being of the Company;

Board means all of the Directors for the time being;

Board Appointed Director means a Director who is appointed in accordance with clause 17;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne;

Chair or **Chairperson** means the chairperson appointed in accordance with clause 38 to chair the Board;

Commencement Date means the date the Company passes a special resolution adopting this constitution;

Company means Victorian Tourism Industry Ltd;

Constitution means this constitution of the Company as amended, supplemented or replaced from time to time;

Corporations Regulations means the *Corporations Regulations 2001 (Cth)* as amended from time to time;

Deputy Chair or **Deputy Chairperson** means the Director appointed in accordance with clause 38 to be the deputy chairperson of Board meetings and General Meetings;

Director means any person formally and lawfully appointed as a director of the Company including an Elected Director, a Board Appointed Director, an Initial Elected Director, an Initial Board Appointor Director and an alternate Director;

Enterprise means a natural person, a partnership, an association (whether incorporated or unincorporated), a trust, a joint venture, a company, government department, government corporation or any other entity or relationship commonly recognised at law or in equity

whether or not the entity or relationship is a legal person and which provides services relating to tourism;

First Annual General Meeting means the annual general meeting held in 2021;

General Meeting means a general meeting of the Company held in accordance with chapter 6;

Guarantee means the maximum amount each Member agrees to pay to the Company in accordance with clause 5;

Industry means the tourism, hospitality and events industry;

Initial Board means the Board appointed under clause 14;

Initial Board Appointed Directors means the directors referred to at clause 14.2;

Initial Elected Directors means the directors referred to at clause 14.1;

Initial Period means the period between the Annual General Meeting held in or around November 2020, and the following Annual General Meeting held in 2021;

Member means a person admitted as a member under clause 9;

Objects means objects of the Company set out in clause 6;

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

Register of Members means the register of Members of the Company which is kept pursuant to the Act;

Registered Address means the last known address of a Member as noted in the Register;

Secretary means any person formally and lawfully appointed as a secretary of the Company including any assistant or acting secretary or any substitute for the time being for the secretary;

Second Annual General Meeting means the annual general meeting held in 2022;

Sector Roundtable means a roundtable established under clause 42;

Special Resolution means a resolution:

- (a) of which notice as required in accordance with the Act has been given; and
- (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution;

Subscription means the subscription fee payable by a Member pursuant to clause 10.

2.2 Interpretation

In this Constitution, unless the contrary intention appears:

- (a) a reference to:
 - (i) any statute, ordinance, code or other law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments or a replacement of any of them by any government body;
 - (ii) any officer of the Company includes any person acting for the time being as such an officer; and
 - (iii) writing includes any mode of representing or reproducing words in a tangible or visible form, and includes facsimile transmission;
- (b) words importing:
 - (i) the singular include the plural and vice versa;
 - (ii) a gender include all other genders; and
 - (iii) natural persons include partnerships, associations and corporations;
- (c) headings do not affect the construction of this Constitution;
- (d) if a word or phrase is defined cognate words and phrases have corresponding meanings;
- (e) references to notices in this Constitution include not only formal notices of meetings but also all documents and other communications from the Company to its Members; and
- (f) an expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that or any other Part or Division has, in any of this Constitution that deals with a matter dealt with by the relevant Part or Division, the same meaning as applies in or in respect of that Part or Division.

Chapter 2 – Nature of the Company

3. Public company

The Company is a public company limited by guarantee.

4. Limitation of Company

- 4.1 The Company must not be operated for the purpose of profit or gain of any individual Member.
- 4.2 The Company does not have the power to:
- (a) issue shares of any kind; or
 - (b) apply, pay or transfer, whether directly or indirectly, any portion of the income and property of the Company for the benefit of, or to, a Member, other than as provided for in clauses 4.3 and 24.
- 4.3 The Company may remunerate a Member for services provided to the Company on arm's length terms as determined by the Board.

5. Guarantee of Members

Each Member undertakes to contribute a maximum of \$10.00 to the Company for payment of:

- (a) the debts and liabilities of the Company;
- (b) the costs, charges and expenses of any winding up; and
- (c) the adjustment of the rights of Members among themselves,

in the event that the Company is wound up:

- (d) while the Member is a Member; or
- (e) within one calendar year after the Member ceases to be a Member.

6. Objects

The Objects for which the Company is established are:

- (a) to secure for the Members all advantages of unity of action and to protect the interests of members in any lawful manner whatsoever on matters relating to the Industry;
- (b) to effect a thorough organisation of the Industry in a manner that facilitates the achievement of the Objects;
- (c) to affiliate, act with or engage with kindred organisations, associations or industry bodies that have an interest in the Industry with the purposes of expressing a collective opinion or view on any matter relating to the Industry;
- (d) to promote and foster the consideration and free discussion of all matters and questions affecting the Industry either directly or indirectly;
- (e) to act as the official expresser of opinions or views on any matter relating to the Industry;

