

# INTERTWINE CONSTITUTION

## 1. Name and type of company

The name of the company is intertwine pty ltd. The company is a not-for-profit private company limited by shares.

## 2. Status of the Constitution

### 2.1. Constitution of the Company

This is the constitution of the Company.

### 2.2. Acknowledgement of Country

This Constitution is being made on colonised land. The Company acknowledges the continuing sovereignty of the First Nations of Australia.

### 2.3. Replaceable Rules

Where this Constitution displaces the Replaceable Rules, that section of the Replaceable Rules does not apply.

Where this Constitution is silent, the Replaceable Rules apply.

## 3. Shareholders

The Company must have at least one Shareholder.

Subject to the Corporations Act and this Constitution, a person becomes a Shareholder on the registration of that person's name in the Register of Shareholders.

At least 75% of shareholders at any given time must be people of colour, women, LGBTIQ+, people with disabilities or people from disadvantaged or otherwise marginalised backgrounds.

## 4. Shares

Where the Founder and the Board jointly agree to issue shares to another person, a share certificate will be created and the person added to the Register of Shareholders.

For the avoidance of doubt, the company only issues shares for the purpose of representing membership. One share represents one vote. Shares are not entitled to any dividends, and cannot be transferred for any monetary value.

## 5. Transfer of Shares

- a. Subject to the Corporations Act, the Shareholders' Deed and this Constitution, a Shareholder may transfer any Share held by the Shareholder by an instrument of transfer:
  - i. in any form prescribed by the Board; or
  - ii. if the Board does not prescribe a form, in any common form.
- b. A Share may not be transferred other than in accordance with this rule.
- c. The instrument of transfer must be signed by, or on behalf of, both the transferor and the transferee.

## 6. Charitable Purpose

- a. The company's object is to promote diversity and inclusion, and eliminate discrimination and prejudice on the basis of race, gender, sexuality, ability or any other marginalised characteristic, through education and training, and networking opportunities for organisations to share information.
- b. The assets and income of the organisation shall be applied solely to further its objects and no portion shall be distributed directly or indirectly to the members of the organisation except as genuine compensation for services rendered or expenses incurred on behalf of the organisation.

## 7. General Meetings

### 7.1. Convening a General Meeting

Any Director may convene a general meeting.

The Company may hold an annual general meeting, to elect Directors and transact any other business which under this Constitution is to be transacted at any annual general meeting.

A general meeting may be held in two or more places. If a general meeting is held in two or more places, the Company must use technology that gives Shareholders and Directors a reasonable opportunity to participate at that general meeting.

### 7.2. Proceedings at a general meeting

A quorum will be all the directors if there are three or fewer directors and at least  $\frac{3}{4}$  of the directors if there are four or more directors.

Any decisions made at a meeting without a quorum will be held over for ratification by a later quorate meeting.

The Chair of the meeting will be a rotating chair.

The chair of each general meeting has charge of conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.

## 8. Decision-Making

Decisions shall be made by consensus.

Where consensus is impossible to reach, agreement may be reached by a vote resulting in a 75% majority and with no director blocking.

All directors and shareholders will have equal weight in decision-making.

No decisions shall be made about a marginalised community without involvement from people within that community.

## 9. Appointment and Removal of Directors

The **company** must have at least two Directors. At least one Director must reside ordinarily in Australia.

### 9.1. Appointment of Directors

- 9.1.1. A Shareholder entitled to appoint a person as a Director under the Shareholders' Deed may do so by written notice to the Company.
- 9.1.2. An appointment of a person as a Director is not effective unless a signed consent to the appointment is provided by that person to the Company. The appointment of a person as a Director will take effect on the later of the date of appointment and the date on which the Company receives the signed consent.
- 9.1.3. Directors are not subject to retirement by rotation.
- 9.1.4. A Director is not required to have a share qualification.
- 9.1.5. At least 75% of directors at any given time must be people of colour, women, LGBTIQ+, people with disabilities or people from disadvantaged or otherwise marginalised backgrounds.

### 9.2. Director may resign

A Director may resign as a director by giving a written notice of resignation to the Company at the registered office.

### 9.3. Cessation of Directorship

A person ceases to be a Director and the office of Director is vacated if the person:

- a. is removed as a Director under the Shareholders' Deed;
- b. resigns as a Director in accordance with this Constitution;
- c. becomes incapable of managing their own affairs due to a medical or mental condition (as evidenced by a certificate to that effect by a qualified medical practitioner);
- d. disregards a written direction of the Board;
- e. has wilfully falsified the Company's accounts;
- f. dies; or

- g. is disqualified from acting as a Director under the Corporations Act.

#### 9.4. Alternate directors and shared responsibilities

In accordance with the Company's commitment to dismantling structures of power, all Directors may appoint a natural person to act as an alternate of that Director. Wherever possible, alternates will be people with less experience who will be mentored in their role by the Director.

#### 9.5. Remuneration of Directors

- a. The company must not pay fees to a director for acting as a director
- b. The company may:
  - i. pay a director for work they do for the company, other than as a director, if the amount is no more than a reasonable fee for the work done, or
  - ii. reimburse a director for expenses properly incurred by the director in connection with the affairs of the company. The Directors are entitled to be reimbursed by the Company for out-of-pocket expenses reasonably and properly incurred in attending meetings of the Board or its committee, and performing duties authorised by the Board on behalf of the Company, to the extent approved by the Board.

