

screenrights

CONSTITUTION

Audio-Visual Copyright Society Limited trading as Screenrights

A Company Limited by Guarantee

ACN 003 912 310

ABN 76 003 912 310

Approved 1996 AGM

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Constitution

of Audio-Visual Copyright Society Limited

(ACN 003 912 310, ABN 76 003 912 310)

A Company Limited by Guarantee

1. PRELIMINARY

1.1. Definitions

The following words have these meanings in this Constitution unless the contrary intention appears:

- (a) **Accounting Period** means a period determined by the Board for accounting, distribution and reporting purposes, that does not extend beyond 30 June in any calendar year.
- (b) **Agent** means the person entitled to exercise all the rights of the Copyright Owner or Registered Title Owner but excludes the Society.
- (c) **Auditor** means the auditor for the time being of the Society.
- (d) **Authorial Candidate** means a candidate for election to the Board, who is eligible for election as an Authorial Director under Clause 8.3 and who has complied with the requirements under Clause 8.4.
- (e) **Authorial Director** means each of the Screenwriter Director, the Screen Director and the Composer Director.
- (f) **Board** means the board of Directors.
- (g) **Business Day** means a day other than a Saturday, Sunday or public holiday in New South Wales.
- (h) **Chairperson of the Board** means the chairperson of the Board who is appointed under clause 12.5(a) as the case may be.
- (i) **Composer Director** means a Director who holds the office of "Composer Director" who must meet the requirements set out in Clause 8.3(b)(iv).
- (j) **Constitution** means this Constitution as amended from time to time, and a reference to a clause of this Constitution is a reference to that clause as amended from time to time.
- (k) **Copyright Act** means the *Copyright Act 1968* (Cth), as amended from time to time or any legislation or provision enacted in its place and includes any regulations and instruments under it.
- (l) **Copyright Owner** means a person who is the legal or beneficial owner of copyright in a Copyright Work.
- (m) **Copyright Work** means a protected subject matter in which copyright subsists in Australia or elsewhere.

- (n) **Corporations Act** means the *Corporations Act 2001* (Cth), as amended from time to time or any legislation or provision enacted in its place and includes any regulations and instruments under it.
- (o) **Direct Vote** means a vote referred to in Clause 7.9(a).
- (p) **Director** means a director of the Society, and where appropriate includes an Alternate Director.
- (q) **Distributable Amount** means that proportion of either or both of the Statutory Collection or Voluntary Collection that is available for distribution to Qualified Persons, in accordance with this Constitution.
- (r) **Distribution Period** means the period during which the Society holds a Potential Share on trust in the Statutory Trust Fund or the Voluntary Trust Fund in accordance with Clause 18.3.
- (s) **General Director** means a Director who is not an Authorial Director nor a New Zealand Director.
- (t) **Member** means a member of the Society under Clause 4 of this Constitution. For the avoidance of doubt, any person who was a member of the Society before the adoption of this Constitution will continue to be a Member.
- (u) **New Zealand Candidate** means a candidate for election to the Board, who is eligible for election as a New Zealand Director under Clause 8.3 and who has complied with the requirements under Clause 8.4.
- (v) **New Zealand Director** means a Director who holds the office of “New Zealand Director”, who meets the requirements set out in Clause 8.3(b)(i)A.
- (w) **Non-General Candidate** means either an Authorial Candidate or a New Zealand Candidate.
- (x) **Non-General Director** means either an Authorial Director or a New Zealand Director.
- (y) **Officer** has the same meaning as in section 9 of the Corporations Act.
- (z) **Ordinary Resolution** means a resolution in respect of which a majority of votes must be cast in favour of it by Members or Board (as the context requires) entitled to vote on the resolution for it to be passed.
- (aa) **Potential Share** means that proportion of the Distributable Amount accruing to a Qualified Person, in accordance with this Constitution.
- (bb) **Qualified Person** means a Copyright Owner or a Registered Title Owner.
- (cc) **Registered Office** means the registered office for the time being of the Society.
- (dd) **Registered Title** means a Copyright Work registered with the Society by a Member for the purpose of the Voluntary Scheme.

- (ee) **Registered Title Owner** means a person who is the legal or beneficial owner of any of the Registered Title Rights.
- (ff) **Registered Title Rights** means in respect of a Registered Title the exclusive right to do or authorise any or all of the following:
 - (i) any act comprised in the copyright whether existing at the date of this Constitution or otherwise; or
 - (ii) the right to collect royalties from collecting agencies outside Australia which distribute royalties collected within their respective territories; but does not include the right to copy (including any reproduction) under the Statutory Scheme.
- (b) **Related Body Corporate** has the same meaning as in section 50 of the Corporations Act.
- (c) **Representative** means a representative appointed by a Member under section 250D of the Corporations Act.
- (d) **Screen Director** means a Director who holds the office of “Screen Director”, who meets the requirements set out in Clause 8.3(b)(iii).
- (e) **Screenwriter Director** means a Director who holds the office of “Screenwriter Director”, who meets the requirements set out in Clause 8.3(b)(ii).
- (f) **Seal** means the common seal of the Society and any official seal of the Society.
- (g) **Secretary** means a person appointed as a secretary of the Society, and where appropriate includes an acting secretary and a person appointed by the Board to perform all or any of the duties of a secretary of the Society.
- (h) **Society** means the Audio-Visual Copyright Society Limited.
- (i) **Society Competing Claims Fund** means the fund operated by the Society for the purposes of Clauses 18.5(a)– 18.5(e).
- (j) **Society Reserve Fund** means a fund established and operated by the Society for the purpose of Clauses 18.1(a)(iii) and 18.2(a)(iii).
- (k) **Special resolution** means a resolution:
 - (i) of which notice as set out in Clause 5.2(c)(iv) has been given; and
 - (ii) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.
- (l) **Statutory Collection** means in relation to each Accounting Period, the amount of equitable remuneration received by the Society in accordance with the Statutory Scheme (and any interest earned from investment of the equitable remuneration) that is attributable to an Accounting Period.

- (m) **Statutory Scheme** means any scheme in Australia under the Copyright Act, under which the Society has been authorised to collect equitable remuneration on behalf of Copyright Owners, and to hold on trust and distribute the amounts collected to the relevant Copyright Owners, or in respect of which the Society is declared to be the relevant collecting society.
- (n) **Statutory Trust Fund** means the fund operated by the Society for purposes of holding the Statutory Collection on trust for Qualified Persons.
- (o) **Voluntary Collection** means in relation to each Accounting Period, the royalties received by the Society under the Voluntary Scheme (and any interest earned from investment of royalties received) that is attributable to an Accounting Period.
- (p) **Voluntary Scheme** means any scheme, other than the Statutory Scheme, operated for the benefit of Registered Title Owners (and not for the benefit of other parties), pursuant to which the Society holds on trust royalties collected for Registered Title Owners who have authorised the Society to administer the Registered Title Rights.
- (q) **Voluntary Trust Fund** means the fund operated by the Society for purposes including holding the Voluntary Collection on trust for a distribution to Qualified Persons.

