



**ATTACHMENTS TO REPORTS OF THE BLAYNEY SHIRE COUNCIL MEETING
HELD ON MONDAY 20 SEPTEMBER 2021**

EXECUTIVE SERVICES REPORTS

05 BIZHQ

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Amendments to Business Enterprise Centre – Central NSW Limited Constitution

Over recent months Business Enterprise Centre – Central NSW Limited obtained independent advice to transfer its operation to a Company Limited by Guarantee structure. The organisation was previously operating as an Association. This advice was as result of an organisational review commissioned by the Board last year and further independent advice. The recommended change was in order to facilitate an environment for increased governance, accounting and control standards. It was further decided to complete application, under the new company entity, for the organisation to regain its charity status, which had inadvertently lapsed several years earlier. The charity status is an integral element within our carrying tax free status.

The decision was taken to move operations to the Company Limited by Guarantee structure from the 1st of July 2021. In order to facilitate this change on that date, it was critical that a new constitution be adopted by the members, being the Councils of Orange, Blayney and Cabonne. This adoption was completed with the support of the relevant Council CEO/GM.

Following adoption of the new constitution and during our review of the charity application requirements, it became evident that a clause within the constitution required amendment. The constitution is required to be amended to remove remuneration of directors. Removal of director remuneration is in reference to director sitting payments, it does not remove the payment of out of pocket expenses. The constitution has been amended to reflect this change.

A further decision was made to enhance a second clause within the new constitution, namely the term of director appointments. The constitution was established with non Council appointed directors having a 1 year appointment term. The major issue of 1 year terms is that a situation could occur when all non council appointed directors are not re-elected in the same year. Although there would be continuation of the Council appointed director terms, the loss of the 6 non Council appointed directors at the same time would create a high degree of interruption, thus risk, to the organisation. This would be exacerbated should it be at the same time as Council elections and 3 new Council appointed directors be appointed.

In order to mitigate this organisational risk the Board recommends a 3 year rotation for non Council appointed directors. Whilst this would see 2 director positions being subject to election each year, it doesn't stop a director from stepping down from the Board at any time during their appointment. This is the right of any Board appointment.

The Board of Business Enterprise Centre – Central NSW Limited recommend that, as members of the organisation, Council approve adoption of the amendments as presented.

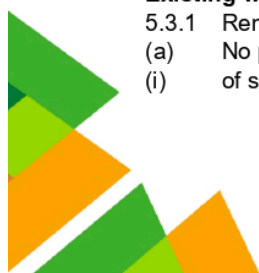
The wording of the current clauses and recommended amendments are detailed as follows.

1. Section 5.3 Remuneration of Directors;

Existing wording:

5.3.1 Remuneration of Directors

- (a) No payment shall be made to any Director other than the payment:
- (i) of such remuneration, and on such conditions, as the Board sees fit;





- (ii) of out-of-pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; and
- (iii) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service.
- (b) If the Board proposes to increase the aggregate amount of the payments made to Directors under clause 5.3(a)(i) from what was paid in the previous Financial Year (which includes resolving to remunerate Directors for the first time), the Board must first obtain the approval of the Member.

Amended wording

5.3.1 Remuneration of Directors

No payment shall be made to any Director other than the payment:

- (a) of out-of-pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; and
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service.

And

2. Section 32 Number and Appointment of Directors

Existing wording:

32.5 Term

- (a) Council Appointed Directors shall hold office for a term of one (1) year each but shall be eligible for reappointment for further terms of one (1) year each.
- (b) Co-Opted Directors shall hold office for a term of up to one (1) year but shall be eligible for reappointment for further terms of up to one (1) year each.
- (c) Time spent on the committee of the Incorporated Association does not count towards the term length of a Director under this clause 32.5.

Amended wording:

32.5 Term

- (a) This clause 32.5 operates subject to clause 32.6.
- (b) A Council Appointed Director shall hold office for the term of Council, but shall be eligible for reappointment for further terms. The term of a Council Appointed Director shall commence when they are appointed pursuant to clause 32.3(a).
- (c) A Co-Opted Director shall hold office for a term of up to three (3) years, but shall be eligible for reappointment for further terms of up to three (3) years each.
- (d) Time spent on the committee of the Incorporated Association does not count towards the term length of a Director under this clause 32.5.





It is the responsibility of the Members, being the Councils of Orange, Blayney and Cabonne, to adopt any changes to the constitution. The changes to Clause 5.3.1, and Clause 32.5, are imperative for our application for charity status and as such we seek Council's agreement to this change by way of adopting the revised constitution in full at the upcoming Members Meeting.

If all individual member councils endorse the recommendations through their Council meetings in September 2021 the new amended constitution will be signed at a Special Members Meeting scheduled for the 30th of September 2021.

Should you have any questions regarding this and the change to director terms please contact myself or our Chairperson Gary Norton on mobile 0418 277 635.


Regards

Michelle Smith
A/CEO
Central NSW Business HQ

7 September 2021

(Full constitution attached)



Level 1/34 Sale Street (PO Box 1364) ORANGE NSW 2800 
T:02 6362 0448 www.bizhq.com.au



Constitution

Business Enterprise Centre – Central NSW Limited

A Public Company Limited by Guarantee

MILLS OAKLEY

Level 7, 151 Clarence Street
SYDNEY NSW 2000

Telephone: 61 2 8289 5800

Facsimile: 61 2 9247 1315

DX 13025, SYDNEY, MARKET STREET

www.millsoakley.com.au

Ref: VMVS/3514992

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1 Name of the Company

The name of the Company is Business Enterprise Centre – Central NSW Limited.

2 Type of Company

- (a) The Company is a not-for-profit public company limited by guarantee.
- (b) The Company is the successor in title to the Incorporated Association.
- (c) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
 - (i) payment of debts and liabilities of the Company;
 - (ii) payment of the costs, charges and expenses of winding up; and
 - (iii) any adjustment of the rights of the contributories among Members.
- (d) The amount that each Member or past Member is liable to contribute is limited to \$1.00.

3 Replaceable Rules

This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

4 Definitions and Interpretation

4.1 Definitions

In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) **ACNC Act** means *Australian Charities and Not-for-Profits Commission Act 2012* (Cth);
- (b) **ACNC Regulation** means *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth);
- (c) **AGM** means annual general meeting;
- (d) **Alternate Director** means a person of a Director's choosing who sits on the Board in that Director's place in the event that the Director cannot attend a meeting;
- (e) **Board** means the board of Directors of the Company;
- (f) **Body Corporate** means a legal entity other than a natural person, and includes a local government entity;
- (g) **Business Day** means a day that is not a Saturday, Sunday or public holiday in New South Wales;
- (h) **Chair** means the chair of the Company, elected pursuant to **clause 32.7(a)(i)**, and includes any acting chair;
- (i) **Chairperson** means the person holding that office under this Constitution and includes any assistant or acting chairperson;

- (j) **Committee** means a committee of the Board established in accordance with **clause 48**;
- (k) **Company** means Business Enterprise Centre – Central NSW Limited;
- (l) **Constitution** means this constitution as amended or supplemented from time to time;
- (m) **Co-Opted Director** means a person with specific skills including, but not limited to, a lawyer, accountant or person with expertise for a particular project the Company may undertake, appointed as a Director pursuant to **clause 32.4(a)**;
- (n) **Corporations Act** means *Corporations Act 2001* (Cth);
- (o) **Council** means each of:
 - (i) Cabonne Shire Council (ABN 41 992 919 200);
 - (ii) Orange City Council (ABN 85 985 402 386); and
 - (iii) Blayney Shire Council (ABN 47 619 651 511);
- (p) **Council Appointed Director** means a Director appointed by a Council Member pursuant to **clause 32.3(a)**;
- (q) **Council Member** means a Member of the Company in the Membership class defined in **clause 7.2**;
- (r) **Deputy-Chair** means the deputy-chair of the Company, elected pursuant to **clause 32.7(a)(ii)**, and includes any acting deputy-chair;
- (s) **Director** means any person holding the position of a director of the Company (and includes both Council Appointed Directors and Co-Opted Directors), and **Directors** means the directors for the time being of the Company or, as the context permits, such number of them as has authority to act for the Company;
- (t) **Direct Vote** means a valid notice of a Member's voting intention, made pursuant to **clause 22**;
- (u) **Disciplinary Committee** means the Committee referred to in **clause 13.2(a)**;
- (v) **Entrance Fee** means the entrance fee payable by a Member pursuant to **clause 11**;
- (w) **Financial Year** means the period commencing on 1 July in one calendar year, and concluding on 30 June in the next calendar year;
- (x) **Incorporated Association** means Business Enterprise Centre – Cabonne, Orange, Blayney Incorporated (incorporation number Y1260644), a New South Wales incorporated association which has transferred its incorporation to the Company;
- (y) **Member** means a member of the Company pursuant to **clause 6** (and includes both Council Members and any other classes of Membership created by the Board pursuant to **clause 7.3(a)**), and **Membership** has the corresponding meaning;
- (z) **Member Present** means in connection with a meeting of Members, a Voting Member being present in person or by proxy or attorney or by Representative;
- (aa) **Member's Guarantee Amount** means the amount referred to in **clause 2(d)**;

- (bb) **Nomination Committee Charter** means the terms of reference for the nomination committee, as approved by the Board from time to time (the nomination committee is a Committee for the purposes of this Constitution);
- (cc) **Objects** mean the objects of the Company as set out in **clause 5.1**;
- (dd) **Office** means the registered office for the time being of the Company;
- (ee) **Office Bearer** means a person holding any of the offices pursuant to **clause 32.7**;
- (ff) **Officer** has the same meaning as given to that term in section 9 of the Corporations Act;
- (gg) **Register** means the register of Members to be kept pursuant to the Corporations Act;
- (hh) **Registration** means registration of the Company as a company by the Australian Securities and Investments Commission;
- (ii) **Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act;
- (jj) **Representative** means a person authorised in accordance with section 250D of the Corporations Act to act as a representative of a Member which is a body corporate, as described in **clause 10**;
- (kk) **Secretary** means the person appointed as the secretary of the Company under **clause 51(a)** and includes any assistant or acting secretary;
- (ll) **Special Resolution** has the meaning given to it by the Corporations Act;
- (mm) **Subscription** means the subscription fees payable by a Member pursuant to **clause 11**; and
- (nn) **Voting Member** means a Member who:
 - (i) has voting rights pursuant to **clause 7**; and
 - (ii) has paid any payable Entrance Fee and annual Subscription within the time limits specified in **clause 12(a)(iv)**, namely, at the latest, within thirty (30) days after having been notified by the Company that the Member is in arrears to the Company.