- (f) to engage in activities to create an environment which is conducive to the development of businesses in the Industry that are vibrant, innovative and commercially sustainable;
- (g) to raise issues of concern to its members with Local, State or Federal Governments, regulators, industry bodies or institutions particularly when policies affecting the Industry are being reviewed, developed, debated or implemented;
- (h) to raise and maintain the profile of the Industry, its value, importance and position in the economy;
- (i) to provide such services from time to time as may assist to improve the technical or business methods of members including confidential exchange of information supplied by Members for the benefit of Members;
- (j) to encourage the study of all matters relating to the Industry with a view to instructing or teaching and to test by examination or otherwise the competency of persons, and to award certificates that denote verification of competence;
- (k) to organise awards, events, conferences, courses, or other activities that the Company may think desirable for the achievement of the Objects;
- (l) to print, publish and distribute by any means; digital channels, newspapers, periodicals, books or leaflets that the Company may think desirable for the achievement of the Objects;
- (m) to acquire, purchase, lease or otherwise hold any land, building or other property real or intangible that the Company may think desirable for the achievement of the Objects;
- (n) to sell, improve, maintain, manage, lease, mortgage, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company;
- (o) to raise and borrow money in such a manner and upon such security as the Company thinks fit;
- (p) to invest and deal with the funds and moneys of the Company in such a manner or on such terms and conditions as may from time to time be determined by the Company to best achieve the Objects;
- (q) to establish and or accept trusts having for their objects the welfare and benefit of any Member or business to enable the Company to more effectively achieve the Objects; and
- (r) any other objectives ancillary to and not inconsistent with the above.

7. Scope of powers

- 7.1 Provided that its capacities and powers are exercised directly or indirectly in the furtherance of the Objects, the Company shall have the legal capacity and powers set out in section 124 of the Act.

8. General Structure

- 8.1 The Objects of the Company will be carried out in accordance with the following general structure:

- (a) The admission and engagement of Members, as set out in clauses 9 to 12 and clauses 66 to 69;
- (b) The operation of the Board, as set out in clauses 13 to 40;
- (c) The operation of the Policy Advisory Council, as set out in clause 41;
- (d) The operation of the Sector Roundtables, as set out in clauses 42 and 43;
- (e) The operation of specific Task Forces as and when deemed appropriate by the Board relevant to the Industry.

9. Members – Admission to membership

- 9.1 Membership of the Company shall be open to any Enterprise actively engaged in the Industry.
- 9.2 The Board must take all measures it considers reasonable to invite applications for membership from all Enterprises or (where an Enterprise is not a legal person) one representative of an Enterprise.
- 9.3 Every applicant for admission to membership shall sign an application for membership in such form as may from time to time be approved by the Board.
- 9.4 Subject to Board ratification, a Member shall be deemed to be a Member upon receipt of a duly completed application for membership form, together with any fee as may be payable by the applicant and will be admitted, at the sole discretion of the Board, as either:
 - (a) Category A;
 - (b) Category B;
 - (c) Category C;
 - (d) Honorary life membership; or
 - (e) any other membership category established by the Board.
- 9.5 For the avoidance of any doubt, the Board may determine that the categories in clause 9.4 can be marketed under any other name, description or title deemed fit by the Board and as amended from time to time.
- 9.6 Each Member shall nominate to the Secretary the name of one individual who shall represent that Member at all meetings and who may vote on behalf of such Member.
- 9.7 A Member may from time to time may notify the Company to change its representative. Such new representative shall be entitled to hold any office of his/her predecessor in the Company. A representative of a Member that ceases to be a Member or ceases to be the representative of a Member shall cease to be eligible to hold any office of the Company.
- 9.8 For the avoidance of doubt, a Member may not be represented by more than one individual concurrently.

10. Subscription

- 10.1 Each Member must pay an annual Subscription at a date and in a manner determined by the Board.

- 10.2 Annual Subscriptions may:
- (a) be paid on an incremental basis for certain classes of membership as determined by the Board; and
 - (b) be varied from time to time as determined by the Board.
- 10.3 For the absence of doubt, the Board may determine that Members of different classes of membership and within a class of membership may pay different annual Subscriptions.

11. Address of Members

- 11.1 Each Member shall provide to the Company the details of an address in Australia where the Company can send notices.
- 11.2 If a Member fails to provide an address in accordance with clause 66.1, the address of the Members is deemed to be the registered office of the Company.

12. Rights of Members

- 12.1 Save for the rights conferred by clauses 41 to 43, Members shall have all the rights granted to Members in this Constitution, including the right to:
- (a) attend and vote at any General Meeting in accordance with this Constitution;
 - (b) stand for any office of the Company.

13. General Board Composition

- 13.1 The Company must establish the Board which shall be comprised of the following representatives:
- (a) Up to seven directors, consisting of:
 - (i) Five Elected Directors, pursuant to clauses 14 to 15 and clause 18;
 - (ii) Up to two additional independent Directors, being Board Appointed Directors, pursuant to clause 14 and clause 16.
- 13.2 Each director of the Board will hold office for a two-year term and is eligible for re-election for no more than two further consecutive terms.

14. Initial Board Composition

- 14.1 As at the Commencement Date, and for the duration of the Initial Period, the Initial Elected Directors shall be:
- (a) Matthew McDonald
 - (b) Anne Jamieson
 - (c) Nicholas Hunt
 - (d) Fiona Sweetman
 - (e) John Forman

- 14.2 As at the Commencement Date, and for the duration of the Initial Period, the Initial Board Appointed Directors shall be:
- (a) Matthew Jackson;
 - (b) Steven Wright.