1.2. Interpretation

In this Constitution, unless the contrary intention appears:

- (a) the word *person* includes a firm, a body corporate, an unincorporated association or an authority;
- (b) the singular includes the plural and vice versa;
- (c) 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;
- (d) a reference to writing includes typewriting, printing, electronic mail, other electronic transmission and other modes of representing or reproducing words in a visible form; and
- (e) a reference to a Clause is a reference to one of the clauses of this Constitution.

1.3. Headings

Headings are inserted for convenience and do not affect the interpretation of this Constitution.

1.4. Name of company

The name of the company is "Audio-Visual Copyright Society Limited".

1.5. Replaceable Rules do not apply

The replaceable rules contained in the Corporations Act from time to time do not apply to the Society.

2. OBJECTS AND POWERS OF SOCIETY

2.1. Objects

The objects of the Society are to:

- (a) operate a collecting society for the purposes of the Statutory Scheme in accordance with the relevant provisions of the Copyright Act;
- (b) operate as a collecting society in respect of any scheme other than the Statutory Scheme, pursuant to which the Society holds on trust, royalties collected for copyright owners who have authorised the Society to act as their agent in administering their rights;
- (c) maximise the incentive provided by the copyright system for the production of Copyright Works by, among other things:
 - (i) using collective rights management to maximise returns to Registered Title Owners and their agents from Copyright Works;
 - (ii) encouraging access to Members' Copyright Works in return for equitable remuneration under Statutory Schemes and Voluntary Schemes;
 - (iii) where appropriate, by other collective rights management arrangements and related administrative collection and distribution services to Members and non-members, such as collection account management services, disbursement administration services, residuals management services, international collection services and other services, other than Voluntary Schemes; and
 - (iv) where appropriate, such other activities as the Board considers are to the benefit of Members and the screen industry generally.

2.2. Powers of company

The Society has the rights, the powers and the privileges of a natural person and a body corporate.

2.3. Exercise of powers

Powers conferred on the Society, the Board, a committee of the Board, a Director or a Member under this Constitution may be exercised at any time and from time to time.

3. INCOME AND PROPERTY OF SOCIETY

3.1. Application for objects only

The income and property of the Society, however derived, must be applied solely towards the promotion of the objects of the Society as set out in this Clause 2.1.

3.2. No dividend, bonus or other payments to Members

No part of the income or property of the Society may be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to any Member.

3.3. Payments in good faith

Clause 3.2 does not prevent the payment in good faith of remuneration to any officers of the Society or to any Member:

- (a) in return for:
 - (i) any services actually rendered to the Society; or
 - (ii) expenses properly incurred on behalf of the Society; or
 - (iii) goods supplied in the ordinary and usual way of business,
- (b) of interest at a rate not exceeding the rate for the time being fixed for the purpose of this Clause by the Board on money borrowed from any Member of the Society; or
- (c) of reasonable and proper rent for premises demised or let by any Member to the Society.

3.4. Limited liability of Members

- (a) The liability of the Members is limited to the amount of the guarantee under Clause 3.4(b).
- (b) Every Member undertakes to contribute an amount as may be required not exceeding Ten Dollars (\$10.00) to the property of the Society, if the Society is wound up while that person is a Member or within one year after that person ceased to be a Member, for:
 - (i) payment of the debts and liabilities of the Society contracted before that person ceases to be a Member; and
 - (ii) costs, charges, and expenses of winding up; and
 - (iii) the adjustment of the rights of the contributories among themselves.

3.5. Winding-up

- (a) If, upon winding up or dissolution of the Society, any property remains after the satisfaction of all its debts and liabilities, this property must only be given or transferred to some other association, company, institution or body:
 - (i) that has objects similar to the objects of the Society; and
 - (ii) whose constitution or governing rules prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Society under Clause 3.
- (b) The decision as to the association, company, institution or body referred to in Clause 3.5(a) is to be determined by:

- (i) the Members at or before the time of winding up or dissolution; or
- (ii) if the Members do not or cannot decide, by application to the Supreme Court of the State of New South Wales for determination.

4. MEMBERSHIP

4.1. Eligibility to become a Member

- (a) Subject to Clause 4.1(b), a person is eligible for admission as a Member if that person is:
 - (i) A Copyright Owner or their exclusive licensee;
 - (ii) A Registered Title Owner or their exclusive licensee;
 - (iii) The Agent of a Copyright Owner or their exclusive licensee;
 - (iv) The Agent of a Registered Title Owner or their exclusive licensee; or
 - (v) Any other person whom the Board considers fit to be a Member irrespective of ownership of rights.

4.2. Application to become a Member

- (a) A person who is eligible for admission as a Member under Clause 4.1 may apply to the Board for admission.
- (b) The application must be made in writing, duly executed by the applicant, in a form that is determined by the Board in its absolute discretion.
- (c) The Board may require the applicant to supply any information that provides evidence of the applicant's eligibility for admission as a Member.
- (d) If the Board considers that the applicant is eligible for admission, the Board may admit the applicant as a Member. For the avoidance of doubt, the Board may delegate this authority.
- (e) The Board must admit the applicant as a Member where the applicant is entitled to membership under the Copyright Act.
- (f) A Member may not assign or transfer their rights and privileges of membership of the Society to any other person, which rights and privileges will cease on the date of cessation of membership.

4.3. Resignation

A Member may resign from membership of the Society by notice in writing to the Secretary.

4.4. Termination

The Board may, by notice in writing to the Member, terminate the membership of any Member with immediate effect where the Board determines that a Member ceases to be eligible for membership under Clause 4.1, or otherwise in the manner and in the circumstances set out in the Member's membership agreement with the Society. For the avoidance of doubt, the Board may delegate this authority.

4.5. Classes of Members

- (a) Subject to this Constitution and the Corporations Act, the Society in a Members' meeting by ordinary resolution may:
 - (i) establish any new class of Members and prescribe the qualifications, rights, restrictions and obligations of Members in that class; and
 - (ii) vary or abrogate the qualifications, rights, restrictions or obligations of Members in any new or existing class.
- (b) The Board may:
 - (i) admit any person to membership in any class of Members;
 - (ii) transfer a Member, with the Member's consent, from membership in one class to membership in another class; and
 - (iii) transfer the rights and privileges of a Member to the person lawfully administering the estate of a deceased Member upon that person producing such evidence of title to the Member's rights and privileges of membership as the Board thinks sufficient.

5. CONVENING MEMBERS' MEETINGS

5.1. Power to convene Members' meeting

- (a) A Members' meeting must be convened on requisition in accordance with section 249D of the Corporations Act or in default may be convened by such requisitions as are provided by section 249E of the Corporations Act.
- (b) Any Director may call a Members' meeting.
- (c) The Members or the court may call a Members' meeting in accordance with sections 249F and 249G of Corporations Act.

5.2. Notice of Members' meeting

- (a) Subject to Clause 5.2(b), the Society must give to each Member, each Director and the Auditor at least 21 days' notice of a Members' meeting.
- (b) Notice of a Members' meeting may be provided less than 21 days before the meeting if:

- (i) for an annual Members' meeting, all the Members entitled to attend and vote at the annual Members' meeting agree beforehand; or
- (ii) for any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand,

except where a resolution will be moved to:

- (iii) remove a Director under section 203D of the Corporations Act;
- (iv) appoint a Director in order to replace a Director who was removed under section 203D of the Corporations Act; or
- (v) remove an Auditor.