4.2 Interpretation

In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes the other gender;
- (c) the word **person** means a natural person and any partnership, association, body or entity whether incorporated or not;
- (d) the words **writing** and **written** include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (f) a reference to any clause or schedule is to a clause or schedule of this Constitution;

- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (h) an expression used in a particular Part or Division of an Act or Regulation that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division; and
- (i) headings do not form part of or affect the construction or interpretation of this Constitution.

5 Objects and Powers

5.1 Objects

- (a) The Company is a charitable institution established to promote economic development and trade and commerce, with a focus on the central regions of New South Wales. The Company will achieve this by:
 - (i) providing tailored advisory support, education and training to businesses;
 - (ii) delivering business skills workshops, courses and seminars;
 - (iii) referring start-ups and small to medium-sized businesses to:
 - (A) support services, which services will provide them with skills development; and
 - (B) government grant opportunities;
 - (iv) increasing access to digital business practices throughout the business community;
 - (v) operating a registered training organisation;
 - (vi) providing grants to charities, or to other organisations to be used for charitable purposes; and
 - (vii) anything ancillary to the Objects referred to in **clauses 5.1(a)(i) to 5.1(a)(vi)**.
- (b) The Company can only exercise the powers in section 124(1) of the Corporations Act to:
 - (i) carry out the Objects of the Company; and
 - (ii) do all things incidental or convenient in relation to the exercise of power under **clause 5.1(b)(i)**.

5.2 Income and Property

- (a) The income and property of the Company shall be applied solely towards the promotion of the Objects of the Company.
- (b) No income or property of the Company shall be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company. However, nothing in this Constitution shall prevent payment in good faith to a Member:

- (i) of any surpluses or profits, so long as the Member is charitable and has objects similar to the Objects of the Company;
- (ii) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
- (iii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
- (iv) of reasonable and proper rent for premises leased by any Member to the Company.

5.3 Remuneration of Directors

No payment shall be made to any Director other than the payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; and
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service.

MEMBERSHIP

6 Admission to Membership

6.1 Eligibility for Membership

Any person is entitled to apply to become a Member if the person:

- (a) agrees to assume the liability to pay the Member's Guarantee Amount;
- (b) satisfies the criteria for Membership in accordance with **clause 7**;
- (c) supports the Objects of the Company and agrees to comply with the terms of this Constitution and any code of conduct which the Board may produce from time to time;
- (d) is, in the Board's opinion, of good character;
- (e) lodges an application form in accordance with **clause 8.1**; and
- (f) subject to **clause 11(c)**, pays any Entrance Fee in accordance with **clause 11**.

6.2 Benefits

- (a) Each Voting Member will be entitled to vote at all general meetings.
- (b) In addition to each Voting Member being entitled to vote at all general meetings, the Board will determine from time to time what additional benefits shall attach to Membership.

7 Classes of Membership

7.1 Classes of Membership

As at the date of Registration, there shall be one (1) class of Membership, known as Council Members.

7.2 Council Members

- (a) Council Members:
 - (i) must be Councils;
 - (ii) shall be entitled to vote; and
 - (iii) shall be the sole Membership class which can exercise rights:
 - (A) to wind up or deregister the Company, including any ancillary Member resolutions pertaining to winding up or deregistering; and
 - (B) under **clause 57.2**.
- (b) There shall be three (3) Council Members at all times.

7.3 Additional Classes and Qualifications

The Board may determine from time to time:

- (a) additional Membership classes; and
 - (b) qualifications for admission to each Membership class and the rights attached to each Membership class,
- both of which shall be detailed in the By-Laws.

8 Applications for Membership

8.1 Membership Classes

This clause 8 pertains to any new Membership classes under **clause 7.3**.

8.2 Applications for Membership

An application for Membership of the Company must:

- (a) be made in writing in the form prescribed by the Board from time to time;
- (b) include a signature, or equivalent acknowledgement by the applicant, acknowledging that the applicant agrees to be bound by the Constitution of the Company as amended from time to time and any code of conduct which the Board may produce from time to time;
- (c) be accompanied by any Entrance Fee payable pursuant to **clause 11(a)**; and
- (d) be lodged with the Secretary.

8.3 Determining Application for Membership

- (a) As soon as practicable after receiving an application for Membership, the Secretary must refer the application to the Board which is to determine whether to approve or reject the application.
- (b) As soon as practicable after the Board makes that determination the Secretary must:
 - (i) notify the applicant, in writing, that the Board approved or rejected the application (whichever is applicable);
 - (ii) if the Board approved the application, enter the applicant's name in the Register and, subject to the Corporations Act, the person becomes a Member on the name being so entered; or

- (iii) if the Board rejected the application, refund any Entrance Fee to the applicant and the Board will not be required to provide the applicant with any reasons for the rejection.
- (c) The Board's decision under **clause 8.3(a)** is final, and an applicant shall not be entitled to any rights of appeal against the decision.

9 Membership Entitlements Not Transferable

A right, privilege or obligation which a Member has by reason of being a Member of the Company:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of the person's Membership.

10 Representative

- (a) **Clause 10** only applies to Body Corporate Members and applicants for Membership which are Bodies Corporate.
- (b) A Body Corporate Member may appoint more than one (1) Representative, but only one (1) Representative may exercise the Member's powers at any one (1) time.
- (c) A Body Corporate Member or an applicant for Membership which is a Body Corporate must appoint as its Representative a natural person.
- (d) The name and address of the Representative will be entered in the Register as the representative of the Body Corporate Member.
- (e) All correspondence and notices from the Company will be served on that Representative and any notice served on a Representative will be deemed to be service on the Body Corporate Member which is represented by that particular Representative.
- (f) If the appointment of a Representative by the Body Corporate Member is made by reference to a position held, the appointment must identify the position.
- (g) Despite **clause 9**, a Body Corporate Member may remove and replace a Representative where the Body Corporate Member gives written notice to the Board in a form approved by the Board.
- (h) A signature by a Representative of a Body Corporate Member on behalf of that Body Corporate Member is taken to be the signature of that Body Corporate Member for the purposes of this Constitution.
- (i) Any power or right of a Body Corporate Member as granted by this Constitution can be exercised by the Representative of that particular Body Corporate Member.
- (j) Body Corporate Members are represented at meetings of Members by their Representatives, subject to the right of a Representative to appoint a proxy pursuant to **clause 27(a)**.
- (k) The actions of a Representative bind the Body Corporate Member which is represented by that particular Representative.
- (l) Each Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if a Member himself or herself.

11 Fees

- (a) There shall be an Entrance Fee and annual Subscription payable by each Member to the Company, unless the Board determines otherwise.
- (b) Subject to **clause 11(c)**, the amount of the Entrance Fee and annual Subscription shall be payable by Members at such times and in such manner as determined by the Board from time to time.
- (c) The Board may in its discretion:
 - (i) determine that no Entrance Fee or annual Subscription is payable by the Members (in whole or in part) in a given year;
 - (ii) determine that there will be different Entrance Fees and annual Subscriptions for different Members; and
 - (iii) extend the time for payment of the Entrance Fee or annual Subscription by any Member.
- (d) No part of any Entrance Fee or annual Subscription shall be refunded to a Member who ceases to be a Member in accordance with **clause 12**.

12 Cessation of Membership

- (a) A Member's Membership will cease:
 - (i) on the date that the Secretary receives written notice of resignation from that Member;
 - (ii) upon that Member no longer satisfying the criteria for Membership;
 - (iii) if, being a natural person:
 - (A) upon that Member dying; or
 - (B) upon that Member becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
 - (iv) subject to **clause 11(c)**, if that Member fails to pay an Entrance Fee or annual Subscription:
 - (A) within thirty (30) days after it falls due; and
 - (B) then fails to rectify this default within thirty (30) days of being notified of the default by the Company;
 - (v) if the Member is expelled from the Company pursuant to **clause 13**; or
 - (vi) if, being a Body Corporate:
 - (A) that Member is dissolved or otherwise ceases to exist;
 - (B) that Member has:
 - (1) a receiver;
 - (2) a receiver and manager;
 - (3) a liquidator;
 - (4) an administrator;

- (5) an administrator of a deed of company arrangement; or
- (6) a trustee of other person administering a compromise or arrangement between the Member and someone else,
appointed to it; or
- (vii) if the Company in general meeting resolves by Special Resolution to terminate the Membership of a Member whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company. The Member must be given at least twenty-one (21) days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed.
- (b) A Member may at any time, pursuant to **clause 12(a)(i)**, resign as a Member but shall continue to be liable for:
 - (i) any monies due by the Member to the Company; and
 - (ii) any sum for which the Member is liable as the Member of the Company under **clause 2(c)**.

13 Disciplining of Members

13.1 Disciplining of Members

- (a) Where the Board is of the opinion that a Member has:
 - (i) persistently refused or neglected to comply with a provision or provisions of this Constitution; or
 - (ii) persistently and wilfully acted in a manner prejudicial to the interests of the Company,

the Board may expel or suspend that Member from the Company.
- (b) A resolution of the Board pursuant to **clause 13.1(a)** is of no effect unless the Board confirms the resolution in accordance with this **clause 13.1(b)** at a Board meeting held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service on the Member of a notice pursuant to **clause 13.1(c)**.
- (c) If the Board resolves under **clause 13.1** to expel or suspend any Member, the Secretary must serve the Member with a notice in writing:
 - (i) setting out the resolution of the Board and the grounds upon which it is based;
 - (ii) stating that the Member may address the Board at a Board meeting to be held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service of the notice;
 - (iii) stating the date, place and time of that meeting; and
 - (iv) informing the Member that the Member may do either or both of the following:
 - (A) attend and speak at that meeting; and/or

- (B) submit to the Board at or prior to the date of the meeting, written representations relating to the resolution.
- (d) At a meeting of the Board held as referred to in **clause 13.1(c)**, the Board must:
 - (i) give the Member an opportunity to make oral representations;
 - (ii) give due consideration to any written representations submitted to the Board by the Member at or before the Board meeting; and
 - (iii) by a resolution, determine whether to confirm or to revoke the resolution under **clause 13.1(a)**. A resolution to confirm the resolution under **clause 13.1(a)** requires the affirmative votes of at least seventy-five per cent (75%) of the Directors voting on the resolution.
- (e) The Member must be notified in writing of the decision of the Board within seven (7) days. If the Board resolves to confirm the expulsion or suspension under **clause 13.1(d)**, the Member must also be notified of the right of appeal available under **clause 13.2**.
- (f) A resolution confirmed by the Board under **clause 13.1(d)** does not take effect:
 - (i) until the expiration of the period within which the Member is entitled to appeal against the resolution where the Member does not exercise the right of appeal within that period; and
 - (ii) where, within that period, the Member exercises the right of appeal, unless and until the Disciplinary Committee confirms the resolution pursuant to **clause 13.2(d)(ii)**.