15. Term and timing of appointment of Initial Elected Directors

- 15.1 Three Initial Elected Directors shall retire at the First Annual General Meeting and the remaining two Initial Elected Directors shall retire at the Second Annual General Meeting.
- 15.2 In default of any agreement between the Initial Elected Directors, the three Initial Elected Directors to retire at the First Annual General Meeting shall be determined by ballot.
- 15.3 Three new Elected Directors shall be elected in accordance with clause 18 at the First Annual General Meeting to coincide with the retirement of the three Initial Elected Directors.
- 15.4 Two new Elected Directors shall be elected in accordance with clause 18 at the Second Annual General Meeting to coincide with the retirement of the remaining two Initial Elected Directors.
- 15.5 Subject to clause 15.6 and 27, each Elected Director shall hold office until the Second Annual General Meeting which follows the Annual General Meeting at which he or she was appointed, at which time the Director shall retire and the Director's position shall become vacant.
- 15.6 A vacating Director shall be eligible for re-election or re-appointment, subject to the restrictions set out in clause 13.2.

16. Term and timing of Initial Board Appointed Directors

- 16.1 One Initial Board Appointed Director shall retire at the First Annual General Meeting and the remaining Initial Board Appointed Director shall retire at the Second Annual General Meeting.
- 16.2 In default of any agreement between the Initial Board Appointed Directors, the Initial Board Appointed Director to retire at the First Annual General Meeting shall be determined by ballot.
- 16.3 A new Board Appointed Director shall be elected by the Board at least 30 days prior to the First Annual General Meeting to coincide with the retirement of one Initial Board Appointed Director.
- 16.4 A new Board Appointed Director shall be elected at least 30 days prior to the Second Annual General Meeting to coincide with the retirement of the remaining Initial Board Appointed Director.
- 16.5 Subject to clause 27, each Board Appointed Director shall hold office until the Second Annual General Meeting which follows the Annual General Meeting at which he or she was appointed, at which time the Director shall retire and the Director's position shall become vacant.

17. Appointment of Board Appointed Directors

- 17.1 Subject to section 201E of the Act and clause 17.2, the Board may appoint up to two Board Appointed Directors.

- 17.2 To qualify for appointment as a Board Appointed Director a person shall demonstrate, to the satisfaction of the Board, knowledge and experience of at least 5 years in one or more of the following areas:
- (a) financial management or;
 - (b) corporate governance
 - (c) business;
 - (d) Policy / Advocacy;
 - (e) the tourism industry; and
 - (f) any other skill or area of expertise required by the Board.

18. Appointment of Elected Directors

- 18.1 The procedure for the election of an Elected Director shall be substantially in accordance with the procedures set out in this clause 18.
- 18.2 The Secretary shall no later than 45 Days before the Annual General Meeting at which an Elected Director is due to retire, call for candidates for election as an Elected Director to replace the retiring Elected Director.
- 18.3 A candidate for an Elected Director must be the person nominated under 9.5 and shall deliver his or her written and signed nomination to the Secretary no later than 30 Days prior to the Annual General Meeting referred to in clause 18.2.
- 18.4 Where the positions available are equal to or exceed the numbers of nominations received by the Secretary, a ballot will not be required. The Secretary shall forthwith declare the candidate so nominated elected unopposed to the position for which he/she was to be nominated.
- 18.5 Where the number of nominations received exceeds the positions available, the Secretary shall, no later than 30 Days prior to the day before the Annual General Meeting referred to in clause 18.2, conduct a postal ballot in accordance with clause 19 or electronic ballot in accordance with clause 20 (as determined by the Board) of all Members.

19. Postal Ballot

- 19.1 In conducting a postal ballot, the Secretary must provide all Members with:
- (a) a ballot paper for the election of the candidates as Elected Directors;
 - (b) a card bearing a distinctive number; and
 - (c) an envelope marked "ballot paper" addressed to the Secretary at such address as the Secretary may determine.
- 19.2 Each ballot paper must:
- (a) be initialled for the purposes of identification by the Secretary or a person authorised by the Secretary; and
 - (b) set out the full name of each nominated candidate, in alphabetical order.
- 19.3 A Member shall not be entitled to cast more than one vote.

- 19.4 Each Member which has received a ballot paper must, in order to cast a valid vote:
- (a) mark the ballot paper by placing an "x" next to the name of the candidate who that Member wishes and is entitled to vote for;
 - (b) indicate its name on the numbered card;
 - (c) place the numbered card and marked ballot paper in the envelope marked "ballot paper" and seal the same; and
 - (d) post it, deliver it or cause it to be delivered to the Secretary of the address marked on the envelope.
- 19.5 Only ballot papers received by the Secretary by no later than 5.00 p.m. on the tenth Business Day prior to the Annual General Meeting referred to in clause 18.2 may be admitted to the ballot.
- 19.6 The number of candidates who receive the highest number of votes shall be declared as Elected Directors. If there is a tie for a vacancy the Secretary must determine by lot which of the tied candidates shall fill the relevant vacancy or vacancies.
- 19.7 The postal ballot shall be counted by the Secretary.
- 19.8 The Secretary shall certify the result of the ballot in writing to the Chairperson at the Annual General Meeting. The Elected Director so elected shall, subject to clause 27, hold office from the close of that Annual General Meeting for the period of 24 months.
- 19.9 The decision of the Secretary shall be final and binding in respect of all matters affecting the postal ballot.
- 19.10 The ballot papers must be retained by the Board for a period of 40 Days after the Annual General Meeting and, unless the Board otherwise resolves, shall then be destroyed by the Secretary.
- 19.11 Where a Member is not notified of an election, non-receipt by that Member does not invalidate that election.