(c) A notice convening a Members' meeting must:

- (i) set out the place (or places and, if there are two or more places at which Members may attend, the main place for the meeting), date and time;
- (ii) if virtual meeting technology is to be used in holding the meeting, set out the technology that will be used and any information required to allow a Member to participate in the meeting by means of technology;
- (iii) state the general nature of the business;
- (iv) if a special resolution is to be proposed, set out the intention to propose the resolution and state the resolution;
- (v) contain a statement on:
 - A. a Member's right to appoint a proxy; and
 - B. the need for the proxy to be a Member of the Society or not; and
 - C. that a Member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.
- (vi) contain any statement required by Clause 7.9(h); and
- (vii) set out any other information required by the Corporations Act.

5.3. Cancellation or postponement of Members' meeting

The Board may, whenever they think fit prior to the commencement of a Members' meeting, by notice, cancel a Members' meeting or postpone the holding of a Members' meeting to a date and time determined by them, as permitted by law.

5.4. How Members' meetings may be held

The Society may hold a meeting of its Members:

- (a) at one or more physical venues; or
- (b) at one or more physical venues and using virtual meeting technology; or
- (c) using virtual meeting technology only.

6. PROCEEDINGS AT MEMBERS' MEETINGS

6.1. Business of annual Members' meeting

The business of an annual Members' meeting is to receive and consider the profit and loss account, the balance sheet and the reports of the Board and the Auditor, and the appointment of the Board.

6.2. Special business

All business other than that referred to in Clause 6.1 which is transacted at an annual Members' meeting and all business transacted at any other Members' meeting is special business.

6.3. Quorum

- (a) The quorum for a Members' meeting of the Society is three Members who are present, whether in person, by proxy, by attorney or by Representative. In determining whether a quorum is present, count individuals attending as proxies or Representatives. However, if a Member has appointed more than 1 proxy or Representative, count only 1 of them. If an individual is attending both as a Member and as a proxy or Representative, count them only once.
- (b) An item of business may not be transacted at a Members' meeting unless a quorum is present when the meeting proceeds to consider it, except for the election of a chairperson of the meeting and adjournment.
- (c) If a Members' meeting does not have a quorum present within 30 minutes after the start time set out in the notice of the meeting:
 - (i) if the meeting was convened by, or on requisition of the Members, under section 249D or 249E of the Corporations Act, the meeting is dissolved; or
 - (ii) in all other cases:
 - A. the meeting is adjourned to the date, time and place that the chairperson of the meeting specifies or, if the chairperson does not specify those things, the meeting is adjourned to the same day in the next week at the same time and place; and
 - B. at any such adjourned meeting, two persons each being a Member or Representative present at the meeting are a quorum, and if a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

6.4. Chairperson

- (a) The Members at Members' meetings must elect a Member present to chair that meeting or part of it if:
 - (i) the Board has not elected a Chairperson of the Board; or
 - (ii) the Chairperson if the Board is not available within 15 minutes after the start time set out in the notice of the meeting, or declines to act, for the meeting or part of the meeting.
- (b) If there is an equality of votes on any resolution put to the vote at a Members' meeting (subject to Clause 7.9(a) and Clause 1.1), the Chairperson of the Board has a casting vote in addition to any votes to which the Chairperson of the Board is entitled either as a Member or as a Representative of a Member. The Chairperson of the Board has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.
- (c) If there is an equality of votes and the Chairperson does not use the casting vote, the special resolution or resolution must be put for a second vote. If there is an equality of votes and the Chairperson does not use the casting vote on the second vote, the resolution fails.

6.5. How questions decided

- (a) Subject to the Corporations Act and this Constitution (including requirements to decide matters by special resolution), every question to be decided by the Members must be decided, whether on a show of hands or on a poll, by ordinary resolution.
- (b) A resolution put to the vote at a Members' meeting must be decided on a show of hands unless a poll is demanded in accordance with this Constitution.
- (c) On a show of hands, a declaration by the chairperson of the meeting is conclusive evidence of the result. Neither the chairperson of the meeting nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- (d) At any Members' meeting, a poll may be demanded by:
 - (i) the chairperson of the meeting;
 - (ii) three Members present (including by proxy) entitled to vote on the resolution; or
 - (iii) Members present (including by proxy) who hold at least 5% of the votes that may be cast on the resolution on a poll.
- (e) The poll may be demanded before a vote is taken, before the voting results on a show of hands are declared or immediately after the voting results on a show of hands are declared.

- (f) The percentage of votes which Members hold is to be calculated when the demand for the poll is made or otherwise as the chairperson of the meeting directs.
- (g) If a poll is demanded:
 - (i) the result of the poll, as disclosed by the chairperson of the relevant meeting, is to be deemed a resolution of the meeting at which the poll was demanded; and
 - (ii) an entry in the minute books of the relevant meeting (being the meeting at which the result is declared) that records that such a declaration of the results of a poll was made, is conclusive evidence that the declaration was made as it is so recorded in those minutes.
- (h) A poll demanded on the election of a chairperson of a meeting or on a question of adjournment of a meeting is to be taken at the meeting and without adjournment.
- (i) A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

6.6. Adjournment

- (a) The chairperson of a meeting must if directed by a majority of the Members present adjourn the meeting to an alternative time and place, provided that only unfinished business of the adjourned meeting is to be transacted at a meeting resumed after an adjournment.
- (b) If a meeting is adjourned for more than 30 days, notice of the adjournment must be given in accordance with Clause 5.2(b).

7. VOTING OF MEMBERS

7.1. Objection to voting qualification

A challenge to a Member's right to vote at a Members' meeting:

- (a) may only be made at the meeting; and
- (b) must be determined by the chairperson of the meeting, whose decision is final.

7.2. Voting rights

Subject to this Constitution:

- (a) on a show of hands, each Member present in person, by proxy or by attorney, and each other person present as Representative of a Member, has one vote; and
- (b) on a poll, each Member has one vote plus one additional vote for each \$500 distributed to the Member in the previous Accounting Period, provided that no Member is entitled to exercise more than 15% of the total votes available to Members entitled to attend and vote at a Members' meeting.

7.3. Right to appoint proxy

A Member of the Society who is entitled to attend or cast a vote at a Members' meeting may appoint another person as proxy to attend and vote in the Member's place at the meeting and a proxy has the same right as the Member to speak and vote at the meeting, and to join a demand for a poll.

7.4. Instrument of proxy

- (a) Any appointment of a proxy is valid if it is signed, or in the case of an appointment notified electronically, authenticated in a manner approved by the Board and in accordance with the Corporations Act, by the Member of the Society making the appointment and contains the following information:
- (i) the Member's name and address;
 - (ii) the name of the Society;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the meeting at which the proxy may be used.
- (b) An appointment of a proxy may specify the way the proxy is to vote on a particular resolution. If it does:
- (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
 - (ii) if the proxy has two or more appointments that specify different ways to vote on the resolution – the proxy must not vote on a show of hands;
 - (iii) if the proxy is the chair of the meeting at which the resolution is voted on – the proxy must vote on a poll, and must vote that way; and
 - (iv) if the proxy is not the chair – the proxy need not vote on the poll, but if the proxy does so, the proxy must vote that way.