13.2 Right of Appeal of Disciplined Member

- (a) The Board will establish a Disciplinary Committee. The Disciplinary Committee will comprise of an independent panel of three (3) experts, all chosen by the Board. The experts will be chosen based upon the nature of the alleged misconduct by the Member. The Disciplinary Committee may seek advice from any relevant source.
- (b) A Member may appeal to the Disciplinary Committee against a resolution of the Board, which is confirmed under **clause 13.1(d)**. Written notice of such an appeal must be lodged with the Secretary within seven (7) days of service of the notice required under **clause 13.1(e)**.
- (c) Within thirty-five (35) days after receipt of a notice of appeal from the Member pursuant to **clause 13.2(b)**, the Disciplinary Committee must convene a meeting.
- (d) At the Disciplinary Committee meeting convened under **clause 13.2(c)**:
 - (i) the Member must be given the opportunity to state its case orally or in writing, or both using any technology (reasonably available to the Board) that gives the Member a reasonable opportunity to do so; and
 - (ii) the Disciplinary Committee must vote by ballot on the question of whether the resolution will be confirmed.
- (e) The Disciplinary Committee's decision pursuant to **clause 13.2(d)(ii)** is final. The Member is not entitled to appeal the Disciplinary Committee's decision.
- (f) The Member the subject of these disciplinary procedures is entitled to:

- (i) subject to **clause 13.2(f)(ii)**, bring a support person to any meeting with the Disciplinary Committee or the Board, which meetings are being held pursuant to this **clause 13**; and
- (ii) if the support person is legally qualified, the Member must notify the Disciplinary Committee or the Board (as the case may be) at least five (5) Business Days before the meeting that the support person attending the meeting will be legally qualified.
- (g) Natural justice will be applied during every disciplinary process under this **clause 13**, requiring the Board and Disciplinary Committee to act fairly, in good faith and without bias or conflict of interest when making its decision.

GENERAL MEETINGS

14 Convening of General Meetings

14.1 AGMs

Notwithstanding section 111L of the Corporations Act:

- (a) the Board shall convene an AGM at least once in each calendar year and within five (5) months after the end of the Financial Year, and any AGM which is convened must be done so in accordance with the requirements of the Corporations Act; and
- (b) notwithstanding **clause 14.1(a)**, the Company's first AGM may be held within the first eighteen (18) months following Registration.

14.2 Convening of General Meetings

- (a) A minimum of three (3) Directors may, whenever those three (3) Directors think fit, convene a general meeting of the Company.
- (b) Notwithstanding section 111L of the Corporations Act:
 - (i) Members may call a general meeting; and
 - (ii) the Company will do so,in accordance with the provisions of Part 2G.2 of the Corporations Act pertaining to the rights of members to call a general meeting.
- (c) A general meeting of the Company may be convened at two (2) or more venues using any technology that gives Members a reasonable opportunity to participate in the meeting.

15 Notice of General Meeting

- (a) Subject to consent to shorter notice being given in accordance with the Corporations Act (notwithstanding section 111L of the Corporations Act), at least twenty-one (21) days' notice of any general meeting must be given specifying:
 - (i) the place, day and hour of the meeting;
 - (ii) the general nature of any business to be transacted at the meeting;
 - (iii) if a Special Resolution is to be proposed, the details of and intention to propose it;

- (iv) if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
 - (v) any other information required by the Corporations Act (notwithstanding the application of section 111L of the Corporations Act).
- (b) The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.
- (c) Subject to **clause 15(b)**, notice of every general meeting must be given in any manner authorised by this Constitution to:
 - (i) every Member;
 - (ii) every Director; and
 - (iii) the auditor for the time being of the Company (if any).

16 Cancellation or Postponement of General Meeting

16.1 Cancellation or Postponement of General Meeting

- (a) Subject to the provisions of the Corporations Act (notwithstanding section 111L of the Corporations Act) and this Constitution, the Board may cancel a general meeting of the Company:
 - (i) convened by the Board; or
 - (ii) which has been convened by Members pursuant to **clause 14.2(b)** upon receipt by the Company of a written notice withdrawing the requisition signed by that Member or those Members.
- (b) The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.
- (c) Where any general meeting is cancelled or postponed or the venue for a general meeting is changed, the Board must notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting.

16.2 Failure to Notify in Writing

Any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

PROCEEDINGS AT GENERAL MEETINGS

17 Quorum

- (a) No business may be transacted at any general meeting unless there is a quorum at all times during the meeting.
- (b) For the purposes of **clause 17(a)**, three (3) Members Present shall constitute a quorum for all general meetings.

- (c) If within thirty (30) minutes after the time appointed for holding a general meeting a quorum is not present:
 - (i) the meeting, if convened upon the requisition of Members, shall be dissolved; and
 - (ii) in any other case:
 - (A) it will stand adjourned to such other day time and place as the Board may by notice to the Members appoint; and
 - (B) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.

18 Chairperson

- (a) The Chair shall preside as Chairperson at each general meeting.
- (b) Where a general meeting is held and:
 - (i) there is no Chair; or
 - (ii) the Chair is not present within thirty (30) minutes after the time appointed for the holding of the meeting or, if present, is unwilling to act as Chairperson of the meeting,then the following person will be Chairperson in lieu of the Chair in the order of availability set out below:
 - (iii) Deputy-Chair;
 - (iv) Secretary;
 - (v) another Director chosen by the Directors present at the meeting; and
 - (vi) a Voting Member or Representative of a Voting Member chosen by a majority of the Members Present.
- (c) The rulings of the Chairperson on all matters relating to the order of business, procedure and conduct of the meeting shall be final, and no motion of dissent from such rulings shall be accepted.

19 Adjournments

- (a) The Chairperson of a general meeting at which a quorum is present:
 - (i) may adjourn a meeting with the consent of the meeting; and
 - (ii) must adjourn the meeting if the meeting so directs,to a time and place as determined.
- (b) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) A resolution passed at a meeting resumed after an adjournment is deemed passed on the day it was passed, and not on the date of the original meeting.
- (d) It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting, except if the meeting is adjourned for thirty (30) days or more, in which case notice of the adjourned meeting must be given as in the case of an original meeting.

20 Determination of Questions

20.1 Determination of Questions

At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:

- (a) the Chairperson of the meeting; or
- (b) at least two (2) Members Present.

20.2 Proxy Votes

Before a vote on a resolution is taken, the Chairperson must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.

20.3 Declaration by the Chairperson

A declaration by the Chairperson of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company, which has been signed by the Chairperson of the meeting or the next succeeding meeting, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

21 Disqualification

No person other than:

- (a) a Voting Member;
 - (b) a Representative of a Voting Member; or
 - (c) a proxy or attorney or Representative of a Voting Member,
- shall be entitled to vote at a general meeting or on any resolution.

22 Direct Votes

- (a) The Board will determine from time to time if Voting Members are entitled to vote by a Direct Vote on a matter or a resolution. If the Board has determined that Voting Members are entitled to vote by a Direct Vote, then the Voting Members must do so using the form prescribed by the Board from time to time, which may include electronic means.
- (b) If sent by post or facsimile, the Direct Vote must be signed by the Voting Member or by a duly authorised officer, attorney or Representative.
- (c) If sent by electronic transmission, the Direct Vote is to be taken to have been signed if it has been signed or authorised by the Voting Member in the manner approved by the Board.
- (d) The Direct Vote must be received by the Company at least forty-eight (48) hours before the time of the relevant general meeting in order to be valid.
- (e) A Direct Vote is valid if it contains the following information:
 - (i) the Voting Member's name and address, or any applicable identifying notations such as the Voting Member's identification number or similar approved by the Board or specified in the notice of meeting; and
 - (ii) the Voting Member's voting intention on any or all of the resolutions to be put before the meeting.

- (f) A Direct Vote is valid unless the Company receives written notification changing the voting intention before the vote is cast.
- (g) The Chair's decision as to whether a Direct Vote is valid is conclusive.
- (h) A Voting Member who has cast a Direct Vote is entitled to attend the meeting. The Member's attendance cancels the Direct Vote:
 - (i) unless the Voting Member instructs the Company otherwise; or
 - (ii) the Board has determined that Direct Votes are the only method permitted for voting on a resolution.
- (i) If a vote is taken at a meeting on a resolution on which a Direct Vote was cast, the Chair of the meeting must:
 - (i) on a vote by show of hands, count each Voting Member who has submitted a Direct Vote for or against the resolution in accordance with their Direct Vote; and
 - (ii) on a poll, count the votes cast by each Voting Member who has submitted a Direct Vote directly for or against the resolution.

23 Right of Non-Members to Attend General Meeting

- (a) The Chairperson of a general meeting may invite any person who is not a Member to attend and address a meeting.
- (b) Any auditor and any Director of the Company shall be entitled to attend and address a general meeting.

24 Objection to Qualification to Vote

Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the Chairperson of the general meeting, whose decision shall be final and conclusive, and a vote allowed by the Chairperson of the general meeting shall be valid for all purposes.

25 Persons of Unsound Mind and Minors

- (a) A Voting Member or Representative of a Voting Member:
 - (i) of unsound mind; or
 - (ii) whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
 - (iii) who is a minor,may vote whether on a show of hands or on a poll by that Voting Member or Representative of a Voting Member's committee, or by such other person as properly has the management or guardianship of that Voting Member or Representative of a Voting Member's estate, or by the public trustee (as the case may be), and the committee or other person or trustee may vote by proxy or representative.
- (b) Any person having the right of management or guardianship of the person or estate in respect of a Voting Member or Representative of a Voting Member as referred to in **clause 25(a)**, must not exercise any of the rights conferred under

that clause unless and until the person has provided to the Board satisfactory evidence of the appointment of the person accordingly.

26 Casting Vote

In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote in addition to a deliberative vote.

PROXIES

27 Right to Appoint Proxies

Notwithstanding section 111L of the Corporations Act:

- (a) a Voting Member or a Representative of a Voting Member who is entitled to attend and vote at a general meeting of the Company may appoint another person as the Voting Member's or the Representative's proxy to attend and vote for the Voting Member or the Representative at the meeting; and
- (b) if a Voting Member or Representative of a Voting Member appoints a proxy, the proxy is entitled to vote on a show of hands and on a poll.

28 Appointing a Proxy

28.1 Appointing a Proxy

The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing.