20. Electronic Ballot

- 20.1 This clause applies to an electronic ballot.
- 20.2 Electronic voting is to be by means of email or other electronic means determined by the Board.
- 20.3 Without limiting clause 20.2, the other electronic means of voting may include requiring voters to access a voting website and to vote in accordance with directions contained on that website.
- 20.4 The Secretary must ensure that the form for the electronic ballot paper contains--
- (a) instructions for completing the voting paper, and
 - (b) the question to be determined, and
 - (c) the means of indicating the voter's choice on the question to be determined.
- 20.5 The Secretary must, no later than 30 Days prior to the day before the Annual General Meeting referred to in clause 18.2, give each person entitled to vote--

- (a) access to an electronic ballot paper, or to a voting website or electronic application containing an electronic ballot paper, that complies with this clause, and
- (b) access to information about--
 - (i) how the ballot paper must be completed, and
 - (ii) the closing date of the ballot, and
 - (iii) if voting is by email--the address where the ballot paper is to be returned, and
 - (iv) if voting is by other electronic means, the means of accessing the electronic voting system and how the completed electronic ballot paper is to be sent to the returning officer.

20.6 Each Member entitled to vote must vote in accordance with the instructions contained in the information.

20.7 A Member shall not be entitled to cast more than one vote.

20.8 Only ballot papers received by the Secretary by no later than 5.00 p.m. on the tenth Business Day prior to the Annual General Meeting referred to in clause 18.2 may be admitted to the ballot.

20.9 The number of candidates who receive the highest number of votes shall be declared as Elected Directors. If there is a tie for a vacancy the Secretary must determine by lot which of the tied candidates shall fill the relevant vacancy or vacancies.

20.10 The electronic ballot shall be counted by the Secretary.

20.11 The Secretary shall certify the result of the ballot in writing to the Chairperson at the Annual General Meeting. The Elected Director so elected shall, subject to clause 27, hold office from the close of that Annual General Meeting for the period of 24 months.

20.12 The decision of the Secretary shall be final and binding in respect of all matters affecting the electronic ballot.

20.13 Where a Member is not notified of an election, non-receipt by that Member does not invalidate that election.

21. Casual vacancy of a Director

21.1 If at any time the Board is not comprised as specified in clause 13 (due to retirement, resignation, removal, a lack of candidates for election or any other reason other than the expiry of the Director's term), the Board shall as soon as practicable appoint a Director until such time as the Director he or she replaces would have retired had he or she been initially elected or appointed under clause 15.5.

21.2 If a person is appointed under this clause as a Director, the Company must confirm the appointment by resolution at its next Annual General Meeting. If the appointment is not confirmed, the person ceases to be a Director at the end of the Annual General Meeting.

22. Non-eligibility of Auditor

The Auditor is ineligible to be elected or appointed as a Director or alternate Director.

23. Other offices held by Directors

A Director may hold any other office or position of profit in the Company together with the directorship on such conditions including additional remuneration as may be agreed by the Board.

24. Remuneration of Directors

24.1 Subject to section 202B under Chapter 2D.3 of the Act, the Directors are to be paid the remuneration for services as determined by the Board.

24.2 With the approval of the Board, the Company may pay a Director:

- (a) expenses (including travel and accommodation) reasonably incurred by the Director in carrying out the Director's duties;
- (b) reasonable remuneration for any services rendered by the Director to the Company;
- (c) reasonable remuneration where the Director is an employee of the Company and the terms of employment have been approved by the Board;
- (d) interest on money lent by the Directors of the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (e) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business; and
- (f) reasonable rent for premises leased by the Director to the Company.

25. Director may resign

A Director may resign as a Director of the Company by giving at least 30 days written notice of resignation to the Company at its registered office.

26. Removal of a Director

26.1 Subject to section 203D of the Act, the Company may, by resolution, remove a Director from office.

26.2 If a Director was appointed to represent the interests of particular Members (as is the case with the Initial Elected Directors), his or her removal under clause 26.1 has no effect until a replacement to represent the interests of those Members has been appointed, unless the removal is a significant breach of Directors code of conduct .

27. Vacation of office

27.1 A Director vacates office if the Director:

- (a) retires in accordance with clauses 15 or 16;
- (b) ceases to be a Director or becomes prohibited from being a Director by virtue of any provision of the Act;
- (c) resigns pursuant to clause 25;
- (d) for more than four months is absent without permission of the other Directors from meetings of the Board held during that period;

- (e) is absent from more than three consecutive Board meetings;
- (f) has a material personal interest in a matter that relates to the affairs of the Company (other than as a Member) and fails to disclose details of that interest in accordance with clauses 28 or 29;
- (g) is removed from the office in accordance with clause 26;
- (h) ceases to be a nominated person under clause 9.5; or
- (i) significant breach of Directors code of conduct.

28. Material personal conflict of interest – Director's duty to disclose

- 28.1 Unless an exception under section 191 of the Act applies, if a Director has a personal, actual or perceived conflict of interest in a matter that relates to the affairs of the Company, the Director must give the other Directors notice of the interest.
- 28.2 The notice required by clause 28.1 must:
- (a) include details of:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company; and
 - (b) be given at a Directors' meeting as soon as practicable after the Director becomes aware of their interest in the matter.