7.5. Right to appoint attorney

- (a) If:
- (i) an appointment of a proxy specifies the way the proxy is to vote on a particular resolution at a meeting of the Society's Members;
 - (ii) the appointed proxy is not the chair of the meeting;
 - (iii) at the meeting, a poll is duly demanded on the question that the resolution be passed; and
- either of the following apply:
- (iv) if a record of attendance is made for the meeting – the proxy is not recorded as attending;

- (v) the proxy does not vote on the resolution,

the chairperson of the meeting is taken, before voting on the resolution closes, to have been appointed as the proxy for the purposes of voting on the resolution at that meeting.

- (b) A Member may by power of attorney executed in the presence of at least one witness and (if necessary) stamped, appoint an attorney to act on the Member's behalf at all or any Members' meetings.

7.6. Receipt of proxy and other instruments

If a person appoints a proxy for a Members' meeting, the following documents must be given to the Society at its registered office or at a place specified for the purpose in the notice calling the Members' meeting, or otherwise received by the Society electronically in accordance with the Corporations Act:

- (a) a proxy's appointment;
- (b) if the appointment is signed or authenticated by the appointor's attorney, the authority under which the form was signed or a certified copy of the authority, and

the appointment and any authority must be given to the Society at least 48 hours before the Members' meeting at which the proxy may be used.

7.7. Validity of vote in certain circumstances

A vote cast by a proxy or attorney is valid even if that person's authority has been revoked by the death of the principal or otherwise, unless the Society has received written notice of the matter before the start of the Members' meeting at which the proxy or attorney votes.

7.8. Authority of a proxy, attorney or representative

- (a) Unless otherwise provided in the instrument, an instrument appointing a proxy, attorney or Representative is to be taken to confer authority to:
 - (i) agree to:
 - A. a meeting being convened by shorter notice than is required by the Corporations Act or by this Constitution;
 - B. any resolution (including a special resolution) at a meeting of which less than the period of notice required by the Corporations Act has been given;
 - (ii) vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (iii) vote on any procedural motion, including any motion to elect the chairperson of the meeting or to adjourn the meeting; and
 - (iv) act generally at the meeting.

- (b) The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the Members' meeting but, if the appointer votes on a resolution, the person acting as proxy or attorney for the appointer is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.

7.9. Direct voting

- (a) The Board may determine that Members who are entitled to vote at any meeting of the Society may cast their votes by sending them to the Society before the meeting by post or electronic means.
- (b) The Board may institute procedures consistent with this Constitution and the Corporations Act for the casting of Direct Votes, including procedures for:
 - (i) how votes are to be cast; and
 - (ii) when votes must be received by the Society in order to be effective, which must be no later than the time appointed for the commencement of the meeting.
- (c) Direct Votes will not be counted if a resolution is decided on a show of hands.
- (d) Direct Votes will be counted if a resolution is decided on a poll, as follows:
 - (i) subject to Clauses 7.9(e), 7.9(f) and 7.9(g), votes cast by Direct Vote by a Member entitled to vote on the resolution will be counted as if the Member had cast the votes in the poll at the meeting;
 - (ii) a Direct Vote received by the Society on a resolution which is amended is taken to be a Direct Vote on that resolution as amended, unless the chairperson of the meeting determines that this is not appropriate; and
 - (iii) receipt of a Direct Vote from a Member has the effect of revoking (or, in the case of a standing appointment, suspending) the appointment of a proxy, attorney or Representative made by the Member under an instrument received by the Society before the Direct Vote was received.
- (e) A Direct Vote:
 - (i) may be withdrawn by the Member by notice in writing received by the Society before the time appointed for the commencement of the meeting; and
 - (ii) is automatically withdrawn if:
 - A. the Member attends the meeting in person (including by Representative, proxy or attorney);
 - B. the Society receives from the Member a further Direct Vote on the same resolution (in which case the most recent Direct Vote is, subject to Clause 7.9, counted in place of the prior Direct Vote); or

- C. the Society receives, after the Direct Vote is received, an instrument under which a Representative, proxy or attorney is appointed to act for the Member at the meeting in accordance with this Constitution.
- (f) A Direct Vote withdrawn under Clause 7.9(e) is not counted.
- (g) A Direct Vote received by the Society is valid even if, before the meeting, the Member:
 - (i) dies or becomes mentally incapacitated;
 - (ii) becomes bankrupt or an insolvent under administration or (in the case of a body corporate) is wound up; or
 - (iii) where the Direct Vote is cast on behalf of the Member by an attorney, revokes the appointment of the attorney or the authority under which the appointment was made by a third party,unless the Society has received written notice of the matter before the commencement of the meeting.
- (h) If the Board has made a determination under Clause 7.9(a) to allow voting by Direct Vote at any meeting, the notice of meeting must inform Members of their rights to vote by Direct Vote and of any relevant matters specified in procedures instituted under Clause 7.9(b).

8. DIRECTORS

8.1. Number of Directors

- (a) The number of Directors must not be more than twelve, until otherwise determined by the Society in a Members' meeting.
- (b) Subject to Clause 8.7, the Board must include:
 - (i) three Authorial Directors, comprising:
 - A. one Screenwriter Director;
 - B. one Screen Director; and
 - C. one Composer Director; and
 - (ii) one New Zealand Director,and each such position must be held by a different person.

8.2. Transitional provisions

The Directors in office on the date that this Constitution was adopted by the Society continue in office but on the terms and conditions set out in this Constitution.

8.3. Eligibility requirements of Directors

- (a) A Director need not be a Member.
- (b) To be eligible to be nominated or elected as a:
 - (i) Director, a person must be:
 - A. ordinarily resident in Australia or New Zealand, except for the New Zealand Director who must be ordinarily resident in New Zealand; and
 - B. be eligible to act as such under the Corporations Act, including under section 201D of the Corporations Act;
 - (ii) Screenwriter Director, a person must be a writer who would qualify as a full member of the Australian Writers Guild (AWG) or New Zealand Writers Guild (NZWG) on the basis of their screenwriting credits or as an office holder of AWG or NZWG;
 - (iii) Screen Director, a person must be a full member of the Australian Directors Guild (ADG) or the Directors and Editors Guild of NZ (DEGNZ) on the basis of their screen directing credits or as an office holder of ADG or DEGNZ; or
 - (iv) Composer Director, a person must be a composer who is member of APRA on the basis of composing music that has been created for screen or as an office holder of APRA.
- (c) The Society may determine further eligibility requirements of Directors at a Members' meeting.

8.4. Nomination and notice of candidature

- (a) To be eligible to be elected as a Director at a Members' meeting, at least 35 days before an annual Members' meeting, a person must give written notice to the Society in the form required by the Board from time to time that:
 - (i) they wish to nominate themselves as a candidate for election to the office of Director at the meeting; and
 - (ii) if the person is seeking to be elected as:
 - A. an Authorial Director, that they wish to so nominate themselves and whether they wish to nominate for election as either the Screenwriter Director, Screen Director or Composer Director; or
 - B. if the person is seeking to be elected as a New Zealand Director, that they wish to so nominate themselves,

provided that a person may only nominate for election to one of those positions at any given time. For the avoidance of doubt, such a nomination does not prevent that person from being eligible to be elected as a General Director under Clauses 8.5 and 8.6.