28.2 Instrument of Proxy

- (a) The instrument of proxy is valid if it contains the following information, and any additional information required by the Corporations Act (notwithstanding the application of section 111L of the Corporations Act):
 - (i) the name and address of the appointor;
 - (ii) the name of the Company;
 - (iii) the proxy's name or the name of the office of the proxy; and
 - (iv) the meetings at which the instrument of proxy may be used.
- (b) An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- (c) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 28.2(a)**.
- (d) An instrument of proxy may be revoked at any time by notice in writing to the Company.

29 Lodgement of Proxies

- (a) An instrument appointing:
 - (i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or

- (ii) an attorney to exercise a Voting Member's or Representative of a Voting Member's voting rights at a general meeting or a certified copy of that power of attorney,

must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than forty-eight (48) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote. In default, the instrument of proxy or the power of attorney will not be treated as valid.
- (b) For the purposes of this **clause 29** it will be sufficient that any document required to be lodged by a Voting Member or a Representative of a Voting Member be received in legible form by facsimile at the place at which the document is required to be delivered by the Voting Member or Representative of the Voting Member, and the document shall be regarded as received at the time the facsimile was received at that place.
- (c) For the purposes of this **clause 29** it will be sufficient that any document required to be lodged be received in legible form by email or other electronic transmission if the notice of meeting so permits, and the document is sent to the address and in the form specified in the notice, and the proxy shall be regarded as received at the time of the receipt of the email or other electronic transmission by the Company.

30 Validity of Proxies

A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:

- (a) the death or unsoundness of mind of the Voting Member or Representative of the Voting Member;
- (b) the bankruptcy or liquidation of the Voting Member or Representative of the Voting Member; or
- (c) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

if the Company has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation, or revocation at least twenty-four (24) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

31 Rights of Proxies and Attorneys

- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (b) Subject to **clause 31(c)**, unless a Voting Member or Representative of a Voting Member by the instrument of proxy directs the proxy to vote in a certain manner, the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.
- (c) A proxy will not be revoked by the appointor attending and taking part in any general meeting, but if the appointor votes on a resolution either on a show of

hands or on a poll, the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.

- (d) The Chairperson of a general meeting may require any person acting as a proxy to establish to the satisfaction of the Chairperson that he or she is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his or her identity, he or she may be excluded from voting either upon a show of hands or upon a poll.

APPOINTMENT AND REMOVAL OF DIRECTORS

32 Number and Appointment of Directors

32.1 Number of Directors

- (a) The Board of Directors shall consist of at least three (3) and up to nine (9) persons.
- (b) Subject to section 201P of the Corporations Act, the Board may by resolution vary the number of Directors holding office from that referred to in **clause 32.1(a)**.

32.2 Composition of Board

- (a) The Board shall consist of:
- (i) three (3) Council Appointed Directors; and
 - (ii) up to six (6) Co-Opted Directors.
- (b) The Board shall determine from time to time how many how many Co-Opted Directors shall be on the Board.

32.3 Council Appointed Directors

- (a) Following the local government election of a Council, the Council Member must, as soon as is reasonably practicable, appoint one (1) Council Appointed Director to the Board, by written notice from the relevant Council's general manager to the Secretary. Upon the appointment of the Council Appointed Director, the term of the previous Council Appointed Director (appointed by that same Council Member), shall come to an end, unless the previously appointed Director is re-appointed.
- (b) The Council Appointed Director who is appointed under **clause 32.3(a)** can be any person.

32.4 Co-Opted Directors

- (a) The Board may appoint Co-Opted Directors to the Board at any time to fill the positions provided for in **clause 32.2(a)(ii)**.
- (b) A Co-Opted Director shall be a person who will bring skills and experience to the Board, as set out in the Nomination Committee Charter, to enable the Board to advance the Objects.

32.5 Term

- (a) This **clause 32.5** operates subject to **clause 32.6**.

- (b) A Council Appointed Director shall hold office for the term of Council, but shall be eligible for reappointment for further terms. The term of a Council Appointed Director shall commence when they are appointed pursuant to **clause 32.3(a)**.
- (c) A Co-Opted Director shall hold office for a term of up to three (3) years, but shall be eligible for reappointment for further terms of up to three (3) years each.
- (d) Time spent on the committee of the Incorporated Association does not count towards the term length of a Director under this **clause 32.5**.

32.6 Initial Board

- (a) Of the initial Board to hold office from Registration:
 - (i) the following Directors shall all be deemed to be Council Appointed Directors:
 - (A) Antonio Mileto (Orange City Council);
 - (B) Ian Davison (Cabonne Shire Council); and
 - (C) Heather Ferguson (Blayney Shire Council);
 - (ii) the following Directors shall all be deemed to be Co-Opted Directors:
 - (A) Gary Norton;
 - (B) Wayne Davis;
 - (C) Jack Evans; and
 - (D) Donna Galvin.
- (b) The initial Directors shall nominate from amongst their number who shall hold each office (as set out in **clause 32.7(a)**).
- (c)
 - (i) Notwithstanding **clause 32.5**, each Director referred to in **clause 32.6(a)** will only hold office until the local government elections of the Councils which are scheduled to take place in 2021.
 - (ii) In the event that the local government elections referred to in **clause 32.6(c)(i)** are postponed, the Directors on the initial Board will continue to hold office until the postponed local government elections take place.
 - (iii) If the local government elections do not all take place on the same day, then:
 - (A) each Council Appointed Director referred to in **clause 32.6(a)(i)** shall retire on the date of the local government election of the Council Member which appointed that Council Appointed Director; and
 - (B) the Co-Opted Directors referred to in **clause 32.6(a)(ii)** shall retire on the last to occur of the local government elections.

32.7 Office Bearers

- (a) The Board shall, at the first meeting of the Board held after Registration and thereafter at the first meeting of the Board held after an Office Bearer has retired,

elect from among the Directors sitting on the Board at the time of the Board meeting:

- (i) the Chair;
 - (ii) the Deputy-Chair; and
 - (iii) such other Office Bearer positions as the Board deems necessary from time to time.
- (b) The Office Bearers shall hold office for a term of one (1) year but shall be eligible for reappointment for terms of one (1) year each, provided that Office Bearers shall not hold office beyond their retirement or removal from the Board as a Director.

33 General Right to Act Despite Vacancy

The Board may act despite any vacancy in its body but if its number falls below the minimum fixed in accordance with **clause 32.1**, the Board may act for the purpose of:

- (a) convening a general meeting; and
 - (b) in emergencies,
- but for no other purpose.

34 Vacation of Office

- (a) Any Director may retire from office on giving written notice to the Company at the Office of his or her intention to retire and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).
- (b) The office of a Director shall become vacant if the Director:
 - (i) dies;
 - (ii) becomes bankrupt or makes any arrangement or composition with creditors generally;
 - (iii) becomes prohibited from being a director of, or managing, a company by reason of any order made under the Corporations Act;
 - (iv) has been disqualified by the Australian Charities and Not-for-Profits Commissioner, at any time during the preceding twelve (12) months, from being a responsible entity of a registered entity under section 45.20(4) of the ACNC Regulation;
 - (v) being a Council Appointed Director, is removed from the Board by the Council Member which appointed that Council Appointed Director (and such removal can occur at any time and within the full and unfettered discretion of that Council Member);
 - (vi) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
 - (vii) is removed from office by the Company in general meeting;
 - (viii) resigns by notice in writing to the Company; or
 - (ix) is absent without permission of the Board from half (1/2) of the meetings of the Board in a Financial Year.

35 Filling of Vacancies on the Board

- (a) In the event of a casual vacancy occurring on the Board:
 - (i) in relation to a Council Appointed Director, the Council Member which appointed that Council Appointed Director shall appoint any person to fill that vacancy in accordance with **clause 32.3**;
 - (ii) in relation to a Co-Opted Director vacancy, the Board shall appoint any person to fill the vacancy in accordance with **clause 32.4(a)**.
- (b) Any Director appointed pursuant to **clause 35(a)(i)** shall hold office for the balance of the term of the vacating Director.
- (c) Any Director appointed pursuant to **clause 35(a)(ii)** shall hold office for a fresh term.

36 Office Bearer Vacancies

- (a) In the event of a vacancy occurring in the position of Chair, the Deputy-Chair shall assume office as acting Chair for the balance of the term of the vacating Chair.
- (b) In the event of a vacancy occurring in the position of Deputy-Chair (including as described in **clause 36(a)**), the Board at its next meeting shall appoint a Director who is not Chair to assume office as acting Deputy-Chair for the balance of the term of the vacating Deputy-Chair.
- (c) If any Office Bearer is temporarily absent or temporarily unable to perform his or her duties, the Board may authorise another Director to act in the vacant position during the absence or inability of the Office Bearer.
- (d) Nothing in **clause 36** permits any person to simultaneously hold more than one position of Office Bearer.

37 Alternate Directors

Alternate Directors shall not be permitted.

POWERS AND DUTIES OF DIRECTORS

38 Duties of Directors

- (a) Each Director is subject to, and must comply at all times with, the duties set out in governance standard 5 in section 45.25 of the ACNC Regulation.
- (b) In accordance with governance standard 4 in section 45.20 of the ACNC Regulation, the Board will take reasonable steps to ensure that the Board does not at any time include a Director who is disqualified from managing a corporation under the Corporations Act or from being a responsible entity under subsection 45.20(4) of the ACNC Regulation.

39 Powers of Directors

The control, management and conduct of the Company shall be vested in the Board, who shall exercise all such powers of the Company as are not by the Corporations Act, the ACNC Act, the ACNC Regulation or by this Constitution required to be exercised in any other manner.

40 Negotiable Instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, requests or arrangements for electronic fund transfers and receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by two (2) people authorised by resolution of the Board. The Board may authorise:

- (a) a Director(s);
 - (b) the Secretary; or
 - (c) another staff member of the Company,
- to sign such instruments.