29. Director must give standing notice about an interest

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

30. Voting and completion of transactions in which a Director has a material personal conflict of interest

A Director who has a material personal conflict of interest in a matter that is being considered at a Board meeting shall not:

- (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter;
- unless:
- (c) the interest does not need to be disclosed under section 191 of the Act; or
 - (d) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature of their interest in the matter and its relation to the affairs of the Company; and
 - (ii) states that the Directors are satisfied that the interest should not disqualify the Director from voting or being present.

31. Financial benefits to related parties

The Company shall not give a financial benefit to a related party of the Company unless it is authorised in accordance with the Act.

Chapter 3 – Management of business by Board

32. Powers of the Board

- 32.1 Subject to the Act and this Constitution, the business of the Company is to be managed by or under the direction of the Board.
- 32.2 The Board may exercise all of the powers of the Company except any powers that any provisions of the Act or this Constitution require the Company to exercise in General Meeting.
- 32.3 The Board shall meet at least 4 times per year.

33. Managing Director

- 33.1 The Board may appoint one or more of themselves to the office of Managing Director of the Company for a period and on the terms (including as to remuneration) as the Board sees fit.
- 33.2 The Board may confer on a Managing Director any of the powers that the Board can exercise.
- 33.3 The Board may revoke or vary:
- (a) the appointment of the Managing Director; or
 - (b) any of the powers conferred on the Managing Director.

34. Delegation to committees

- 34.1 The Board may delegate any of their powers to a committee of Directors, a Director, an employee of the Company or any other person or group of persons.
- 34.2 The delegate must exercise the powers delegated to it in accordance with any directions of the Board.
- 34.3 The effect of the delegate so exercising a power is the same as if the Board exercised it.
- 34.4 The Board may, by power of attorney, appoint any company, firm, person or body of persons to be the attorney of the Company for:
- (a) any period; and
 - (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Board under this Constitution.

Chapter 4 – Board meetings

35. Circulating resolutions

- 35.1 The Board may pass a resolution without a Board meeting being held if all of the Directors entitled to vote on the resolution sign a document containing a statement that

they are in favour of the resolution set out in the document, unless a Director/s are overseas and unavailable to vote.

35.2 Separate copies of a document may be signed by Directors if the wording of the resolution and statement is identical in each copy.

35.3 The resolution is passed when the last Director signs.

36. Calling Board meetings

A Board meeting may be called by a Director giving reasonable notice individually to every Director.

37. Use of technology

37.1 A Board meeting may be called or held using any technology consented to by the Board.

37.2 Any consent may be a standing consent.

37.3 A Director may only withdraw their consent within a reasonable period before the Board meeting, subject to majority Board approval.

38. Chairperson and Deputy Chairperson

38.1 As at the Commencement Date, the Chair of the Board shall be Matthew McDonald for a period of two years.

38.2 As at the Commencement Date, the Deputy Chair of the Board shall be Anne Jamieson for a period of two years.

38.3 Following the expiry of the two-year period, the Directors will determine by Majority Board which of their number will be the Chair and Deputy Chairperson for the subsequent two-year period.

38.4 The Chair will preside at every Board meeting or, in the absence of the Chair, the Deputy Chair will preside.

39. Quorum at Board meetings

Unless the Board determines otherwise, the quorum for a Board meeting is four Directors and the quorum must be present at all times during the Board meeting.

40. Passing of Board resolutions

40.1 A resolution of the Board must be passed by a majority of the votes cast by the Directors entitled to vote on the resolution.

40.2 The Chair, or in the absence of the Chair, the Deputy Chair, has one casting vote in addition to any vote they have in their capacity as a Director.

41. Policy Advisory Council

41.1 The Company must establish the Policy Advisory Council (**Council**) which shall be comprised of the following representatives:

(a) All Category A Members;

(b) Board Directors;

- (c) Two Members from each Sector Roundtable (being no more than 8 in total), in accordance with clause 43;
 - (d) up to four additional Members appointed by the Board to ensure the Council is reasonably representative of the broader Members as a collective.
- 41.2 During the Initial Period, the Board may appoint up to four additional Members (in addition to any Members it appoints under clause 41.1(d)) to ensure the Council is reasonably representative of the broader Members as a collective.
- 41.3 The Policy Advisory Council will have the following powers:
- (a) to establish a set of rules by which it must abide and which must be endorsed by the Board (**PAC Rules**);
 - (b) to act in accordance with an agreed business plan and in the Company's best interests;
 - (c) to report to and to be accountable to the Board via the Chairperson;
 - (d) to establish sub-committees as and when required;
 - (e) to act as the key policy development arm of the Company by performing the following key functions:
 - (i) collaborate and liaise with each Sector Roundtable through seeking feedback (including through the circulation of surveys), development and implementation;
 - (ii) development of policies relating to emergency and disaster response arrangements.
- 41.4 The Policy Advisory Council must meet at least every 6 months or otherwise required by the PAC Rules.
- 41.5 The Policy Advisory Council must keep minute books in which it records proceedings and resolutions of meetings, and must ensure that such minutes are submitted to the Secretary within a reasonable period after each meeting.
- 41.6 Such record of any minutes from meetings will be tabled at the next available Board meeting.