- (b) Clause 8.4(a) does not apply to a Director retiring from office by rotation at the meeting under Clause 8.8.
- (c) If a person nominates themselves under Clause 8.4(a) to be elected as an Authorial Director or New Zealand Director, that person must, if requested by the Society, provide evidence that they are eligible to hold that office under Clause 8.3, including by way of a statutory declaration, by the time required by the Society.

8.5. Election of Directors

- (a) Except in relation to the appointment of Directors to fill casual vacancies under Clause 8.7, all elections for Directors must take place in accordance with this Clause 8.5 annually before each annual Members' meeting.
- (b) If the number of such candidates for election does not exceed the number of positions for Directors to be elected at the meeting, all the candidates will be deemed to be elected Directors without a ballot and the confirmation of such elected Directors will be announced at the annual Members' meeting.
- (c) If the number of such candidates exceeds the number of positions for Directors to be elected at the meeting, then the election of all Directors is to be made by ballot in accordance with Clause 8.6.

8.6. Conduct of Ballot

- (a) If a ballot is required under Clause 8.5(c), the Society must, as soon as reasonably practicable after receiving all nominations and notices of candidates for election under clause 8.4, circulate details of such candidates to each Member and facilitate a ballot for the election of Directors in accordance with the process, and at such times and by such means as determined by the Board from time to time (which, for the avoidance of doubt, may include electronic voting), and the results of such ballot will be announced at the annual Members' meeting.
- (b) voting rights of Members in such a ballot will be the same as if the vote was conducted by a poll;
- (c) the votes will be calculated as follows:
 - (i) votes for any Non-General Director positions are to be calculated first, and the Non-General Candidate who receives the highest number of votes for the relevant Non-General Director position will be so elected to that position;
 - (ii) votes for General Director positions are to then be calculated, and:
 - A. any Authorial Candidate or New Zealand Candidate who does not receive sufficient votes to be elected to the Board as an Authorial Director or New Zealand Director (as relevant) under Clause 8.6(c)(i) will be considered to be a candidate for election as a General Director, and all votes cast for such a candidate will be counted in accordance with this Clause 8.6(c)(ii);

- B. the candidate who receives the highest number of votes will be elected;
- C. if there is more than one vacancy for General Director positions, the candidate who receives the second highest number of votes will be elected and so on, until all the vacancies are filled; and
- D. if there is an equality of votes, the position must be determined by drawing lots in any manner determined by the Chairperson.

8.7. Casual vacancy

- (a) The Board may deal with a casual vacancy in the Board or to fill an additional Board position within the limit under clause 8.1.(a) in any manner it sees fit, which may include at any time:
 - (i) appointing a person as a Director to fill a casual vacancy; or
 - (ii) deciding that an election to fill the casual vacancy is to be held by the Society at the next annual Members' meeting by ballot, which ballot will be conducted in accordance with this Clause 8.
- (b) Where an Authorial Director position becomes vacant other than at an annual Members' meeting and the Board appoint a person to fill that vacancy under Clause 8.7(a)(i), the Board must only replace that person with a person who meets the eligibility requirements of the Screenwriter Director, Screen Director or Composer Director as relevant for the Authorial Director, except that where the Board determines that there is no such person, then:
 - (i) the Board may appoint another person (in which case that person will hold office as a General Director); and
 - (ii) the Board will consult in relation to the relevant Authorial Director with the AWG and NZWG in respect of the Screenwriter Director, the ADG and DEGNZ in respect of the Screen Director, and APRA in respect of the Composer Director.
- (c) Where the New Zealand Director position becomes vacant other than at an annual Members' meeting and the Board appoint a person to fill that vacancy under Clause 8.7(a)(i), the Board must only replace that person with a person who meets the eligibility requirements of a New Zealand Director, except where the Board determines that there is no such person, then the Board may appoint another person (in which case that person will hold office as a General Director).
- (d) Any Director appointed by the Board to fill a casual vacancy or an additional Board position under this Clause 8.7 holds office until the next annual Members' meeting held after the Director was appointed (which period will not count as an initial term for the purposes of Clause 8.8). At such meeting, the Director may nominate themselves for election under and in accordance with Clauses 8.4 and 8.5.

8.8. Rotation of Directors

- (a) The initial term of office of a Director commences at the conclusion of the annual Members' meeting at which they are elected, and terminates at the conclusion of the third annual Members' meeting following the Director's election.
- (b) At the expiry of the initial term (and any further term), the Director will automatically retire and will be eligible to nominate themselves for re-election for a maximum of two further consecutive terms, resulting in up to three consecutive terms. Each such further term will terminate at the conclusion of the third annual Members' meeting held after the annual Members' meeting at which the Appointed Director was re-elected.
- (c) After the expiry of a third term, a Director may nominate themselves for re-election for one further term, but only after a request from the Chair (or a request from the other Directors in the case of the Chair) to do so in order to fill a specific skills and/or knowledge requirement(s) and only if the request is supported by the other Directors with no more than one abstention or dissent. Each such further term will terminate at the conclusion of the third annual Members' meeting held after the annual Members' meeting at which the Appointed Director was re-elected.
- (d) A Director who has reached the term limit set out in this Clause 8.8 (three or four consecutive terms, as applicable) may not submit for re-election again, nor be appointed as a Director to fill a casual vacancy under Clause 8.7, nor be appointed as an Alternate Director, until the third annual Member's meeting following the Director's retirement.
- (e) Nothing in this Clause 8.8 prevents a person from nominating as a candidate for election as a Director for an unlimited number of non-consecutive terms.
- (f) A retiring Director may act until the conclusion of the meeting at which the Director retires and is eligible for re-election.

9. DIRECTOR REMUNERATION AND EXPENSES

9.1. Remuneration

- (a) Subject to Clause 9.1(b), the Directors are entitled to remuneration for their services as Directors, such sum accruing from day to day as the Society in a Members' meeting determines.
- (b) If a Director at the request of the Board, performs additional or special duties for the Society, the Society may remunerate that Director by payment of a fixed sum or salary to be determined by the Board and that remuneration may be either in addition to or in substitution for that Director's remuneration under Clause 9.1(a).

9.2. Expenses

A Director is also entitled to be reimbursed for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from Board meetings or a committee or when otherwise engaged on the business of the Society.

10. VACATION OF OFFICE

10.1. Vacation of office

The office of a Director is automatically vacated if the Director:

- (a) ceases to be a Director by virtue of, or becomes prohibited from being a Director because of an order made under, the Corporations Act;
- (b) becomes bankrupt or insolvent or makes an arrangement or composition with creditors of the Director's joint or separate estate generally;
- (c) dies;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (e) resigns office by notice in writing to the Society or refuses to act;
- (f) is not present personally or by an Alternate Director at Board meetings for a continuous period of six months without leave of absence from the Board; or
- (g) is removed from office by an ordinary resolution of the Society, in accordance with section 203D of the Corporations Act.