41 Conferment of Powers

- (a) The Board may from time to time confer upon any Director for the time being or any other person as they may select such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.
- (b) Powers conferred under this **clause 41** may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

DIRECTORS' DISCLOSURE OF INTEREST

42 Contracts

- (a) The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions which apply to such contracts or arrangements.
- (b) Any interest of a Director must be dealt with in accordance with the relevant legislation, being either:
 - (i) the Corporations Act; or
 - (ii) the ACNC Regulation,which shall include disclosing an interest and having the Secretary record all declarations in the minutes of the relevant meeting.
- (c) Subject to **clause 42(b)**, a Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board may:
 - (i) not be present while the matter is being considered at a meeting;
 - (ii) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (iii) not vote on the matter;

- (iv) not sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- (v) not vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- (d) A Director's failure to make disclosure under this **clause 42** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
- (e) A general notice given to the Board by a Director that the Director is an officer, a member of, or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

PROCEEDINGS OF DIRECTORS

43 Meetings of Directors

- (a) The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings and proceedings as it thinks fit, provided that the Board must meet not fewer than six (6) times each calendar year.
- (b) A Director may at any time, and the Secretary upon the request of a Director shall, convene a meeting of the Board by giving at least twenty-four (24) hours' notice of the meeting to all Directors, provided that the Director or Secretary must have used his or her best endeavours to ensure that the notice was properly provided.
- (c) Notice of a meeting of the Board must be in writing in any form, including email or digital messaging, provided that proof of service can be provided upon request.
- (d) Subject to **clause 43(e)**, a Board meeting may be convened or held using any technology consented to by a majority of Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (e) The particular technology used to convene or hold a Board meeting, pursuant to **clause 43(d)**, must be of a type that is available and accessible to all Directors who wish to attend the Board meeting.
- (f) All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors. Attendance by a Director at a meeting of Directors waives any objection which that Director may have to a failure to give notice of the meeting.

44 Quorum

- (a) The quorum necessary for the transaction of the Board's business is three (3) Directors being personally present.

- (b) A quorum must be present at all times during the meeting in order for business to be transacted.

45 Chairperson

- (a) The Chair shall be the Chairperson.
- (b) The Chair shall, if present, preside as Chairperson of every meeting of the Board.
- (c) If a meeting of the Board is held and the Chair is:
- (i) not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
 - (ii) if present, does not wish to chair the meeting,
- then the following person will be Chairperson in lieu of the Chair in the order of availability set out below:
- (iii) Deputy-Chair; and
 - (iv) another Director chosen by the Directors present at the meeting.

46 Voting

- (a) A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- (b) Each Director shall have one (1) vote.
- (c) In the case of an equality of votes at a meeting of the Board, the Chairperson is entitled to a casting vote in addition to a deliberative vote.

47 Resolutions by Directors

- (a) The Board may pass a resolution without a Board meeting being held if a majority of the Directors sign a document containing a statement that they are in favour of the resolution set out in that document. For this purpose, signatures can be contained in more than one document.
- (b) A facsimile transmission which is received by the Company and which purports to have been signed by a Director shall for the purposes of this **clause 47** be taken to be in writing and signed by that Director at the time of the receipt of the facsimile transmission by the Company in legible form.
- (c) An email transmission which is received by the Company and which purports to have been sent by a Director shall for the purposes of this **clause 47** be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Company.
- (d) A vote made by a Director using an online voting platform operated or commissioned by the Company shall for the purposes of this **clause 47** be taken to be in writing and signed by that Director at the time the vote was received by the online voting platform.
- (e) Any decisions made under **clauses 47(a) to 47(d)** shall be tabled at the next Board meeting.

48 Committees

- (a) The Board may form and delegate any of its powers to a Committee consisting of such Directors and/or other persons as it thinks fit and may from time to time revoke such delegation.
- (b) The Board has the power to require any Committee to have all decisions made by that Committee ratified by the Board.
- (c) A Committee must in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- (d) The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- (e) A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Corporations Act and this Constitution to be made entered and signed. A copy of such Committee minutes shall be tabled at the next Board meeting.

49 Validation of Acts of Directors

All acts done:

- (a) at any meeting of the Board; or
- (b) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

MINUTES

50 Minutes

- (a) The Board must cause minutes to be kept in such a manner as is required by the Corporations Act (notwithstanding the application of section 111L of the Corporations Act) for the purposes of recording:
 - (i) the names of the Directors present at each meeting of the Board and of Directors present at each meeting of any Committee;
 - (ii) all orders, resolutions and proceedings of general meetings and of meetings of the Board and of Committees; and
 - (iii) such matters as are required by the Corporations Act, the ACNC Act or the ACNC Regulation to be recorded in the record books of the Company including, without limitation, all declarations made or notices given by any Director of his or her interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.

- (b) Such minutes shall be signed by the Chairperson of the meeting, or the Chairperson of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

SECRETARY

51 Appointment and Tenure

- (a) There must at all times be at least one (1) Secretary appointed by the Board for a term and on conditions determined by the Board.
- (b) The Board may replace any Secretary so appointed.

BY-LAWS

52 By-Laws

- (a) The Board may from time to time make such By-Laws as are in its opinion necessary and desirable for the proper control, administration and management of the Company's affairs, operations, finances, interests, effects and property and to amend and repeal those By-Laws from time to time.
- (b) A By-Law must be subject to this Constitution and must not be inconsistent with any provision contained in this Constitution.
- (c) When in force, a By-Law is binding on all Members and has the same effect as this Constitution.
- (d) The Board will adopt such measures as it deems appropriate to bring to the notice of the Members all By-Laws, amendments and repeals.

EXECUTION OF DOCUMENTS

53 Execution of Documents

- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Corporations Act, the Company may execute any agreement, deed or other document by:
 - (i) two (2) Directors signing the same; or
 - (ii) one (1) Director and one (1) Secretary signing the same.
- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

ACCOUNTS AND INSPECTION OF RECORDS

54 Financial Year

The Company's financial year shall be the Financial Year.

55 Accounts and Inspection

The Board shall:

- (a) cause proper financial records to be kept and must, if required by the Corporations Act, the ACNC Act or the ACNC Regulation, prepare and distribute copies of the financial reports of the Company and a Directors' report;
- (b) where required by the Corporations Act or ACNC Act, cause the financial records to be audited or reviewed by a properly qualified auditor or other entity authorised by the Corporations Act or the ACNC Act; and
- (c) from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of the Members.

NOTICES

56 Service of Notices

- (a) A notice may be given by the Company to any Member by:
 - (i) serving it on the Member personally;
 - (ii) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Company for the giving of notices;
 - (iii) facsimile to the facsimile number supplied by the Member to the Company for the giving of notices; or
 - (iv) sending it to the electronic address supplied by the Member to the Company for the giving of notices.
- (b) Any Member who has not left at or sent to the Office his or her place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.
- (c) Subject to this Constitution, a notice may be given under this Constitution to any Director by:
 - (i) serving it on the Director personally;
 - (ii) sending it by post to the Director or leaving it at the Director's usual residential or business address; or
 - (iii) sending it to the facsimile number supplied by the Director to the Company for the giving of notices; or
 - (iv) sending it to the electronic address supplied by the Director to the Company for the giving of notices.
- (d) Subject to this Constitution, a notice may be given by a Member or Director to the Company by:
 - (i) serving it on the Company at the Office;
 - (ii) sending it by post to the Office;
 - (iii) facsimile to the Company's principal facsimile number; or

- (iv) email to the Company's principal email address.
- (e) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the third (3rd) Business Day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.
- (f) Where a notice is sent by facsimile or other electronic means, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the Business Day after it is sent.
- (g) A notice may be given by the Company to the persons entitled to Membership in consequence of the death or bankruptcy of a Member by:
 - (i) service on the Member personally;
 - (ii) sending it by post addressed to the person by name or by the title of the representative of the deceased or person of unsound mind or the assignee of the bankrupt or by any like description at the address, if any, within Australia, supplied for the purpose by the person claiming to be entitled; or
 - (iii) by giving the notice in any manner in which the same might have been given if the death, unsoundness of mind or bankruptcy had not occurred.
- (h) Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Company to that effect shall be conclusive evidence of service.

WINDING UP

57 Winding Up

57.1 Surpluses

- (a) If any surplus remains following the winding up of the Company, they will be given or transferred to another institution(s) or corporation(s) which has (have):
 - (i) objects which are similar to the Objects and is charitable;
 - (ii) a constitution which requires its income and property to be applied in promoting its objects; and
 - (iii) a constitution which prohibits it from paying or distributing its income and property among its members to an extent at least as great as imposed on the Company by **clause 5.2(b)**.
- (b) If a Body Corporate Member satisfies the requirements under **clause 57.1(a)**, it may receive the surpluses under that clause.

57.2 Determination of Recipient

The identity of the institution(s) or corporation(s) referred to in **clause 57.1(a)** is to be determined by the Council Members, in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of New South Wales for determination.

INDEMNITY

58 Indemnity

To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred in that person's capacity as an Officer or employee of the Company (or former Officer or employee of the Company). However, no such Officer or employee (or former Officer or employee) shall be indemnified out of the funds of the Company under this **clause 58** unless:

- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Corporations Act.

59 Payment of Indemnity Policy Premium

- (a) To the extent permitted by law the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions before or after the date of the issue of the policy or both) except for:
 - (i) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
 - (ii) a liability arising out of conduct that contravenes the governance standards in sections 45.5 to 45.25 of the ACNC Regulation.
- (b) The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- (c) Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his or her actions or omissions then the Company shall not be required to indemnify the Officer under **clause 58** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

60 Indemnity to Continue

The indemnity granted by the Company contained in **clauses 58** and **59** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring before the date of the deletion or modification.

Annexure A Form of Appointment of Proxy

Business Enterprise Centre – Central NSW Limited
(incorporated under the Corporations Act)

PROXY FORM

1. Your details

(Please print your name and address)

Name: _____

ABN/ACN: _____

Address: _____

City: _____

State: _____

Postcode: _____

Country: _____

Telephone: _____

2. Appoints

Name: _____

(Please print name of proxy)

or failing the person so named, or if no person is named, the **Chairperson of the Meeting** to vote in accordance with the following directions or, if no directions have been given, as the proxy or the Chairperson sees fit at the (Annual) General Meeting of Business Enterprise Centre – Central NSW Limited to be held on *[insert date]* commencing at *[insert time]* and at any adjournment thereof.

3. Directions

4. Signature

5. Date



PARTNERSHIP AGREEMENT

Between **Service NSW** (ABN 37 552 837 401) and the **Blayney Shire Council** (the '**Council**')
(the '**Parties**')

Last Updated: 27 July 2021

1. Purpose

1.1. The purpose of this Agreement is to:

- A. Provide the services of Service NSW for Business, which is a division of Service NSW with a mandate of being the one front door for businesses in NSW to access government information and services.
- B. Provide the framework within which Services will be delivered;
- C. Document the responsibilities of Service NSW and the Council on the provision of Services;
- D. Provide mechanisms to manage the relationship between the Parties;
- E. Promote a collaborative approach to working together in a timely and effective manner and to act in good faith.

This Agreement is not legally binding.