### 10. Powers of directors

- a. The directors are responsible for managing and directing the activities of the company to achieve the purpose(s) set out in clause 6.
- b. The directors may use all the powers of the company except for powers that, under the Corporations Act or this constitution, may only be used by shareholders or members.
- c. The directors must decide on the responsible financial management of the company including:
  - i. any suitable written delegations of power under clause 11, and
  - ii. how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

## 11. Delegation of directors' powers

- a. The directors may delegate any of their powers and functions to a committee, a director, an employee of the company (such as a chief executive officer) or any other person, as they consider appropriate.
- b. The delegation must be recorded in the company's minute book.

## 12. Duties of directors

12.1. The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- a. to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company
- b. to act in good faith in the best interests of the company and to further the charitable purpose(s) of the company set out in clause 6
- c. not to misuse their position as a director
- d. not to misuse information they gain in their role as a director
- e. to disclose any perceived or actual material conflicts of interest in the manner set out in clause 12.3.
- f. to ensure that the financial affairs of the company are managed responsibly, and
- g. not to allow the company to operate while it is insolvent.

### 12.2. Meeting procedures and decision making

Board Meetings at Intertwine will have a formal structure and standard documents to ensure effective decision-making. Documents that should generally be expected at Board Meetings will be as follows:

- Meeting Agenda
- Previous Minutes
- Financial Report
- Director/ CEOs Report
- Correspondence
- Other Management Reports as deemed necessary by Board and Executive
- Supporting documentation relevant to agenda items

The Agenda, draft minutes of the previous meeting, reports, and, where possible, all other relevant supporting documents, should be made available to all attendees before the meeting, to allow consideration before the meeting and to streamline meeting discussions and decision-making.

Minutes will be taken at all Board Meetings. Minutes should comprise the following information as a minimum requirement:

- Date, time, location, start time, and finish time of the meeting
- Members (and observers or guests) present at the meeting, and any apologies
- Acceptance of previous minutes and any agreed amendments
- Results of resolutions or decisions, and any relevant discussion points, questions, or dissenting views regarding said decisions

- Notes of discussions and acceptance of reports
- Noting of agenda items suspended or held over
- Noting of new business not included on the meeting agenda
- Action items, including individual responsible and delivery dates where appropriate

Final approved minutes should be kept for a minimum of 3 years, either stored electronically and backed up regularly, or in hard copy. Minutes should be readily available to all Board Members and Office Holders, giving due diligence to security and protection of confidential and sensitive information that may be contained in minutes and meeting papers.

Intertwine is committed to consensus decision making in all meetings. The procedure for consensus decision making when an idea or proposal is put to the meeting is as follows:

- The facilitator clarifies that everyone understands what the proposal is.
- Discussion and disagreements are encouraged.
- Changes and alterations are worked out by the group if necessary.
- The proposal (or altered proposal) is restated so everyone is clear what it is.
- The facilitator tests for consensus by asking whether people agree with the proposal and, if so, the group plans how the idea will be put into action.
- If there is disagreement, the group goes back and reworks the proposal, trying to find new solutions or compromises.

### 12.3. Conflicts of Interest

The Board of Intertwine is committed to high standards of ethical conduct and accordingly places great importance on making clear any existing or potential conflict of interest.

A conflict of interest may occur if an interest or activity influences or appears to influence the ability of any Board Member, Executive Office Holder, or Director to exercise objectivity.

Intertwine will address conflicts of interest according to the following principles:

- All conflicts of interest, whether existing or newly arising, shall be declared by the member concerned and documented in the Board's Conflicts of Interest Register.
- An individual who believes a Board member, or other office holder has an undeclared conflict of interest should specify in writing the basis of this potential conflict.
- Where a Board member or office holder has a conflict of interest that individual shall not initiate or take part in any Board discussion on that topic (either in the meeting or with other Board members before or after the Board meetings), unless expressly invited to do so by unanimous agreement by all other members present.
- Where a Board member or office holder has a conflict of interest that individual shall not vote on that matter.
- Board members or office holders are not barred from engaging in business dealings with the organisation, provided that these are negotiated at arm's length without the participation of the individual(s) concerned.

## 13. Appointment and role of secretary

- a. The company must have at least one secretary, who may also be a director.
- b. A secretary must be appointed by the directors (after giving the company their signed consent to act as secretary of the company) and may be removed by the directors.
- c. The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- d. The role of the secretary includes:
  - i. maintaining a register of the company's members and shareholders, and
  - ii. maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.

## 14. Company's financial year

The **company's** financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

## 15. Indemnity, insurance and access

### 15.1. Indemnity

- a. The company indemnifies each officer of the company out of the assets of the company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the company.
- b. In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- c. In this clause, 'to the relevant extent' means:
  - i. to the extent that the company is not precluded by law (including the Corporations Act) from doing so, and
  - ii. for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- d. The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the company.

### 15.2. Insurance

To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the company against any liability incurred by the person as an officer of the company.

### 15.3. Directors' access to documents

- a. A director has a right of access to the financial records of the company at all reasonable times.
- b. If the directors agree, the company must give a director or former director access to:
  - i. certain documents, including documents provided for or available to the directors, and
  - ii. any other documents referred to in those documents.

## 16. Winding up

### 16.1. Surplus assets not to be distributed to shareholders

In the event of the organisation being dissolved, all assets that remain after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes, which is charitable at law and which has rules prohibiting the distribution of its assets and income to its members.

### 16.2. Distribution of surplus assets

- 16.2.1. Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets that remain after the company is wound up must be distributed to one or more charities:
- a. with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6, and
  - b. which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company.
- 16.2.2. The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of shareholders at or before the time of winding up. If the shareholders do not make this decision,