11. POWERS OF DIRECTORS

11.1. Powers of Directors

- (a) The management of the affairs of the Society is vested in the Board and they may exercise all the powers and do all the things which the Society is by this Constitution or otherwise authorised to exercise and do and are not by this Constitution or by statute required to be exercised or done by the Society in Members' meeting, subject to the provisions of the Corporations Act and of this Constitution.
- (b) The Board may borrow or raise money for the Society and secure the repayment, satisfaction or performance thereof or of any debts liabilities contracts or obligations incurred or undertaken by the Society as they think fit.

11.2. Appointment of Attorney

- (a) The Board may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Society for the purposes and with the powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Board) and for the period and subject to the conditions that they think fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Board thinks fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

12. PROCEEDINGS OF DIRECTORS

12.1. Meetings

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

12.2. Quorum

Unless the Directors determine otherwise, the quorum for a Board meeting is 3 Directors.

12.3. Effect of vacancy

The continuing Directors may act notwithstanding a vacancy in their number but, if their number is reduced below six, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to six or for summoning a Members' meeting.

12.4. Convening meetings

- (a) A Director may, and the Secretary on the request of a Director must, convene a Board meeting.
- (b) A Board meeting may be held in two or more venues using any technology that gives Directors a reasonable opportunity to participate and is agreed to by all Directors.

12.5. Chairperson

- (a) Subject to Clause 12.5(b), the Board must elect a Director to hold the office of Chairperson (and a person may only fill the office of Chair for so long as that person is a Director), who will hold office for the duration determined by the Board.
- (b) The Chairperson may be removed from that office by a resolution of the Board of which not less than 14 days' notice has been given to all the Directors.
- (c) The Chairperson is entitled to preside at Board meetings but, if the Chairperson is not present and able and willing to act within ten minutes after the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the Board must elect one of their number to be chairperson of the meeting.

12.6. How questions decided

Each Director present will have one vote on every question to be decided by the Board. Questions arising at Board meetings (except for any question relating to the appointment or removal of a Chairperson) are to be decided by a majority of votes and if there is an equality of votes the Chairperson of the meeting has a casting vote. The Chairperson has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.

12.7. How questions decided continued

If there is an equality of votes and the Chairperson does not use the casting vote, the questions arising at a meeting of the Directors may be put for a second vote. If there is an equality of votes and the Chairperson does not use the casting vote on the second vote, the question to be decided fails.

12.8. Committees

- (a) The Board may delegate any of its powers to a committee of Directors and such other persons as they think fit.
- (b) A committee must exercise the powers delegated to it in accordance with any directions of the Board. The effect of the committee exercising a power in this way is the same as if the Board exercised it.
- (c) Subject to Clause 12.8(b), the meetings and proceedings of a committee consisting of two or more Directors are governed by the provisions of this Constitution as to the meetings and proceedings of the Board so far as they are applicable.

12.9. Written resolution

- (a) A resolution may be passed by the Board without a Board meeting being held if all 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.
- (b) For the purpose of Clause 12.9(a), two or more separate documents may be distributed for signing by the various Directors provided that each document is in identical terms. All documents so distributed will be deemed to be one document. The resolution is passed when the last Director entitled to vote signs the document.

12.10. Validity of acts of Directors

All acts of the Directors, a committee or a person acting as a Director or member of a committee are valid even if it is afterwards discovered that there was some defect in the appointment, election or qualification of any of them or that any of them was disqualified or had vacated office.

13. CHIEF EXECUTIVE OFFICER

13.1. Appointment and removal

The Board may appoint a person to the office of Chief Executive Officer either for a fixed term or without limitation as to period of appointment but not for life, and may remove a person so appointed and appoint another instead.

13.2. Remuneration

The Board may determine the remuneration of a Chief Executive Officer.

13.3. Powers

The Board may confer on a Chief Executive Officer such of the powers conferred on the Board by this Constitution, for such time, to be exercised for purposes, on terms and with restrictions as they think fit and all or any of those powers may be conferred collaterally with but not to the exclusion of the powers of the Board and may be revoked or varied by the Board.

14. ALTERNATE DIRECTORS

14.1. Appointment and removal

- (a) Subject to the Corporations Act, a Director (“appointor”) may in writing appoint a person other than a Director who is approved by a majority of the other Directors to act as an Alternate Director in the appointor’s place whether for a stated period or periods or until the happening of a specified event or from time to time. Where an Authorial Director is an appointor, the person appointed must meet the requirements of Screenwriter Director, Screen Director or Composer Director as relevant for the Authorial Director. Similarly, where a New Zealand Director is an appointor, the person appointed must meet the requirements for a New Zealand Director.
- (b) An Alternate Director:
 - (i) may be removed or suspended from office in writing by the appointor or by ordinary resolution of the Society;
 - (ii) subject to this Constitution, is entitled to receive notice of Board meetings and to attend and vote if the appointor is not present;
 - (iii) may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, perform all the duties of the appointor in so far as the appointor has not exercised or performed them;
 - (iv) automatically ceases to be an Alternate Director if the appointor ceases to be a Director;
 - (v) whilst acting as a Director is responsible to the Society for the Alternate Director’s own acts and defaults and the appointor is not responsible for them;
 - (vi) may not receive any remuneration from the Society as a Director except for any special services which in the opinion of the Board are outside the scope of the ordinary duties of a Director; and
 - (vii) may not be taken into account separately from the appointor in determining the number of Directors.
- (c) If the appointor retires by rotation but is re-elected by the meeting at which the appointor retires, the appointment of the Alternate Director continues to operate as if the appointor had not retired.

15. LOCAL MANAGEMENT

The Board may:

- (a) provide for the management and transaction of the affairs of the Society in a specified locality whether in Australia or abroad as they think fit and Clauses 15(b) to 15(c) do not limit the generality of this Clause.

- (b) establish local boards or agencies for managing any of the affairs of the Society in a specified locality and may appoint persons to be members of those local boards or managers or agents and may fix their remuneration.
- (c) delegate to a person so appointed any of the powers vested in the Board and may authorise the members of a local board or any of them to fill vacancies in it and to act notwithstanding vacancies. Any such appointment or delegation may be made on terms that the Board thinks fit and the Board may remove a person so appointed and may revoke or vary any such delegation.

16. SECRETARY

A Secretary holds office on such terms and conditions, as to remuneration and otherwise, as the Board determines.

17. OBLIGATIONS OF THE SOCIETY

17.1. Accounting

- (a) The Society must determine the Accounting Period in any calendar year.
- (b) The Society must follow a consistent practice in attributing the receipts and expenditure of the Society to an Accounting Period.
- (c) The Society must exercise reasonable endeavours to collect monies under the Statutory Scheme and the Voluntary Scheme and having regard to the expenses to be incurred in the collection of these monies.

17.2. Society Funds

The Society must establish and operate:

- (a) a Statutory Trust Fund;
- (b) a Voluntary Trust Fund; and
- (c) a Society Reserve Fund.

17.3. Administrative costs

The administrative costs and other outgoings of the Society that are paid out of the Statutory Trust Fund and Voluntary Trust Fund must be reasonable.