2. Background

- 1) Service NSW is a Division of the Government Service established under the Service Act. The functions of Service NSW include the exercise of customer service functions, within the meaning of the Service Act; other functions conferred by statute; and other functions relating to the delivery of Government services, as directed by the Minister responsible for Service NSW.
- 2) Section 7 of the Service Act makes provision for customer service functions to be delegated by other NSW Government agencies to the Chief Executive Officer ('**CEO**').
- 3) The functions of the CEO are exercised by the staff of Service NSW.
- 4) Section 8 of the Service Act enables the CEO to enter into Agreements with local government agencies for the exercise of a non-statutory customer service function of the agency; or with respect to the exercise of a customer service function delegated to the CEO.
- 5) Subsection 8(4) of the Service Act provides that an Agreement with a council, a county council or a joint organisation within the meaning of the *Local Government Act 1993* must be approved by a resolution of the council, county council or joint organisation, must be approved before it is entered into.
- 6) Service NSW partners with the Council to promote and deliver the services of Service NSW for Business to businesses across NSW.

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7) the purpose of this collaboration is to ensure awareness and access to Government services to all businesses in NSW.

8) the Services of Service NSW for Business are free for the Council and for customers.

9) The PPIP Act and the HRIP Act set out information handling principles that apply to public sector agencies (as defined in section 3 of the PPIP Act). As public sector agencies, the parties must not do anything, or engage in any practice, that contravenes a privacy principle that applies to them.

10) Section 14 of the Service Act makes provision for the disclosure and use of information, including personal information, for the purposes of the exercise of customer service functions by the CEO. Section 14 has effect despite the provisions of any other Act, including the PPIP Act and the HRIP Act.

11) Section 15 of the Service Act makes provision for the collection of personal information for the purposes of the PPIP Act and the HRIP Act, by Service NSW.

12) Section 16 of the Service Act enables an Agreement made under the Service Act, or a delegation of a customer service function by an agency to the CEO, to provide for the exercise by Service NSW of functions relating to access to information under the Government Information (Public Access) Act 2009 and functions relating to the State Records Act 1998, in connection with the functions of the council concerned. The responsibilities of Agencies under the *State Records Act 1998* include making and keeping full and accurate records of their office.

13) The Parties have agreed to enter into an Agreement under section 8 of the Service Act, incorporating the terms on this Agreement..

3. Guiding Principles

3.1. The Parties will:

- A. Work collaboratively and in good faith in a timely and effective manner, with open communication to achieve shared objectives;
- B. Facilitate a partnership relationship that promotes and achieves continuous improvement and accountability;
- C. Ensure that each of its Personnel complies with this Agreement and all applicable laws and policies relating to the Services, including the *Work Health and Safety Act 2011*;
- D. Comply with the agreed timelines for meeting obligations to ensure efficient and effective delivery of Services;
- E. Work together to identify and manage shared risks;
- F. Work together to prioritise initiatives and enhancements, particularly where there are limitations on time and resources; and
- G. Work together to respond to the media, advise Ministers, and consult each other when developing communications that impact on Services.

4. Roles and Responsibilities

4.1. Service NSW will:

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- A. Provide the Services in accordance with the terms of this Agreement, subject to any Change Request;
- B. Exercise the required standard of skill, care and diligence in its performance of the Services and ensure that its Personnel have appropriate qualifications and skills to provide the Services;
- C. Take responsibility for the management of records it creates or holds as a result of the exercise of a customer service function, where required; and
- D. Take responsibility for performing necessary maintenance of its systems and data managing the impact on customers from Service NSW system outages and working in conjunction with the Council.

4.2. The Council will:

- A. Provide Service NSW with all information, inputs, resources and subject matter expertise in a timely manner as required to enable Service NSW to provide the Services as set out in the Agreement;
- B. Take responsibility for the management of records it receives or holds following the exercise of a customer service function by Service NSW.

4.3. The Parties undertake to maintain open channels of communication by:

- A. Making available Personnel, data, reports and computer systems for the purposes of resolving customer issues;
- B. Appointing a Relationship Manager with responsibility for managing the contractual and operational aspects of the Services. The Relationship Manager may be varied.

5. Services

A. Service NSW will:

- (i) provide the relevant information and contacts to Council to ensure its local businesses are aware and can access the Service NSW for Business services
- (ii) provide a single point of contact for Council to ensure it can access Service NSW for Business services.

B. the Council will:

- (i) refer eligible customers to the Program;
- (ii) provide guidance to Service NSW staff to assist in responding to inquiries;
- (iii) inform customers and Service NSW of the outcome of relevant applications in line with privacy requirements
- (iv) provide updates on changes to local government policies, guidelines or other matters which may affect the Program;
- (v) identify local opportunities to inform customers of the program;
- (vi) provide Service NSW with feedback on the effectiveness and performance of the Program.

6. Liability

- 6.1. To the full extent permitted by law, neither Council or Service NSW will be liable to the customer for the customer's actions or responsible for any liability, loss or cost suffered directly or indirectly by the business in connection with the Service NSW for Business service.

7. Data and Data Security

- 7.1. Each party retains ownership of its Data.
- 7.2. Except as required by law, neither party must, and must ensure that its Personnel will not:
 - A. use the Data belonging to the other party for any purpose other than the performance of its obligations under this Agreement; or
 - B. sell, commercially exploit, let for hire, assign rights in or otherwise dispose of any Data. or
 - C. Make the other party's Data available to a third party including another government agency or body, other than an approved Subcontractor, and only to the extent required under this Agreement.
- 7.3 Each party must establish and maintain safeguards against the destruction, loss or alteration of either party's Data in the possession or control of that party which are is consistent with and no less rigorous than those maintained by either party to secure its own data; and comply with all applicable laws and policies.
- 7.4 In particular, the Parties will ensure the secure transmission and storage of data, at standards no less than those recommended by Cyber Security NSW.

8. Confidential Information

- 8.1. The Parties must, in respect of any Confidential Information:
 - A. Keep the Confidential Information confidential and not disclose that information to any person without the prior written consent of the disclosing party, other than to its Personnel, professional advisors or contractors requiring access to the Confidential Information in connection with providing the Services;
 - B. Use the Confidential Information solely for the purpose of carrying out its obligations;
 - C. Not permit the Confidential Information to be reproduced except to the extent reasonably required to carry out its obligations;
 - D. Not do anything that would cause the disclosing party or its Personnel to breach their obligations under Privacy Law; and
 - E. Notify the other party as soon as possible upon becoming aware of any breach of this clause.

9. Privacy

- 9.1 Each party and its Personnel must:
 - A. Comply with Privacy Laws; and
 - B. Do all that is reasonably necessary to enable the other party to comply with Privacy Laws, including the development of documentation to demonstrate compliance with Privacy Laws, as agreed between the parties;
- 9.2. In particular, Service NSW acknowledges that:
 - A. The collection of personal or health information will take place in compliance with the Privacy Laws, as modified by section 15 of the Service Act; and

- B. the use, disclosure, storage and retention of such information will be in accordance with the Privacy Laws, and in accordance with applicable policies.

Schedule 3 documents the respective responsibilities of Service NSW and the Council in relation to the collection, storage, use, retention and disclosure of personal information.

- 9.4 Personal and health Information collected, used, disclosed or retained between the parties will be managed and retained by the parties in accordance with the *State Records Act 1998* (NSW) and all other applicable laws, including Privacy Laws.
- 9.5 Once either of the Parties has reasonable grounds to believe there has been unauthorised access to, unauthorised disclosure of, or a loss of Personal or Health Information, dealt with in connection with this Agreement (**'Data Incident'**):
 - A. The party must immediately (but in any event, no later than 72 hours of becoming aware of the Data Incident) notify the other party of that contravention together with all relevant information relating to the contravention;
 - B. Consult with the other party as to which party should have primary responsibility for investigating and dealing with the breach or possible breach;
 - C. Consider, having regard to the scope of the Data Incident and the nature of the personal or health information involved, together with any other relevant factors, whether the Data Incident is serious.
 - D. The party with primary responsibility for the breach must notify the Privacy Commissioner as soon as practicable that a serious Data Incident has occurred; and
 - E. The parties must co-operate and collaborate in relation to assessment and investigation of the Data Incident, and action required to prevent future Data Incidents.
- 9.6 If either of the Parties receives a complaint or request for an internal review of conduct in relation to a breach or alleged breach of a Privacy Law, including under section 53 of the PPIP Act, (a **'Complaint'**), the following will apply:
 - A. It is the responsibility of the party that receives the Complaint to perform a preliminary investigation to determine the party responsible for the conduct;
 - B. If responsibility lies wholly with the party that received the Complaint, then that party is responsible for responding to the complaint or conducting the internal review of conduct;
 - C. If, after performing the investigation, the relevant party reasonably considers that the Complaint should be transferred to the other party, it will (after obtaining the consent of the customer) promptly transfer the Complaint and any further information obtained by the party from its preliminary investigation, to the other party, no later than 20 days after receipt of the original Complaint;
 - D. If the Complaint relates jointly to the conduct of both parties, then the party that received the Complaint will (after obtaining the consent of the Customer) notify the other party no later than 20 days after its receipt of the original Complaint and provide any further information obtained by that party from its preliminary investigation. The parties will then work together to coordinate a joint response from the parties within 60 days of receipt of the Complaint. This response may include an internal review of conduct.

10. Intellectual Property

- 10.1 Each party will retain the Intellectual Property Rights in its Existing Material.
- 10.2 Each party agrees to grant to the other party a non-exclusive and royalty free licence to use, sublicense, adapt, or reproduce:
 - A. Their Existing Material; and
 - B. All methodologies, processes, techniques, ideas, concepts and know-how embodied in their Existing Material,
 - C. To the extent their Existing Material is required for use by the other party, solely in connection with provision of the Services.
- 10.3 Each party represents and warrants to the other party that it has all required rights and consents for its Existing Material to be used for the Services.
- 10.4 Intellectual Property Rights in all New Contract Material will vest in the Council.
- 10.5 The Council grants a perpetual, worldwide, irrevocable and royalty free licence to the Intellectual Property Rights in all New Contract Material to Service NSW for the purpose of performing the Services.
- 10.6 Subject to clauses 10.1 and 10.4, Service NSW will own all Intellectual Property Rights in the provision of the Services, including any solution and service design.

11. Performance Management and Continuous Improvement

- 11.1 Service NSW for Business does not require any provisions in relation to performance management
- 11.2 Service NSW for Business will work collaboratively with Council to ensure continuous improvement of its services to Council.
- 11.3 Any future extension of this Agreement by Service NSW with Council will specify the relevant performance management and continuous improvement provisions required.

12. Reporting

- 12.1 Service NSW for Business does not require any reporting arrangements
- 12.2 Any future arrangements that require reporting will be outlined in a Schedule to this Agreement.