42. Sector Roundtables

- 42.1 Subject to clause 42.2, the Company must establish a Sector Roundtable for each of the key industry sectors:
- (a) Events;
 - (b) Accommodation;
 - (c) Tourism & Attractions; and Tour & Transport;
 - (d) Destinations and Tourism Services.
- 42.2 The number and category of each Sector Roundtable may vary from time to time provided that each key industry sector within VTI Limited is represented in a Sector Roundtable.

- 42.3 On joining the Company, each Category A or B Member will be allocated to the applicable Sector Roundtable (having regard to the applicable industry sector) at the discretion of the Secretary.
- 42.4 Each Sector Roundtable must meet at least 2 times per year.
- 42.5 The Board is to establish a set of rules by which each Sector Roundtable must abide.
- 42.6 Each Sector Roundtable convened under this Constitution has the following powers:
- (a) To elect its own chairperson;
 - (b) To elect two of its Members to the Policy Advisory Council, in accordance with clause 43;
 - (c) To report to and to be accountable to the Board;
 - (d) To advise the Policy Advisory Council on all matters relating to their respective industry sectors, by consultation and through completion of surveys;
 - (e) To assist the Policy Advisory Council by providing input on policy development and assisting in policy implementation and distribution.
- 42.7 For the avoidance of doubt, there shall be no upper limit on the number of members in each Sector Roundtable provided that each such member remains eligible to be a Category A or B Member (as the case may be).
- 42.8 Each Sector Roundtable must keep minute books in which it records proceedings and resolutions of meetings, and must ensure that such minutes are submitted to the Secretary within a reasonable period after each meeting.

43. Sector Roundtable – Appointment to Policy Advisory Council

- 43.1 The procedure for each Sector Roundtable electing two of its members to the Policy Advisory Council shall be substantially in accordance with the procedures set out in this clause 43
- 43.2 Any Member of a Sector Roundtable seeking appointment to the Policy Advisory Council must deliver his or her written nomination to the Secretary no less than 28 days prior to a meeting held in accordance with clause 42.4.
- 43.3 Where the number of candidates is equal to or less than the positions available, the Secretary has the discretion to determine who shall be appointed to the Policy Advisory Council from the nominations received. The Secretary shall forthwith declare the candidate so appointed to the position which he or she so nominated. A decision made by the Secretary is final and not subject to appeal.
- 43.4 Where the number of candidates is greater than the number of positions, there shall be a vote conducted, where each Member of the Sector Roundtable has one vote.
- 43.5 The term of an appointment made under this clause 43 is two years. Any Member of a Sector Roundtable who is appointed to the Policy Advisory Council, whose term is to expire, may nominate for a further term.

Chapter 5 – General Meetings

44. Calling of General Meetings by a Director

A Director may call a General Meeting.

45. Calling of General Meetings

- 45.1 If requested by Members entitled under section 249D(1) of the Act to call a General Meeting, the Board must call and arrange to hold a General Meeting.
- 45.2 Members with at least 5% of the votes that may be cast at a General Meeting may call and arrange to hold the General Meeting in accordance with section 249F of the Act.
- 45.3 A court may order a General Meeting to be called in accordance with section 249G of the Act if it is impracticable to call the meeting in any other way.

46. Annual General Meetings

Unless the Company has only one Member and subject to any extension of time granted under the Act, the Company shall hold all Annual General Meetings at least once in each calendar year and within 5 months after the end of every financial year.

47. Amount of notice of meetings

Subject to the Act, at least 21 days' notice must be given of a General Meeting.

48. Notice of meetings

- 48.1 Written notice of the General Meeting must be given individually to each Member entitled to vote at the meeting and to each Director.
- 48.2 The Company may give the notice of the General Meeting to a Member:
- (a) personally;
 - (b) by sending it by post to the address of the Member in the Register of Members or the alternative address (if any) nominated by the Member;
 - (c) by sending it to the facsimile number or electronic mail address (if any) nominated by the Member; or
 - (d) by any other means authorised by the Act.
- 48.3 A notice of meeting sent by post is taken to be given three days after it is posted.
- 48.4 A notice of meeting sent by facsimile or electronic mail is taken to be given on the Business Day after it is sent.

49. Auditor entitled to notice and other communication

The Company must give its Auditor:

- (a) notice of a General Meeting in the same way that a Member is entitled to receive notice; and
- (b) any other communication relating to the General Meeting that a Member is entitled to receive.

50. Notice of adjourned meetings

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more.

51. Members' resolutions

The Members may propose a resolution to be moved at a General Meeting only in accordance with the provisions of Division 4 of Part 2G.2 of the Act.

52. Time and place for meetings of Members

A General Meeting must be held at a reasonable time and place.

53. Technology

The Company may hold a General Meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

54. Quorum

- 54.1 A quorum for a General Meeting shall be one Member or 5% of Members, whichever is the greater, and such quorum shall be present during the meeting at all times.
- 54.2 In determining whether a quorum is present, individuals attending as proxies or body corporate representatives are to be counted.
- 54.3 An individual who is attending both as a Member and as a proxy or a body corporate representative shall be counted in their capacity as a Member and in the capacity of each proxy or body corporate representative vote that the Member holds.
- 54.4 A meeting that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is to be adjourned to a date, time and place as the Board specifies.
- 54.5 If the Board does not specify one or more of those requirements, the meeting is adjourned to:
- (a) if the date is not specified, the same day of the week;
 - (b) if the time is not specified, the same time; or
 - (c) if the place is not specified, the same place.
- 54.6 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting shall be dissolved.

55. Chairing General Meetings

- 55.1 The Chairperson will preside at every General Meeting or, in the absence of the Chairperson, the Deputy Chairperson will preside.
- 55.2 If no Chair or Deputy Chair is selected or if at any General Meeting the Chair or Deputy Chair is not present within 15 minutes after the time appointed for holding the meeting, the Members must elect a Member present to chair the General Meeting.
- 55.3 The Chair, Deputy Chair or the Member elected to chair in accordance with clause 55.2 must adjourn the General Meeting if the Members present with a majority of votes at the General meeting so direct and the Chair, Deputy Chair or the Member elected to chair in accordance with clause 55.2 must do so.

56. Auditor's right to be heard at General Meeting

The Auditor is entitled to attend and be heard at General Meetings.

57. Proxies and body corporate representatives

- 57.1 A Member who is entitled to attend and cast a vote at General Meetings may appoint a proxy or, if the Member is not a natural person, a representative, to attend and cast a vote at that meeting.
- 57.2 Any proxy or representative appointed under clause 57.1 must be appointed in accordance with Division 6 of Part 2G.2 of the Act and shall have the rights set out in that Division.

58. Voting at General Meetings

- 58.1 Subject to any rights or restrictions attached to any class of Membership, at a General Meeting:
- (a) on a show of hands, each Member has one vote; and
 - (b) on a poll, each Member has one vote.
- 58.2 The Chair, Deputy Chair or the Member elected to chair in accordance with clause 55.2 shall not have a casting vote.

59. Objections to right to vote

A challenge to a right to vote at a General Meeting:

- (a) may only be made at the meeting; and
- (b) must be determined by the Chair, Deputy Chair or the Member elected to chair in accordance with clause 55.2 (as applicable) whose decision is final.

60. How voting is carried out

- 60.1 A resolution put to the vote at a General Meeting must be decided on a show of hands unless a poll is demanded.
- 60.2 On a show of hands, a declaration by the Chair, the Deputy Chair or the Member elected to chair in accordance with clause 55.2(as applicable) is conclusive evidence of the result.
- 60.3 Neither the Chair, the Deputy Chair or the Member elected to chair in accordance with clause 55.2 (as applicable) nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.

61. Matters on which a poll may be determined

- 61.1 A poll may be demanded on any resolution other than resolutions concerning:
- (a) the appointment of the Chair, the Deputy Chair or the Member elected to chair in accordance with clause 55.2 (as applicable); or
 - (b) the adjournment of the meeting.
- 61.2 A poll may be demanded in accordance with 250L of the Act.

62. When and how polls must be taken

A poll must be taken when and in the manner the Chair, the Deputy Chair or the Member elected to chair in accordance with clause 55.2 (as applicable) directs.

Chapter 6 – Board and Members' Minutes

63. Minutes

- 63.1 The Company must keep minute books in which it records:
- (a) proceedings and resolutions of General Meetings;
 - (b) proceedings and resolutions of Board meetings;
 - (c) resolutions passed by Members without a meeting; and
 - (d) resolutions passed by the Board without a meeting.
- 63.2 The Company must ensure that the minutes of a meeting are signed by the Chair, the Deputy Chair or the Member elected to chair in accordance with clause 55.2 (as applicable) or the Chair of the next meeting within a reasonable time after the meeting.
- 63.3 The Company must ensure that resolutions passed without a meeting are signed by a Director within a reasonable time after the resolution is passed.

64. Members' access to minutes

Members are entitled to gain access to the minute book of General Meetings in accordance with the Act.

Chapter 7 – Secretary

65. Appointment

- 65.1 The Company must have a Secretary or Secretaries, at least one of which is ordinarily resident in Australia.
- 65.2 The Secretary shall be appointed by the Board on such terms, at such remuneration and upon such conditions as the Board thinks fit.
- 65.3 As at the Commencement Date, the Secretary shall be Felicia Mariani.

Chapter 8 – Members - cessation of membership

66. Events leading to cessation

- 66.1 A Member ceases to be a Member if the Member:
- (a) dies;
 - (b) resigns in writing;
 - (c) becomes of unsound mind or becomes liable to be dealt with in any way under the law relating to mental health;
 - (d) is convicted of an indictable offence;

- (e) fails to pay within 90 days of the due date for payment of the Subscription relevant to its membership status;
- (f) ceases to engage in commerce or ceases to be a supplier of goods and/or services to businesses that are actively engaged in commerce in the Industry;
- (g) becomes bankrupt or insolvent or makes an assignment for the benefit of its creditors;
- (h) being a company or other incorporated entity, has a receiver or a receiver and manager appointed to its assets or some of them, or passes a resolution or takes any action having the effect of its winding up or has such action taken against it; or
- (i) upon passing of a Board resolution that the Member be removed from the Register of Members on the grounds that the Member has broken one or more of the rules of the Company or has been deemed by the Board to have acted in a manner that may bring the Company or the Company's reputation into disrepute.

66.2 The Member shall be afforded the opportunity to appeal its removal from the Register of Members within fourteen days of a Board resolution being communicated to the Member in writing by the Company. The Board shall hear any appeal by the Member and shall upon passing of a Board resolution reverse or endorse the Board's previous resolution.

67. Non-payment of Subscription

If any Subscription of a Member remains unpaid for a period of 60 days from the due date for payment of the subscription, the Member will be debarred from all privileges of membership (including all constitutional entitlements) provided that the Board may, if it thinks, reinstate the Member on payment of all arrears.

68. Effect of cessation

A Member who ceases to be a Member continues to be liable for:

- (a) any Subscription and all arrears due and unpaid at the date of cessation;
- (b) all other moneys due by them to the Company; and
- (c) the Guarantee.

69. Power of Board in respect of a Member's conduct

69.1 If any Member:

- (a) wilfully refuses or neglects to comply with the provisions of the Constitution; or
- (b) is guilty of any conduct which, in the opinion of the Board, is unbecoming of a Member or prejudicial to the interests of the Company,

the Board has the power to censure, fine, suspend or expel the Member from the Company pursuant to a resolution by the Board.

69.2 At least one week before the meeting of the Board at which a resolution under clause 69.1 is passed, the Company shall provide the Member with:

- (a) notice of the meeting;
- (b) the allegations against them;
- (c) the intended resolution; and
- (d) advice that the Member shall, at the meeting and before the passing of the resolution, have an opportunity to give, orally or in writing, any explanation of defence they may think fit.

69.3 Any Member referred to in clause 69.1 may, by notice in writing lodged with the Secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Board, elect to have the question dealt with by the Company in General Meeting.

69.4 If an election is made under clause 69.3:

- (a) a General Meeting must be convened and the resolution considered; and
- (b) if the resolution is passed by a majority of two-thirds of those present and voting (such vote to be taken by ballot), the Member concerned shall be dealt with accordingly.

Chapter 9 – Accounts and Audit

70. Accounting records

70.1 The Board shall cause accounting and other records to be kept to correctly record and explain the transactions and financial position of the Company, to enable true and fair statements of financial performance and statements of financial position to be prepared and to permit preparation of any other documents required by the Act or this Constitution.

70.2 The records shall be kept:

- (a) in such manner as to enable them to be conveniently and properly audited;
- (b) for seven years after the completion of the transactions or operations to which they relate; and
- (c) at the Company's registered office or at such other place as the Board thinks fit.

70.3 The records shall at all times be open to inspection by the Board.

71. Accounts

71.1 Each financial year, the Company shall prepare a financial report and a Directors' report in accordance with the Act.

71.2 The financial report for each financial year shall consist of:

- (a) the financial statements for the year;
- (b) the notes to the financial statements; and
- (c) the Board's declaration about the statement and the notes.

- 71.3 The financial statements for the year will consist of:
- (a) a statement of financial performance for the previous financial year of the Company;
 - (b) a statement of financial position at the date to which the profit and loss account is made up;
 - (c) a statement of cash flows for the year; and
 - (d) if required by the Accounting Standards, a consolidated statement of financial performance and financial position and statement of cash flows.
- 71.4 The notes to the financial statements shall consist of:
- (a) disclosures required by the Corporations Regulations;
 - (b) the notes required by the Accounting Standards (if any); and
 - (c) if required, any other information necessary to give a true and fair view of the financial position and performance of the Company.
- 71.5 The Board's declaration made pursuant to clause 73.2 is a declaration by the Board:
- (a) that the financial statement, and the notes required by the Accounting Standards, comply with the Accounting Standards;
 - (b) that the financial statements and the attached notes give a true and fair view of the financial position and performance of the Company;
 - (c) whether, in the Board's opinion, there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable; and
 - (d) whether, in the Board's opinion, the financial statement and attached notes are in accordance with the Act.

72. Auditor

The Company shall appoint an Auditor to audit the Company's financial statements in accordance with the Act.

Chapter 10 – Winding up

73. Rights of Members on winding up

If the Company is wound up or dissolved, the Members have no right to participate in any distribution or payment of the assets or property of the Company.

74. Distribution of assets

- 74.1 If the Company is wound up or dissolved, the assets and property available for distribution after satisfaction of all debts and liabilities shall be given or transferred to some other institution or institutions:
- (a) which has objects similar to the Objects;
 - (b) whose constitution prohibits the distribution of its income and property to an extent at least as great as that imposed by clause 4.2(b); and

- (c) which is an income tax exempt entity under the *Income Tax Assessment Act 1997* (Cth).
- 74.2 For the purposes of clause 76.1, the Board shall identify the institution or institutions at the time of dissolution.
- 74.3 If the Board fails to identify the institution or institutions under clause 76.1, the Supreme Court of Victoria shall make that determination.

Chapter 11 – Indemnity

75. Indemnity

- 75.1 Subject to Part 2D.2 of the Act, a person who is or has been an officer (as defined in the 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 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 made under section 1317G of the Act or a compensation order made under section 1317H of the Act; or
 - (ii) arises out of conduct involving a lack of good faith; and
 - (b) for legal costs and expenses incurred by the person, unless the costs and expenses are incurred:
 - (i) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under section 199A(2) of the Act;
 - (ii) in defending or resisting criminal proceedings in which the person is found guilty;
 - (iii) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
 - (iv) in connection with proceedings for relief of the person under the Act in which the court denies the relief.

76. Insurance

- 76.1 Except to the extent precluded by the Act (including under section 199B), the Company may pay or agree to pay a premium in respect of a contract insuring the person who is or has been an officer (as defined in the Act) 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 Act; or
 - (b) for costs and expenses incurred by the person in defending proceedings as such an officer, whether civil or criminal and whatever their outcome.

- (c) The Board must at all times maintain adequate Directors and Officers Insurance.