18. ALLOCATION AND DISTRIBUTION OF MONEYS

18.1. Statutory Scheme

- (a) In each Accounting Period, the Statutory Collection must be dealt with in the following order:
 - (i) for the payment of all reasonable expenses that are incidental to the conduct, management and operation of the Society as the Board considers appropriate;

- (ii) for such special purposes (including cultural and charitable purposes) that the Board considers are in the interest of the Society, provided that the funds expended for special purposes do not exceed 1% of the Statutory Collection;
 - (iii) to the Society's Reserve Fund to meet any anticipated future obligations of the Society as the Board considers appropriate; and
 - (iv) the remainder, for payment to each Qualified Person who is a Member, in accordance with their Potential Share, as soon as reasonably possible after determination of their entitlement under Clause 19.
- (b) If the Society is unable, at the time of allocation, to distribute a Potential Share (accruing under Clause 18.1(a)(iv) because the Qualified Person is not a Member or for any other reason, the Society must hold that Potential Share on trust and pay it to the Qualified Person (or their Agent), as soon as reasonably possible, or otherwise in accordance with Clause 18.3.

18.2. Voluntary Scheme

- (a) In each Accounting Period, the Voluntary Collection must be dealt with in the following order:
- (i) for the payment of all reasonable expenses that are incidental to the conduct, management and operation of the Voluntary Scheme as the Board considers appropriate;
 - (ii) for such special purposes (including cultural and charitable purposes) that the Board considers are in the interest of the Society, provided that the funds expended for special purposes do not exceed 1% of the Voluntary Collection;
 - (iii) to the Society's Reserve Fund to meet any anticipated future obligations of the Society under the Voluntary Scheme as the Board considers appropriate; and
 - (iv) the remainder, for payment to each Qualified Person in accordance with their Potential Share, as soon as reasonably possible after determination of their entitlement under Clause 19.
- (b) If the Society is unable, at the time of allocation, to distribute a Potential Share (accruing under Clause 18.2(a)(iv) for any reason, the Society must hold that Potential Share on trust in the Voluntary Trust Fund and pay it to the Qualified Person (or their Agent), as soon as reasonably possible after determination of their entitlement under Clause 19, or otherwise in accordance with Clause 18.3.

18.3. Undistributed Trust Monies

If any Potential Share has remained in the Statutory Trust Fund or the Voluntary Trust Fund under Clauses 18.1(b) and 18.2(b) for a period of four years from the end of the Accounting Period in which the Board determined the relevant total Distributable Amount, the monies may be distributed in accordance with Clauses 18.1(a) and 18.2(a), unless the Board is

satisfied that special circumstances require the monies to be held on trust for a further period of not more than two years.

18.4. Other Monies

Any monies received by the Society from any source other than under the Statutory Scheme or the Voluntary Scheme may be dealt with by the Society in its absolute discretion.

18.5. Competing Claims

- (a) Where there is a dispute between two or more Members with respect to entitlement to a Potential Share (a **Competing Claim**), and that Competing Claim has not been resolved by the end of the Distribution Period, the disputed Potential Share must be paid into the Competing Claims Fund at the end of the Distribution Period.
- (b) Monies placed in the Competing Claims Fund must remain in the Competing Claims Fund until the relevant Competing Claim has been resolved, or for a period of no longer than one year, whichever is the shorter.
- (c) The Board may from time to time make and publish policies and procedures for the resolution of Competing Claims, which will be binding on Members on publication.
- (d) If a Competing Claim has not been resolved at the end of one year from the date of payment of the relevant Potential Share into the Competing Claims Fund, then the amount of the Potential Share will be returned from the Competing Claims Fund to the relevant Statutory Trust Fund or Voluntary Trust Fund and will form part of the Distributable Amount for reallocation in the immediately following Accounting Period.
- (e) Distributions made from the Competing Claims Fund, either on resolution of the relevant dispute or on the expiry of one year, are final and binding.

19. DETERMINATION OF ENTITLEMENTS

19.1. Distributions

- (a) The Board must determine the total Distributable Amount at least once in each Accounting Period.
- (b) The Board must exercise reasonable endeavours to ensure that each Potential Share is allocated equitably and accurately.
- (c) The Board must, in determining the scheme of allocation of the Distributable Amount, have regard to all relevant matters including without limitation the following:
 - (i) records;
 - (ii) information provided under a sampling procedure; and
 - (iii) any information obtained by the Board that assists in ascertaining the nature and extent of use of the Copyright Works or the Registered Titles.

- (d) The Board may request a Qualified Person to supply the Society with any details, including without limitation details relating to a Copyright Work or a Registered Title for any purpose including without limitation verification that the Qualified Person is a Copyright Owner or a Registered Title Owner.
- (e) Except as provided in Clauses 18.5(a) and 19.1(g) the allocation of Potential Shares by the Board is final and binding.
- (f) If a person claims to be entitled to a share in the Statutory Collection or the Voluntary Collection and has not been allocated a Potential Share, the Board may if satisfied that the person is entitled to a payment, make any payment to the person that they consider fit, from the Society's Reserve Fund.
- (g) If the Board determine that a Potential Share allocated and paid to a Qualified Person constitutes an over-allocation, the excess may be deducted from any subsequent allocation by the Board to that person.
- (h) Where the accumulated total of monies allocated to a Qualified Person is less than \$200.00, or such other sum that is determined by the Board, the Board may retain the amount of the relevant Potential Share in the Statutory Trust Fund or the Voluntary Trust Fund as applicable.
- (i) The Board may from time to time make and publish rules regulating the use of funds from time to time accounted for in the Society's IBNR Fund, the Society's Competing Claims Fund and the Society Reserve Fund, including without limitation the amalgamation of those two Funds, in accordance with which the determination and distribution of entitlements will be made. The power in this Clause 19.1(i) may only be exercised if the Board forms the view that it will:
 - (i) enhance the efficient distribution of such amounts to Qualified Persons in accordance with Clauses 18.1(a), 18.2(a) and 18.3; and
 - (ii) not cause any detriment to Qualified Persons.

20. EXECUTION OF DOCUMENTS

20.1. Signatures by Directors

Without limiting the manner in which the Society may execute any agreement, deed or other document, including as permitted under section 126 of the Corporations Act, the Society may execute any agreement, deed or other document by:

- (a) two Directors signing the instrument; or
- (b) one Director and one Secretary signing the instrument.

20.2. Negotiable instruments

Cheques, bills of exchange, promissory notes and other negotiable instruments may be signed, accepted, drawn, made or endorsed on behalf of the Society in the manner and by persons (whether Directors or officers of the Society or not) as the Board determines but not otherwise.

20.3. Signatures by electronic means

The Board may determine generally or in a particular case that the signature of a Director, Secretary or other person appointed by the Board for the purpose of signing documents may be written by a specified electronic means.

21. ACCOUNTS

21.1. Accounts and financial records

- (a) The Board must cause true accounts and records to be kept relating to:
 - (i) sums of money received and expended by the Society, the manner in respect of which such receipt and expenditure takes place, and the reason for the receipt and expenditure;
 - (ii) the manner in which the allocation of moneys by the Society is determined and carried out; and
 - (iii) the assets (including property and credits) and liabilities of the Society,
(the **Accounts**).
- (b) The Accounts must be kept at the Registered Office or at such other place or places as the Board thinks fit, and must always be open to inspection by the Directors.
- (c) Subject to the Corporations Act, the accounts of the Society must be examined by the Auditor at least once in every year. The Auditor must prepare a report to the Members following their examination in accordance with the provisions of the Corporations Act.

22. INSPECTION OF RECORDS

22.1. Member Access to Records relating to that Member

- (a) A Member is entitled to inspect the records of the Society (including the Accounts) insofar as the records relate to that Member's entitlement to receive a Distributable Amount, provided that the Member complies with Clause 22.1(b), and at such times and places and under such reasonable conditions as the Board determines.
- (b) Where a Member requires access to the Society's records under Clause 22.1(a), the Member must provide notice to the Society specifying:
 - (i) the category of records that the Member wishes to inspect;

- (ii) the proposed date of inspection, which must be not less than seven Business Days from the date on which the Society received notice; and
- (iii) an undertaking by the Member to pay a reasonable fee determined by the Board, to go towards all reasonable costs incurred by the Society in providing such an inspection.

22.2. Other Access Rights

Subject to the Corporations Act, other than as contemplated under clause 22.1, the Board or the Members by ordinary resolution, may determine whether, and to what extent, and at what times and places, and under what conditions and regulations, the books and records of the Society (including the Accounts) or any of them will be open to inspection by the Members and other persons.

23. SERVICE OF DOCUMENTS

23.1. Process for service

- (a) Subject to the Corporations Act, a notice (including notices of Members meetings under Clause 5.2) or other document may be delivered to, or served on, a Member by the Society by either:
 - (i) delivering it personally;
 - (ii) sending it by post, and:
 - A. in the case of a Member that does not have a registered address in Australia, by airmail post to the address the Member notified in writing to the Society by that Member; or
 - B. in any other case, by ordinary post, to the registered address notified in writing to the Society by that Member; or
 - (iii) sending it by electronic mail or other electronic means to the unique resource locator, domain name or other electronic address notified in writing to the Society by that Member or other person.
- (b) A Member whose registered address is not in Australia may specify in writing an address in Australia to be deemed the Member's registered address within the meaning of this Clause 23.
- (c) A notice or document delivered or sent:
 - (i) personally is to be deemed received or served when delivered;
 - (ii) by post is to be deemed received or served on the following day after it was posted; or
 - (iii) by electronic mail or other electronic means is to be deemed received or served at the time it was sent (as recorded on the device from which the sender sent the notice or document).

- (d) If the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (recipient's time) it is deemed to be received at 9.00am on the following Business Day.
- (e) For the purposes of proving delivery or service by mail:
 - (i) it is sufficient to prove that the envelope or wrapper containing the document was properly addressed and stamped and was posted; and
 - (ii) a certificate in writing signed by a Director, Secretary or other officer of the Society that a document or its envelope or wrapper was properly addressed and stamped and was posted is conclusive evidence of those facts.
- (f) Subject to the Corporations Act:
 - (i) if a given number of days' notice or notice extending over any other period is required to be given, the day on which the notice is to be deemed served and in case of a notice convening a meeting the day on which the meeting is to be held are to be excluded in calculating the number of days or other period;
 - (ii) if this Constitution requires or permits a notice to be given by the Society, the Board, a Director or the Secretary, neither accidental omission to give the notice nor non-receipt of the notice invalidates the meeting, resolution, procedure or matter to which the notice relates;
 - (iii) the signature to a written notice need not be handwritten;
 - (iv) a reference in this Constitution to a notice or document in writing includes a notice given by any form of written communication, including email;
 - (v) a reference in this Constitution to signing a notice or any other thing includes authentication in a manner approved by the Board; and
 - (vi) all summonses, notices, process, judgments and orders in relation to any legal proceedings by the Society or its liquidator against a Member not in New South Wales may be served by certified or registered post (the foregoing provisions as to notices applying with necessary changes) and that service is to be deemed personal service.

24. INDEMNITY

24.1. Indemnity of Officers and Auditor

- (a) Subject to this Clause 24, to the extent permitted by law the Society indemnifies each Officer and Auditor against any liability to another person incurred by the Officer or Auditor as an Officer or Auditor of the Society.
- (b) The indemnity referred to in Clause 24.1(a) does not indemnify an Officer or Auditor against a liability:
 - (i) owed to the Society or a Related Body Corporate;

- (ii) for a pecuniary penalty order under section 1317G or a compensation order under section 1317H, section 1317HA or section 1317HB of the Corporations Act; or
 - (iii) that is owed to someone other than the Society or a Related Body Corporate and did not arise out of conduct in good faith.
- (c) This Clause 24.1(b) does not apply to a liability for legal costs.
- (d) The indemnity referred to in Clause 24.1(a) does not indemnify an Officer or Auditor against legal costs incurred in defending an action for a liability incurred as an Officer or Auditor of the Society if the costs are incurred:
 - (i) in defending or resisting proceedings in which the Officer or Auditor is found to have a liability for which the Officer or Auditor could not be indemnified under Clause 24.1(b);
 - (ii) in defending or resisting criminal proceedings in which the Officer or Auditor is found guilty;
 - (iii) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
 - (iv) in connection with proceedings for relief to the Officer or Auditor under the Corporations Act in which the court denies the relief.
- (e) Clause 24.1(d)(iii) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order.
- (f) For the purposes of Clause 24.1(d), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.
- (g) The Society may, in accordance with the Corporations Act, pay the premiums on contracts insuring a person who is or has been an Officer or Auditor of the Society.

25. CONFIDENTIALITY

Every Director, Chief Executive Officer, Secretary, member of committee, or other officer employed or engaged in the business of the Society and having access to records, accounts, transactions and any other information relating to the affairs of the Society, must sign a declaration that they will not reveal other than to the Board or management, and not use for their own business or private purposes, any information relating to such matters which has come to their knowledge, except where required to do so by the Board or by a Members' meeting or under a duty imposed by any statute or law.

26. MEMBERS' INFORMATION

To the extent permitted by law, the Society may collate information provided to the Society by a Copyright Owner or a Registered Title Owner, and disclose such information in a manner consistent with the objectives of the Society.

27. PARAMOUNT CLAUSES

The definition of Accounting Period in Clause 1.1, and all of Clauses 3.2, 17.1(a), 17.1(b), 17.1(c), 17.2, 17.3, 18.1(a), 18.1(b), 18.3 and 22.1(a) will have effect despite the operation of any contrary provision in the Clauses.

28. AMENDMENTS

28.1. Method of amendment

This Constitution can only be amended by a special resolution of Members.

28.2. Notification

The Society will notify the Attorney-General for the Commonwealth of Australia of any amendment to this Constitution, to the extent required by and in accordance with the Copyright Act.

Audio-Visual Copyright Society Limited trading as Screenrights

ACN 003 912 310

ABN 76 003 912 310

Level 1, 140 Myrtle Street

Chippendale NSW 2008

Australia

Telephone: +61 2 8038 1300

info@screenrights.org

www.screenrights.org