13. Change Management

- 13.1 Each party will comply with the Change Management Process set out in Schedule 4.
- 13.2 The parties agree to complete a Change Request in the form set out in Schedule 4 to add to or vary the Services.

14. Governance

- 14.1 The parties agree to comply with the Governance Framework.

15. Business Continuity and Disaster Recovery

- 15.1 Each party will maintain Business Continuity and Disaster Recovery Plan arrangements to ensure that each party is able to continue to perform its obligations under this Agreement, or where performance is not possible, resume performance as soon as reasonably practicable in the event of a Disaster.

16. Dispute Resolution

- 16.1 In the event of a dispute between the parties, a party will:
- Raise the dispute with the other party's Relationship Manager and use best efforts to resolve the dispute;
 - If the dispute is not resolved within a reasonable period, the Chief Executive of the Council or their delegate will meet with the Chief Executive Officer of Service NSW (or their delegate) with a view to resolving the dispute.
 - If the dispute is not resolved under clauses 16.1(b) within a reasonable period, attempt to resolve any dispute in accordance with the Premier's Memorandum M1997-26.
- 16.2 Despite the existence of a dispute, each party must continue to perform its obligations.

17. Termination

- 17.1 Either party may terminate this Agreement in whole or in part by giving the other party 90 days written notice or as otherwise agreed.
- 17.2 On notice of termination or where Service NSW is otherwise required to cease to perform some or all of the Program, the parties will work together in good faith to finalise and agree a transition out plan to facilitate smooth and orderly transition of the relevant Program to the Council or the Council's nominated third party. Where the parties cannot agree, the dispute resolution provisions in clause 16 will apply.
- 17.3 Upon termination, each party agrees to return all Data and property belonging to the other party within 30 days of the termination date and comply with the transition out plan agreed under clause 17.2.

18. Miscellaneous

- 18.1 Entire Agreement
- This Agreement supersedes all previous Agreements, understandings, negotiations, representations and warranties and embodies the entire Agreement between the Parties about its subject matter.
- 18.2 Survival

The following clauses survive termination or expiry of the Agreement: Clauses 4, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19 and any other clause which by its nature is intended to survive termination or expiry of the Agreement.

18.3 Notices

A notice under this Agreement must be in writing and delivered to the address or email address of the recipient party.

18.4 Variation

All variations to this Agreement and all consents, approvals and waivers made under this Agreement must be evidenced in writing and variations signed by both parties.

18.5 Waiver

If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

10.6. Applicable law

The Agreement is governed by, and is to be construed in accordance with, the laws in force in NSW.

18.7 Counterparts

The Agreement may consist of a number of counterparts and if so, the counterparts taken together constitute one and the same instrument.

19. Execution

Blayney Shire Council has reviewed and accepts this Agreement

Signed for and on behalf of Blayney Shire Council by its authorised signatory	Signed for and on behalf of Service NSW by its authorised signatory
Name:	Name:
Title:	Title:
Date:	Date:
Signature:	Signature:
Witness:	Witness:
Signature:	Signature:

Schedules

Schedule 1 - Definitions

In these Partnership Agreement, except where a contrary intention appears:

Business Continuity and Disaster Recovery Plan means a business continuity and disaster recovery plan which documents the back-up and response actions each of the parties will take to continue its obligations if a Disaster occurs;

Change Request means the request for a change to the scope of Services in the form set out in Schedule 4;

Commencement Date means the date of start of this Agreement.

Confidential Information of a party means any written or oral information of a technical, business or financial nature disclosed to the other party, including its employees or agents, by the disclosing Party (whether orally or in writing) whether before or after the Commencement Date, that:

- A. is by its nature confidential; or
- B. is designated as confidential; or
- C. the other party knows or ought to know is confidential,
- D. but does not include information which:
 - a. is or becomes public knowledge other than by breach of this Agreement; or
 - b. is in the lawful possession of the Party without restriction in relation to disclosure before the date of receipt of the information; or
 - c. is required to be disclosed by Law, government policy or legal process.

Contact Centre has the meaning set out in Schedule 2;

Continuous Improvement Principles have the meaning set out in Schedule 2;

Continuous Improvement Process has the meaning set out in Schedule 2;

Data means the data of each party and all data and information relating to their operations, Personnel, assets, customers and systems in whatever form that may exist, including Confidential Information;

Disaster means an event that causes, or is likely to cause, a material adverse effect on the provision of the Services that cannot be managed within the context of normal operating procedures including interruption, destruction or other loss of operational capacity;

Existing Material means any material that is developed prior to entering into a Partnership Agreement, or developed independently of a Partnership Agreement, and includes any enhancements and modifications to its Existing Material created as part of a Partnership Agreement;

HRIP Act means the *Health Records and Information Privacy Act 2002* (NSW);

Instrument of Delegation means the instruments of delegation (including its terms and conditions) made by the Council in relation to the Delegated Functions.

Intellectual Property Rights includes patent, knowhow, copyright, moral right, design, semi-conductor, or circuit layout rights, trademark, trade, business or company names or other proprietary rights and any rights to registration of such rights, whether created before or after the Commencement Date, in Australia or elsewhere;

Middle Office has the meaning set out in Schedule 2;

Moral Rights means the right of integrity of authorship and the right not to have authorship falsely attributed, as confined by the *Copyright Act 1968* (Cth) and the rights of similar nature anywhere in the world, whether in existence before or after the Commencement Date;

New Contract Material means new data created, other than the solution or service design;

Partnership Agreement means these terms and conditions and includes Schedules 1, 2, 3 and 4.

Personal Information has the meaning given to it in the Privacy Laws, as amended from time to time;

Personnel means the person or persons employed or otherwise contracted by either party under this Agreement, as the context requires;

PPIP Act means the *Privacy and Personal Information Protection Act 1998* (NSW);

Privacy Law means any law that applies to either or both of the parties which affect privacy or any personal information or any health information (including its collection, storage, use or processing) including:

- A. the PPIP Act; and
- B. the HRIP Act.

Program means the Easy to do Business program;

Quarterly Forecast has the meaning set out in Schedule 2;

Relationship Manager means the nominated relationship managers of either party, as set out in the Service Agreement, or as otherwise nominated by a party from time to time;

Service Act means the *Service NSW (One-stop Access to Government Services) Act 2013* (NSW);

Service Centre has the meaning set out in Schedule 2;

Service NSW Standard Operating Conditions means the standard operating conditions met by Service NSW in the usual course of its performance of the Services set out in Schedule 2;

Subcontractor means a third party to which Service NSW has subcontracted the performance or supply of any Services;

Schedule 2

1. Service NSW Standard Operating Conditions

In addition to the Partnership Agreement this section covers the standard omnichannel service inclusions.

1.1. Service Centre

Similar services as those available at Service Centres may be offered through Mobile Service Centres. The Mobile Service Centre timetable is published regularly on the Service NSW website.

Inclusion	Description
Concierge and digital assisted services	A Service NSW Concierge will greet and direct customers to the appropriate channel and dispense a ticket where applicable. If the transaction can be completed online, a Digital Service Representative will assist the customer to complete the transaction
Customer sentiment surveys	Before leaving the centre, customers will be offered the option of leaving feedback via a digital terminal

1.2. Contact Centre

Similar services (to that of phone-based) may be offered through a web chat feature accessible via the Service NSW website.

Inclusion	Description
Virtual hold call back system	During high volume periods, customers will be offered the option of leaving their details with an Interactive Voice Response (IVR) auto attendant. Customers can hang up while holding their place in the queue. Their call will be returned by the next available operator
Inbound number	Service NSW will answer all inbound enquiries on 13 77 88 as 'Service NSW'
Call coding	A Customer Service Representative will record the customer's reason for calls and the outcome
Customer sentiment surveys	Once the call is complete, customers will be offered the option of leaving feedback via an automated IVR system

1.3. Middle Office

Inclusion	Description
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Enquiry triage	Service NSW will triage enquiries received to info@service.nsw.gov.au or via Service NSW website 'Contact Us' page and <ul style="list-style-type: none"> - Resolve these enquiries or; - Refer it to the appropriate business area at the Council
Enquiry coding	A Customer Service Representative will record the customer's reason for enquiring and the outcome

1.4. Service NSW Website and Mobile App

Inclusion	Description
Scheduled maintenance and planned outages	Service NSW will conduct regularly scheduled maintenance of the website and mobile app. 10 business days of notice will be provided regarding outages from planned and scheduled maintenance Maintenance activities with negligible impact or outage, such as enhancements to optimise for cybersecurity or performance, may occur without notification to the Council

1.5. Service NSW for Business

Service NSW for Business provides a multi-channel service including digital, phone and face-to-face services for metro and regional businesses in NSW and develops relationships with councils and business associations to promote the offering to local businesses.

Inclusion	Description
Relationship management	Business Customer Service staff initiate and maintain relationships with councils and business associations to promote awareness and use of the service offering by such stakeholders and their local business community. It may include, but is not limited to, information sharing, regular liaison at events and stakeholder premises and issue of surveys.
Scheduled Maintenance and Planned Outages	Digital products controlled by Service NSW for Business will be regularly updated, upgraded and maintained without any outages.

1.6. Training

Service NSW will provide appropriately trained Personnel to deliver the Services.

1.7. Language

Service NSW will provide services in English and may arrange translation and interpreter services for customers from non-English speaking backgrounds if required.

1.8. Branding

Unless otherwise set out in the Partnership Agreement, Service NSW channels are singularly branded. Marketing communication is limited to Service NSW led or co-led campaigns and programs.

1.9. Contractors and Agents

Service NSW may use contractors and agents in connection with the delivery of Services. Such agents and contractors are approved persons under Part 2 Section 12 of the Service Act.

1.10. Out of Scope Services

Any item, service or deliverable that is not specified in a Partnership Agreement is deemed to be out of scope for Service NSW.

2. Operational Framework

Service NSW operational framework outlines how operations are managed on a day-to-day basis.

Operational Support	Description
Knowledge Management	Service NSW creates and maintains support material (knowledge articles) for serving customers. These will be sent to the Council for endorsement of content accuracy bi-annually
Complaints Management	Service NSW will record complaints and its supporting information unless resolved at the outset. Service NSW will contact the Council where assistance is required
Issues Management	Issues relating to existing products and services should be raised via partnerships@service.nsw.gov.au or directly with the Relationship Manager The Relationship Manager will assess the issue and facilitate a resolution within Service NSW, providing regular updates
Quality control framework/ compliance	Service NSW has a quality control framework that governs transactional activities in line with risk assessment at the time of onboarding The framework includes: <ul style="list-style-type: none"> - Regular review of contact centre calls, including being assessed against procedure and process used by the agent during the call - Daily quality checks of transactions undertaken by the service centre - Quarterly compliance reviews and certifications provided by all service delivery channels

2.1. IT Operations & Support

Service NSW runs a 24/7, 365 days a year service desk. Unplanned interruptions or degradations in quality of service should be raised to the Service NSW Service Desk on 1300 697 679 (option 2) or servicedesk@service.nsw.gov.au

Incident response times in our production environment are prioritised based upon urgency and impact, with associated response and resolution times.

Priority Code	Service Level Target Response/Resolution Time
P1 - Critical	Response: Immediate response, action/update within 15 minutes Resolution: 2 hours
P2 - High	Response: Immediate response, action/update within 30 minutes Resolution: 4 hours
P3 - Medium	Response: 8 hours Target Resolution: 10 working days
P4 - Low	Response: Email notification of call being logged within 2 days. Response by email or phone within 2 working days Target Resolution: 20 working days

Where vendors or other government platforms are involved, Service NSW utilises a best practice vendor governance framework for service level Agreements and for priority 1 and 2 incidents.

2.2. System and Security Maintenance

Service NSW complies with the NSW Government Cyber Security Policy and operates an information security management system that is certified against ISO 27001. These engagement Terms do not extend the certification scope to the Council's specific activities.

3. Customer Payments

Service NSW will collect payments from customers for transactions set out in the Service Agreement. Cash, cheque, money order, credit or debit card may be accepted and merchant fees plus GST will be recovered.

Service NSW will provide remittances and reconciliation files to the Council which include:

- A. Credit T+2 value for cash, cheques* and bank card payments
- B. Credit T+2 value for AMEX payments
- C. Debit any cheques dishonoured
- D. Debit any card payment chargebacks
- E. Debit any refunds processed on behalf of the Council

Cheque payments received over \$50,000 will be remitted back to the Council once the funds clear the Service NSW remitting bank account.

4. Business Continuity and Disaster Recovery

Service NSW will maintain an Enterprise Risk Management Framework focused on managing risks to Service NSW, including mitigation of the likelihood and impact of an adverse event occurring. As a function of risk management, business continuity management will enable Service NSW to minimise disruptive risks and restore and recover its business-critical services within acceptable predefined timeframes should an adverse event or other major business disruption occur.

Recovery and timeframes may be impacted when events or disruptions are related to dependencies on partner Agencies. The Parties will agree on Recovery Point Objectives and Recovery Time Objectives and associated charges prior to designing the system and will periodically review these objectives.

All systems and technology provided by Service NSW internally and through third-party vendors, operate through multiple data centres to achieve high availability. Service NSW systems are architected, where practicable and possible, to ensure continuity of service in the event of a data centre disruption or outage.

Definitions

Recovery Point Objectives means the age of files that must be recovered from backup storage for normal operations to resume if a computer, system, or network goes down as a result of a hardware, program, or communications failure.

Recovery Time Objectives means the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity.

5. Continuous Improvement

Service NSW regularly reviews improvement ideas from employees and customers. We will provide you with any ideas relevant to your agency for consideration.

'Continuous Improvement' refers to identifying a process, system or policy opportunities that will deliver a benefit for our people, our customers or the NSW government. These improvements may be delivered in house where possible or by engaging our partnering agencies where further input or decisions are required under policy or legislation. A Continuous Improvement:

- A. Puts the customer first
- B. Makes the customer service job easier
- C. Improves a step in a process
- D. Changes the way a task is completed so that it doesn't take as long
- E. Reduces handling time and is cost effective
- F. Allows others to benefit from best practices
- G. Allows us to do things better locally, regionally or organisation-wide
- H. Is a low-investment process change and not a policy change
- I. Improves accountability within the various stages of the process
- J. Removes steps that don't add any value to a process

Service NSW will consider several factors such as cost to implement, cost savings, customer experience, team member experience and operational efficiency in prioritising continuous improvements.

5.1. Continuous Improvement Process

The parties will identify new continuous improvement initiatives on an annual basis, with a 6-monthly check-in on ongoing continuous improvement initiatives.

When establishing a new continuous improvement initiative, the parties will classify the initiative based on

whether it can be implemented as:

- A. part of the ongoing 'business as usual' services (cost and resourcing to be absorbed by Service NSW;
or
- B. a new project initiative (cost and resourcing to be agreed by the parties).

A prioritisation process will be agreed upon between the parties to prioritise initiatives (for Service NSW, this will be performed by the Partnerships team).

The Council may be required to effect policy, system or regulatory changes to assist in delivering the service process improvement, as agreed with Service NSW. Where a review of Council policy, system or regulatory changes is requested by Service NSW from the Council, these should be conducted within timeframes agreed between the respective Relationship Managers.

Schedule 3 – Privacy and Data Security

(a) General

- (i) Service NSW may collect, use, disclose, store and retain personal information when exercising functions for the Council:
- (ii) Where Service NSW exercises functions for the Council, Service NSW can share information it obtains with the Council without separately requesting the customer's consent. Service NSW can also share the information it obtains with any person that the Council is authorised or required to disclose the information to in accordance with the Service Act.

(b) Access to Agency Systems

- (i) The Parties agree that Service NSW will not have access to the Council's information system.

(c) Collection of information

- (i) Service NSW may incidentally collect Personal Information via call recordings in the course of answering queries on behalf of Council or referring customers to Council. Personal Information collected may include: full name, address, contact number or email address.
- (ii) Service NSW will take reasonable steps to ensure that the Personal or Health Information it collects on behalf of the Council is, relevant, accurate, up-to-date and complete.
- (iii) Service NSW will provide a privacy collection notice to customers whenever it collects their information.
- (iv) If Service NSW collects personal information for its own internal purposes, when exercising functions for the Council, it will ensure that the privacy collection notice meets the requirements of section 10 of the *PIPA Act* in light of section 15(3) of the *Service Act*.
- (v) The notice will address each of the matters that a privacy collection notice is, by law, required to address. Service NSW will develop the content of the notice in consultation with the Blayney Shire Council.

(d) Internal records maintained by Service NSW

- (i) Under the *Service Act*, Service NSW is permitted to collect, maintain and use the following records for its internal administrative purposes, including for the purposes of its interactions with customers for whom functions are exercised:
 - Details of transactions between customers and Service NSW
 - The preferences of customers for transacting matters with Service NSW and the Blayney Shire Council, and
 - Other information about customers.
- (ii) Service NSW collects, maintains and uses the following information for its internal administrative purposes:
 - Details of transactions between customers and Service NSW
 - The preferences of customers for transacting matters with Service NSW and the Blayney Shire Council, and

- Other information about customers.

(e) Use of information

- (i) Service NSW can use information in accordance with the *Service Act*, PPIP Act and HRIP Act.
- (ii) Service NSW uses Personal Information for the purposes of assisting customers in directing queries to Council, training and quality purposes.

(f) Disclosure

- (i) Service NSW can disclose information in accordance with the *Service Act*, PPIP Act and HRIP Act.
- (ii) Where Service NSW performs a transaction for a customer, when exercising functions for the Council, it will ask the customer for consent before sharing that information with a different agency,

(g) Retention

- (i). Personal Information collected via call recordings is stored in Genesys. The length of data retention will be directly related to the purpose for which it was collected and retained. Data is maintained for the minimum period required. Call recordings are available for 3 months and subsequently archived. **(h)**

(h) Data Security

- (i). Personal Information stored in Genesys follows a comprehensive User Access Matrix controlled by Government Technology Platforms Virtual Contact Centre Team. Role based access to the system is granted to users at the minimum level required to perform their duties and to protect against unauthorised access, use, modification or disclosure. Access vi SSO with dfsi.okta.com. The Genesys PureCloud environment is whitelisted and only users on the corporate network or VPN can access the platform. The User Access Matrix is reviewed monthly and a detailed review is conducted every 6 months. The User Access Matrix is a comprehensive document that shows details such as the time of last login, date the account was disabled, date of termination, date of extension, date of role review, name of the reviewer.

(i) Privacy Management plans

The parties agree to update and periodically review their privacy management plans or other relevant policy documents so that any person can ascertain whether Service NSW or the Council holds personal information relating to that person and if so, the nature of the information, the main purposes for which it is used and the person's entitlement to access the information, in relation to the services covered by this Agreement.

(j) Access to and amendment of Personal Information

- (i) Service NSW agrees that it will provide any individual who requests it with access to their own personal information without excessive delay and without any expense, in relation to information it holds as a result of exercising functions for the Council.

(k) Privacy Officer

The parties have nominated a Privacy Officer who is the point of contact for dealing with complaints, applications for internal reviews, data breaches, employee education and other privacy matters.

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Privacy Officers can be contacted as follows:

Service NSW:

Privacy Officer

Service NSW

2-24 Rawson Place, Sydney NSW 2000

Phone: 13 77 88

Email: privacy@service.nsw.gov.au

Blayney Shire Council:

[Name of Council Privacy Officer]:

Schedule 4- Change Management

1. Change Management Process

Change is defined as any alteration to services, process, technology or product. Changes may be initiated by Service NSW or the Council. Where a change to the Services is requested by a party, set out below is the following process:

- 1.1. The party requesting the change will notify the other party's Relationship Manager as soon as possible;
- 1.2. The Relationship Managers will meet within 5 days to discuss the requested change;
- 1.3. The Relationship Managers will work collaboratively to conduct a high-level change assessment of the change, and agree and draft a Change Request, considering the following factors:
 - A. Current state and desired future state outcomes;
 - B. Impacts on customers and both parties informed by end-to-end customer journey;
 - C. Additional resource effort; potential cost and timing of implementation;
 - D. Implementation and testing requirements;
 - E. Legislation/policy that may be required;
 - F. Whether variation to the Partnership Agreement will be required; and
 - G. Continuous Improvement Principles
- 1.4. The parties will sign the Change Request, which will be incorporated into this Agreement.

Where a change relates to Service NSW's IT systems, the Council will notify Service NSW within a reasonable period to outline the proposed change and requested timeframes. Service NSW will consider the change and advise whether an increased cost to implement the change is required.

Service NSW will assess the results and implement corrective action to ensure sustainability of the change to the Services. Changes to the Services will be reported on in the monthly management meeting between Relationship Managers.

2. Change Request Template

This Change Request is created in accordance with the Partnership Agreement	
Date of Change Request	
Originator of Change Request	
Proposed Implementation Date	
Cost	<Cost>
Summary and scope:	
Service NSW responsibilities:	

Council responsibilities:
Change plan:
Change impact (Including the effect on service levels):
Assumptions and exclusions:
List of documents forming part of this change request:
Clauses affected by this change request: