

Constitution

Sunburnt Arts Ltd

ACN: 672 941 276

Incorporated	November 7, 2023
Review	February 7, 2024
Updated	February 18, 2024

Table of contents

1. Name	5
2. Purpose and Powers	5
3. Mission Statement	5
4. Not-For-Profit	5
5. Membership	5
5.1 General	5
5.2 Membership Classes	5
5.3 Eligibility	6
5.4 Membership Rights	6
5.5 Application	6
5.6 Admission	6
5.7 Annual membership fee	7
5.8 Register	7
5.9 Reserve powers of the members	7
5.10 Ceasing to be a Member	7
5.11 Liability of Members	8
6. Convening General Meetings	8
6.1 Convening general meetings	8
6.2 Changes to general meeting arrangements	8
6.3 Entitlement to receive notice	8
6.4 Notice of general meetings	8
6.5 Timing of notice	9
6.6 Annual General Meeting	9
6.7 Chairperson of General Meetings	9
6.8 Quorum for General Meetings	9
6.9 Adjournment of General Meetings	10
6.10 Auditor's Rights	10
7. Voting at General Meetings	10
7.1 Voting rights	10
7.2 Method of Voting	10
7.3 Decisions of the Members	10
7.4 Seconding	11
7.5 Proxies	11
7.6 Use of technology in General Meetings	11
7.7 Resolutions without meetings	11
8. Dispute Resolution	11
9. Appointment and Removal of Directors	12
9.1 Number and composition of Directors	12
9.2 Eligibility	12
9.3 Appointment of Directors	12
9.4 Term of office	12
9.5 Ceasing to be a Director	13
9.6 Discipline of a Director:	13
9.7 Leave of absence	13
9.8 Insufficient Directors	14

9.9 Defects in appointment of Directors	14
10. Board Decision Making	14
10.1 Convening Board meetings	14
10.2 Notice of Board meetings	14
10.3 Quorum for Board meetings	14
10.4 Use of virtual technology in Board meetings	14
10.5 Chairperson of Board meetings	15
10.6 Voting at Board meetings	15
10.7 Resolutions without meetings	15
11. Directors' Powers and Duties	15
11.1 Powers of the Board	15
11.2 Duties of Directors	15
11.3 Establishment of committees	15
11.4 By-laws	16
12. Directors' Interests	16
12.1 Conflicts of interest	16
12.2 Permissible conduct	16
13. Office Bearers	17
13.1 Appointment of Office Bearers	17
13.2 Secretary	17
13.3 Treasurer	17
14. Indemnities And Insurance	18
15. Administration	18
15.1 Minutes and records	18
15.2 Members' access to Company records	18
15.3 Common seal	18
15.4 Execution of documents	18
16. Records, Accounting and Audit	18
16.1 Accounts and other records of the Company	18
16.2 Audit	19
16.3 Financial year	19
17. Amending This Constitution	19
18. Notices	19
19. Winding Up or Revocation of Endorsement	19
19.1 Contribution of a Member on winding up	19
19.2 Distribution of assets on winding up or revocation of endorsement	19
20. Establishment of Public Fund	20
20.1 Administration of Public Fund	20
20.2 Winding up, dissolution or revocation of Public Fund	21
21. Interpretation	21
21.1 Definitions	21
21.2 Interpretation	22
21.3 Exclusion of replaceable rules	22
22. Transitional Provisions	22
22.1 Members	22
22.2 Directors	22
Appendix 1. Ten Principles of Burning Man	

1. Name

The name of the Company is Sunburnt Arts Ltd (the **Company**).

2. Purpose and Powers

- 2.1 The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a Charity.
- 2.2 The Purpose for which the Company is established is to advance and promote certain cultural forms and activities including music, performing arts, visual arts, and art illustration, by any means.
- 2.3 Solely to carry out the Purpose, the Company may exercise all of the powers of an individual and a company under the Act

3. Mission Statement

Sunburnt Arts' mission is to curate and celebrate cultural expressions in alignment with the Ten Principles of Burning Man (Appendix 1), lifting the human spirit and addressing social problems as a means to inspiring a sense of culture, community and cultural engagement. The Company seeks to do this for the benefit of participants and the wider community.

4. Not-For-Profit

- 4.1 The income and property of the Company must be applied solely towards the Purpose.
- 4.2 No part of the income or property of the Company may be paid or transferred directly or indirectly to Members or Directors by way of dividend, bonus or other profit distribution in their capacity as Members or Directors.
- 4.3 Clause 4.2 does not stop the Company from making a payment:
 - 4.3.1 to a Member for goods or services provided or expenses properly incurred at fair and reasonable rates or rates more favourable to the Company;
 - 4.3.2 to a Member in carrying out the Company's Purpose;
 - 4.3.3 of premiums for insurance indemnifying Directors to the extent allowed for by law and this Constitution; or
with the prior approval of the Board, to a Director as reimbursement for out-of-pocket expenses properly incurred in performing a duty as Director; and
 - 4.3.4 any payments made to a member under 4.3.1 - 4.3.3 may only be paid with the written approval of the Standing Committee: Finance and Risk.

5. Membership

5.1 General

The minimum number of Members is five or double the number of sitting board members - whichever is higher.

5.2 Membership Classes

- 5.2.1 The Company will have two Membership Classes:
 - 5.2.1.1 Voting Members; and
 - 5.2.1.2 Associate Members.
- 5.2.2 Membership of the Company must be within a Membership Class in accordance with this clause and clauses 5.3 and 5.4.
- 5.2.3 A person admitted to a Membership Class will be entitled to exercise the rights set out in accordance with clause 5.4 and will be required to meet all liabilities and requirements attaching to that Membership Class by reason of this Constitution.

5.3 **Eligibility**

- 5.3.1 To be eligible for Associate Membership, a person must be:
 - 5.3.1.1 A natural person;
 - 5.3.1.2 committed to the Purpose of the Company;
 - 5.3.1.3 at least 18 years old; and
 - 5.3.1.4 agree to comply with the Code of Conduct and this Constitution.
- 5.3.2 To be eligible for Voting Membership, a person must:
 - 5.3.2.1 meet the eligibility criteria of clause 5.3.1; and
 - 5.3.2.2 have attended a Burning Seed event as a participant at least once with the most recent occasion in the last five physical events; or
 - 5.3.2.3 have provided a contribution towards the Burning Seed event's coordination and obtained a Burning Seed email address.

5.4 **Membership Rights**

- 5.4.1 Voting Members are entitled to:
 - 5.4.1.1 receive notices of, attend and speak at a General Meeting;
 - 5.4.1.2 vote at a General Meeting; and
 - 5.4.1.3 receive any additional Voting Member benefits as are prescribed by the Board from time to time.
- 5.4.2 Associate Members are:
 - 5.4.2.1 entitled to receive notices of, attend and speak at a General Meeting;
 - 5.4.2.2 not entitled to vote at a General Meeting; and
 - 5.4.2.3 entitled to receive any additional Associate Member benefits as are prescribed by the Board from time to time.

5.5 **Application**

- 5.5.1 An application for Membership must be made in writing in the form and manner (if any) approved by the Board to the Membership Committee.
- 5.5.2 The Membership Committee is responsible for receiving and processing applications and for the general management of Voting Members and Associate Members.
- 5.5.3 The Membership Committee will make recommendations to the Board as to whether an application should be accepted or rejected within a reasonable time.
- 5.5.4 An applicant for Voting Membership must pay the annual membership fee.
- 5.5.5 An applicant must agree in writing to contribute the Guaranteed Amount in accordance with clause 19.1.

5.6 **Admission**

- 5.6.1 The Board must consider the recommendations of the Membership Committee within a reasonable time.
- 5.6.2 The Board does not have to give reasons for accepting any application.
- 5.6.3 If the Board accepts an application, the Secretary must, as soon as possible, enter the applicant's details into the Register (subject to the payment of the annual membership fee).
- 5.6.4 The Secretary must notify the Membership Committee of the accepted or rejected application.
- 5.6.5 The Membership Committee must notify the Member in writing of the date their membership commenced.

5.6.6 If the Board rejects an application, the Membership Committee must notify the applicant in writing of the rejection as soon as possible.

5.6.7 A person becomes a Member when their name is entered into the Register.

5.7 Annual membership fee

5.7.1 The annual membership fee for a Voting Member is \$10.

5.7.2 The annual membership fee is due and payable on 1 July each year.

5.7.3 The rights of a Voting Member (including the right to vote) who has not paid the annual membership fee by the due date are suspended until it is paid.

5.7.4 If a Voting Member does not pay their annual membership fee within 60 days of receiving a notice of payment from the Company, the Member is deemed to have resigned their Membership.

5.8 Register

5.8.1 The Secretary must maintain the Register.

5.8.2 The Register must contain:

5.8.2.1 the name, address, Membership Class, and date of admission to Membership – for each current Member; and

5.8.2.2 the name, date of admission to Membership and date on which a person stopped being a Member – for each person who ceased to be Member in the past seven years.

5.8.3 The Secretary may keep former Member entries separately from current Member entries.

5.8.4 Notices may be served on a Member at their address in the Register.

5.8.5 The Company must give Members access to the Register in accordance with the Act.

5.8.6 Information that is accessed from the Register must only be used in a manner relevant to the interests or rights of Members.

5.9 Reserve powers of the members

If the Board proposes to make significant purchases and expenditures (worth at least 25% of the Company's assets) or sell important assets (being assets that the Company cannot undertake its activities without and /or which make up at least 10% of the Company's net worth), it must first obtain the Voting Members' approval for the purchase, expense or sale by resolution.

5.10 Ceasing to be a Member

5.10.1 A person ceases to be a Member on:

5.10.1.1 death;

5.10.1.2 resignation;

5.10.1.3 expulsion after the processes set out in the Code of Conduct have been exhausted;

5.10.1.4 deemed resignation in accordance with clause 5.7.4;

5.10.1.5 the Board deeming, in its sole discretion, the Member to be an untraceable Member because the person has not responded to correspondence within 60 days;

5.10.1.6 failing to satisfy the relevant eligibility requirements for the Member's Membership Class and the Membership not being transferred to another Membership Class; or

5.10.1.7 becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law related to mental health.

5.10.2 The Board may, in its sole discretion, refund all or part of any annual membership fee

in the event of a person ceasing to be a Voting Member, either on a pro rata basis or otherwise.

5.10.3 There will be no liability for any loss or injury suffered by a Member as a result of any decision made in good faith under this clause.

5.10.4 Any person who for any reason ceases to be a Member must not represent themselves in any manner as being a Member.

5.11 **Liability of Members**

The liability of a Member is limited to the Guaranteed Amount, being \$10.

6. **Convening General Meetings**

6.1 **Convening general meetings**

6.1.1 The Board may call a general meeting.

6.1.2 If the Company receives a written request from Members with at least 5% of the votes that may be cast at a general meeting to call a general meeting (a **Request**), the Board must:

6.1.2.1 give all Members notice of a general meeting within 21 days of the Request; and

6.1.2.2 hold the general meeting within 2 months of the Request.

6.1.3 The Request must state any resolution to be proposed at the meeting.

6.1.4 If the Board does not call the meeting within 21 days of a Request, 50% or more of the Members who made the request may call a general meeting.

6.1.5 To call and hold a meeting under clause 6.1.4 the Members must:

6.1.5.1 as far as possible, follow the general meeting procedures in this Constitution; and

6.1.5.2 hold the general meeting within three months after making the Request.

6.1.6 The Company must pay the Members who make the Request any reasonable expenses they incur because the Board did not call and hold the meeting.

6.2 **Changes to general meeting arrangements**

6.2.1 The Board may change the venue for, postpone or cancel a general meeting called under clause 6.1.1.

6.2.2 If a change is made under clause 6.2.1:

6.2.2.1 notice of the change must be given to all persons entitled to receive notices of a general meeting under this Constitution;

6.2.2.2 a notice of postponement must specify the date, time and place to which the general meeting has been postponed; and

6.2.2.3 clause 6.5 does not apply to the notice.

6.2.3 The only business that may be transacted at a general meeting which is postponed is the business specified in the original notice convening the meeting.

6.3 **Entitlement to receive notice**

Notice of a general meeting:

6.3.1 must be given to every Member and every Director; and

6.3.2 may be given to any auditor appointed for the Company and in office at the time.

6.4 **Notice of general meetings**

A notice of general meeting must:

6.4.1 be in writing;

- 6.4.2 state the place, day and time of the meeting;
- 6.4.3 provide details of any technology that will be used to facilitate the meeting;
- 6.4.4 state the general nature of the business to be transacted at the meeting;
- 6.4.5 state the wording of any special resolution to be considered (and state that it is proposed as a special resolution); and
- 6.4.6 state that proxy voting is not permitted.

6.5 Timing of notice

At least 21 days' notice must be given of a General Meeting (other than a meeting to consider a resolution to remove a Director or auditor) unless:

- 6.5.1 in the case of an Annual General Meeting, all the Members entitled to attend and vote agree beforehand; and
- 6.5.2 in the case of any other General Meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.

6.6 Annual General Meeting

- 6.6.1 The Board must hold an Annual General Meeting at least once in every calendar year.
- 6.6.2 The business of an Annual General Meeting may include any of the following (even if not stated in the notice of meeting):
 - 6.6.2.1 the annual financial statements and any auditor's report;
 - 6.6.2.2 the appointment of Directors; and
 - 6.6.2.3 the appointment and remuneration of any auditor.

6.7 Chairperson of General Meetings

- 6.7.1 A Chair will preside as chairperson at every General Meeting.
- 6.7.2 The Chair will rotate from meeting to meeting.
- 6.7.3 If there is no Chair, the Chair is not present within 15 minutes of the commencement time or the Chair is unwilling to act as chairperson for all or part of the meeting, the following may preside as chairperson (in order of precedence):
 - 6.7.3.1 the Deputy Chair (if any);
 - 6.7.3.2 a Director chosen by a majority of the Directors present;
 - 6.7.3.3 the only Director present; or
 - 6.7.3.4 a Member chosen by a majority of the Members present.

6.8 Quorum for General Meetings

- 6.8.1 No business may be transacted at a General Meeting (other than electing a chairperson or adjourning the meeting), unless a quorum is present at the time the business is dealt with.
- 6.8.2 A quorum for a General Meeting is a majority of the Members for the whole meeting.
- 6.8.3 If a quorum is not present within 15 minutes of the commencement time, then:
 - 6.8.3.1 if the meeting was called by, or at the request of Members, the meeting will dissolve;
 - 6.8.3.2 otherwise:
 - 6.8.3.2.1 the meeting stands adjourned to the day, time and place, determined by the Board or (if no determination is made by the Board), to the same day, time and place in the following week; and
 - 6.8.3.2.2 if at the resumption of the meeting a quorum is not present

within 15 minutes of the commencement time, the meeting will dissolve.

6.8.4 A suspended Member is not counted for the purpose of determining a quorum.

6.9 **Adjournment of General Meetings**

6.9.1 The chairperson may (and must if directed by a majority of the Members present and entitled to vote) adjourn the meeting or any business, motion, or discussion being considered or remaining to be considered.

6.9.2 Only unfinished business may be transacted at a General Meeting resumed after an adjournment.

6.9.3 It is not necessary to give any notice of an adjournment, or of the business to be transacted at any adjourned meeting, unless a meeting is adjourned for one month or more.

6.9.4 A meeting adjourned under this clause is adjourned to the day, time and place determined by the Board or (if no determination is made by the Board), to the same day, time and place in the following week.

6.10 **Auditor's Rights**

6.10.1 Any auditor appointed by the Company and in office at the time of a General Meeting is entitled to:

6.10.1.1 attend any General Meeting; and

6.10.1.2 be heard at the General Meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.

6.10.2 The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any General Meeting.

7. **Voting at General Meetings**

7.1 **Voting rights**

7.1.1 Each Voting Member has one vote (provided they are not suspended).

7.1.2 On a vote conducted at a General Meeting by poll, each person present who is a Voting Member has one vote.

7.2 **Method of Voting**

7.2.1 Voting will occur by the method determined by the chairperson.

7.2.2 A poll can be demanded by five Voting Members at any time prior to a vote, or immediately after the declaration of a result of a vote conducted by means other than a poll.

7.2.3 A poll must be taken in the manner directed by the chairperson.

7.2.4 A poll demanded on the election of the chairperson or on a question of adjournment must be taken immediately.

7.2.5 A Voting Member may vote in person or by technology.

7.3 **Decisions of the Members**

7.3.1 Questions arising for determination (other than a Special Resolution) will be decided by a majority of votes cast (unless otherwise provided in this Constitution).

7.3.2 The chairperson has a deliberative vote. If the votes cast on a motion are equal the chairperson will not have a casting vote and motion will be lost.

7.3.3 A declaration by the chairperson that a resolution has been carried or lost on a show of hands or voices is conclusive evidence of the fact (unless a poll is demanded).

7.3.4 An objection to the right of a person to vote may only be raised at the meeting at which the vote objected to is given or tendered. Any objection must be referred to the chairperson, whose decision is final. A vote not disallowed pursuant to such an

objection is valid for all purposes.

7.4 **Seconding**

It is not necessary for a motion to be seconded in order to be put to a vote.

7.5 **Proxies**

Proxy voting is not permitted.

7.6 **Use of technology in General Meetings**

7.6.1 The Company may hold its meetings using any technology that is agreed to by the Board.

7.6.2 The use of any technology must allow the person a reasonable opportunity to participate including a reasonable opportunity to exercise a right to speak.

7.6.3 The Board's agreement may be a standing one.

7.6.4 A person who attends by technology is deemed to be present in person at the meeting.

7.6.5 A Voting Member participating through the use of technology:

7.6.5.1 must be given the opportunity to participate in a vote in real time; and

7.6.5.2 may, in the sole discretion of the Board, be given the opportunity to record a vote in advance of the meeting, in which case the voter may elect to vote in real time or in advance.

7.6.6 A document that is required or permitted to be tabled at a meeting using technology is taken to have been tabled if it is:

7.6.6.1 given to the persons entitled to attend the meeting (whether physically or using technology) before the meeting; or

7.6.6.2 made accessible to the persons entitled to attend the meeting (whether physically or using technology) during the meeting.

7.7 **Resolutions without meetings**

7.7.1 This clause does not apply to a Special Resolution, a resolution to remove a Director or a resolution to appoint or remove an auditor.

7.7.2 A resolution may be passed without a meeting if:

7.7.2.1 notice is given to all Members entitled to vote; and

7.7.2.2 at least 75% of all of Members entitled to vote approve the resolution in writing.

7.7.3 For the purpose of this clause:

7.7.3.1 the notice must include the wording of the resolution and may be distributed by any means, including electronic communication;

7.7.3.2 approval in writing includes approval by email and any other means of electronic communication; and

7.7.3.3 the resolution will fail if it does not receive the required approval within 7 days after the notice is given.

7.7.4 Resolutions without meetings must be recorded in the minutes.

8. **Dispute Resolution**

8.1 The Company's Code of Conduct will determine the procedure to be followed to determine any dispute arising between:

8.1.1 a Member and another Member;

8.1.2 a Member and the Board; and

8.1.3 a Member and the Company.

- 8.2 The Board will be subject to the following:
- 8.2.1 a Member may appoint any Person to act on behalf of the Member in the dispute resolution procedure;
 - 8.2.2 each party to the dispute has been given an opportunity to be heard on the matter which is the subject of the dispute; and
 - 8.2.3 the outcome of the dispute must not be determined by a biased decision-maker.

9. Appointment and Removal of Directors

9.1 Number and composition of Directors

At all times, the Company must have at least three Directors and not more than seven Directors.

9.2 Eligibility

- 9.2.1 Any natural person committed to the Purpose is eligible to be a Director provided:
- 9.2.1.1 the person is a Voting Member;
 - 9.2.1.2 the person has consented in writing to be a Director;
 - 9.2.1.3 the person has suitable qualifications, skills and experience to discharge the functions of a Director, as determined by the Board from time to time; and
 - 9.2.1.4 the person is not ineligible to be a Director under:
 - 9.2.1.4.1 the Act; or
 - 9.2.1.4.2 the ACNC Legislation.
- 9.2.2 Rule 9.2.1.4.2 will not apply to disqualify a person if an exemption is obtained from the ACNC Commissioner.

9.3 Appointment of Directors

- 9.3.1 Nominations will be managed by the Membership Committee in accordance with the Company's Nominations and Elections Policy.
- 9.3.2 The Voting Members will elect a person to be a Director by resolution using the single transferable vote method in accordance with the Company's Nominations and Elections Policy.
- 9.3.3 The Board may appoint a Voting Member to fill a casual vacancy. Where possible, the Voting Member will be the runner up of the last election.
- 9.3.4 An election must be held within six months of the Company's incorporation.

9.4 Term of office

- 9.4.1 The term of office of a Director elected by the Members:
- 9.4.1.1 is three years;
 - 9.4.1.2 commences at the end of the General Meeting at which they are elected; and
 - 9.4.1.3 expires at the end of the third Annual General Meeting following the election.
- 9.4.2 The term of office of a Director appointed by the Board:
- 9.4.2.1 commences on the date of appointment; and
 - 9.4.2.2 expires at the conclusion of the first Annual General Meeting following the appointment.
- 9.4.3 Subject to clause 9.4.4 a person may be appointed as a Director for more than one term of office.
- 9.4.4 Prior to appointing an individual as a Director who has served at least one term, the Board must consider the desirability of renewal on the Board, including introducing

new perspectives and giving different individuals an opportunity to serve.

9.5 **Ceasing to be a Director**

A person stops being a Director, and a casual vacancy is created, if they:

- 9.5.1 are found to have breached the Code of Conduct due to a disqualifying breach;
- 9.5.2 resign by written notice to the Company;
- 9.5.3 cease to be a Voting Member;
- 9.5.4 are removed by the Members under the Act;
- 9.5.5 are removed in accordance with clause 9.6;
- 9.5.6 are absent without leave of the Board, from:
 - 9.5.6.1 three consecutive Board meetings; or
 - 9.5.6.2 four Board meetings over 12 months;
- 9.5.7 die, or become subject to a Court order to receive treatment or have their finances managed by another person due to being of unsound mind or having a mental illness;
- 9.5.8 are directly or indirectly interested in any contract or proposed contract with the Company and fail to declare the nature of the interest as required by the Act; or
- 9.5.9 become ineligible to be a Director under the Act or the ACNC Legislation.

9.6 **Discipline of a Director:**

- 9.6.1 The Board may take disciplinary action against a Director if it believes there are sufficient grounds to do so, including a breach of the Company's Code of Conduct.
- 9.6.2 The Board may only resolve to take disciplinary action against a Director in a Board meeting.
- 9.6.3 If the Board intends to consider a resolution to discipline a Director, it must notify the Director (in writing) who is the subject of the proposed resolution 7 days prior to the relevant board meeting:
 - 9.6.3.1 of the date, place and time of the meeting where the resolution will be considered;
 - 9.6.3.2 of the intended resolution and the grounds on which it is based; and
 - 9.6.3.3 that they may attend the meeting and give a verbal or written explanation or submission before the resolution is voted on.
- 9.6.4 After considering any oral or written explanation or submission, the Board may resolve to:
 - 9.6.4.1 take no further action;
 - 9.6.4.2 formally warn the Director;
 - 9.6.4.3 issue a formal motion of censure; or
 - 9.6.4.4 refer the matter to an unbiased independent decision maker who will determine whether a serious breach of the Code of Conduct

9.7 **Leave of absence**

- 9.7.1 Directors are entitled to request a leave of absence from Board meetings for a maximum period of six months, subject to approval by the Board.
- 9.7.2 Leave of absence requests must be made in writing to the Board and cannot be granted retrospectively, unless there are extenuating circumstances (as agreed by the Board from time to time) which given rise to a retrospective approval.
- 9.7.3 The Board will consider any request for a leave of absence at its next scheduled meeting (unless there are extenuating circumstances (as agreed by the Board from time to time)).

- 9.7.4 A Director on an approved leave of absence:
- 9.7.4.1 is not counted for the purpose of forming a quorum in accordance with clause 10.3 or passing resolutions without meetings in accordance with clause 7.7;
 - 9.7.4.2 will be recorded in Board meeting minutes as a Board member on an approved leave of absence;
 - 9.7.4.3 will not receive minutes of Board meetings or general meetings but will have access to previous minutes when they return to the Board; and
 - 9.7.4.4 will be recorded as being on an approved leave of absence in the Company's Annual Report.

9.8 Insufficient Directors

If the number of Directors is insufficient to constitute a quorum or less than the minimum number fixed under clause 9.1, the remaining Directors may, except in an emergency, act only to:

- 9.8.1 increase the number of Directors to a number sufficient to constitute a quorum or meet that minimum number; or
- 9.8.2 convene a General Meeting of the Company.

9.9 Defects in appointment of Directors

An act done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- 9.9.1 there was a defect in the appointment of the person; or
- 9.9.2 the person was disqualified from continuing in office, voting or taking the relevant step.

10. Board Decision Making

10.1 Convening Board meetings

A Director may convene or ask the Secretary to convene a Board meeting.

10.2 Notice of Board meetings

- 10.2.1 Written notice of Board meetings must be given to every Director at least 48 hours prior to the meeting (unless the Board unanimously waives this requirement).
- 10.2.2 A notice of a Board meeting:
 - 10.2.2.1 must specify the place, day and time of the meeting;
 - 10.2.2.2 must provide details of any technology that will be used to facilitate the meeting; and
 - 10.2.2.3 does not need to specify the nature of the business to be transacted at the meeting.

10.3 Quorum for Board meetings

- 10.3.1 No business may be transacted at any Board meeting unless a quorum is present.
- 10.3.2 A quorum of Directors for Board meetings is a majority of the total number of Directors.
- 10.3.3 A Director on a leave of absence approved by the Board should not be included when calculating the total number of Directors for the purposes of this clause.

10.4 Use of virtual technology in Board meetings

- 10.4.1 The Board may hold its meetings using any technology that is agreed to by the Board.
- 10.4.2 The use of any technology must give the Director a reasonable opportunity to participate including a reasonable opportunity to exercise a right to speak.
- 10.4.3 The Board's agreement may be a standing one.

- 10.4.4 A Director who attends by technology is deemed to be present in person at the meeting.
- 10.5 **Chairperson of Board meetings**
- At the start of each Board meeting, the Board will appoint a Director to preside as chairperson for the meeting.
- 10.6 **Voting at Board meetings**
- 10.6.1 A question arising at a Board meeting is to be decided by a majority of votes of Directors present and entitled to vote.
- 10.6.2 The chairperson has a deliberative vote. If the votes cast on a motion are equal, the chairperson will not have a casting vote and the motion will be lost.
- 10.7 **Resolutions without meetings**
- 10.7.1 A Board resolution may be passed without a meeting if all of the Directors entitled to vote on the resolution respond stating that they are in favour of the resolution.
- 10.7.2 The resolution is passed at the time when the last Director necessary to constitute unanimous consent in favour of the resolution responds.
- 10.7.3 For the purpose of this clause:
- 10.7.3.1 the notice must include the wording of the resolution;
 - 10.7.3.2 the notice may be distributed by any means;
 - 10.7.3.3 separate copies of the notice may be signed; and
 - 10.7.3.4 the resolution fails if it has not achieved unanimous consent within seven days after the notice was given.
- 10.7.4 Resolutions without meetings must be recorded in the minutes of the next Board meeting.

11. Directors' Powers and Duties

- 11.1 **Powers of the Board**
- 11.1.1 The Directors are responsible for managing the business of the Company and furthering the Purpose.
- 11.1.2 The Directors may exercise all the powers of the Company that are not, by the Act or by this Constitution, required to be exercised by the Members.
- 11.1.3 The Board cannot remove a Director or auditor.
- 11.1.4 The Board may delegate any of its powers to one or more Directors, a committee, an employee or any other person.
- 11.1.5 The Board may specify terms of the delegation (including the power to further delegate) and revoke a delegation.
- 11.2 **Duties of Directors**
- Directors must comply with any duties imposed on them by the Act and with the duties described in governance standard 5 of the ACNC Legislation.
- 11.3 **Establishment of committees**
- 11.3.1 The Board has established the following standing committees which are to be constituted in accordance with, and comply with their respective Terms of Reference:
- 11.3.1.1 Membership Committee; and
 - 11.3.1.2 Finance Committee.
- 11.3.2 The Board may establish other committees.
- 11.3.3 A committee may include, or be comprised of, non-Directors.
- 11.3.4 The meetings and proceedings of committees are:

11.3.4.1 subject to any terms of reference and/or delegation; and

11.3.4.2 otherwise governed as far as possible by the provisions of this Constitution which regulate the proceedings of the Board.

11.4 **By-laws**

11.4.1 The Board may make regulations or by-laws for the general conduct and management of the Company and the business of the Board.

11.4.2 The Board may revoke and alter by-laws or regulations as it sees fit.

12. **Directors' Interests**

12.1 **Conflicts of interest**

12.1.1 A Director must disclose the nature and extent of any perceived or actual material conflict of interest to the other Directors (or the Members if the other Directors share that conflict).

12.1.2 A Director who has a material personal interest in a matter that is being considered by the Board:

12.1.2.1 must not be present while the matter is being considered at a Board meeting; or

12.1.2.2 vote on the matter;

unless permitted by clause 12.1.3.

12.1.3 Provided the Board approves and it is permitted by law, a Director may be present or vote if:

12.1.3.1 the interest arises because the Director is a Member and the other Members have the same interest;

12.1.3.2 the interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as an officer of the Company;

12.1.3.3 the interest relates to any payment by the Company under clause 14 in respect of an indemnity permitted under the Act or any contract relating to such an indemnity; or

12.1.3.4 the Australian Securities and Investments Commission makes an order allowing the Director to vote on the matter; or

12.1.3.5 the interest relates to a contract the Company is proposing to enter into that:

12.1.3.5.1 is subject to approval by the Members; and

12.1.3.5.2 will not impose any obligation on the Company if it is not approved by the Members;

12.1.3.6 the Directors who do not have a material personal interest in the matter pass a resolution that:

12.1.3.6.1 identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company, and

12.1.3.6.2 states that those Directors are satisfied that the interest should not stop the Director from voting or being present; or

12.1.3.7 the interest arises merely because the Director has a right of subrogation in relation to a guarantee or indemnity referred to in clause 14.

12.2 **Permissible conduct**

Provided a Director complies with clause 12.1 they may:

12.2.1 hold any other position in the Company, except that of an auditor;

- 12.2.2 hold any office or place of profit in any other entity promoted by the Company or in which it has an interest of any kind;
- 12.2.3 enter into a contract or arrangement with the Company;
- 12.2.4 participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or persons dependent on or connected with them;
- 12.2.5 act in a professional capacity (or be a Member of a firm which acts in a professional capacity) for the Company, except as auditor;
- 12.2.6 sign or participate in the execution of a document by or on behalf of the Company; and
- 12.2.7 do any of the above despite the fiduciary relationship of the Director's office:
 - 12.2.7.1 without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
 - 12.2.7.2 without affecting the validity of any contract or arrangement.

13. Office Bearers

13.1 Appointment of Office Bearers

- 13.1.1 From time to time as required, the Board must appoint a Chair, a Deputy Chair, and any other Office Bearers it deems fit from among the Board.
- 13.1.2 Office Bearers of the Company hold office until the end of the first Annual General Meeting following their appointment.
- 13.1.3 An Office Bearer may be elected for more than one successive term.
- 13.1.4 The Board may remove or suspend a person from holding any Office Bearer position by resolution passed at a Board meeting provided:
 - 13.1.4.1 the resolution is passed by not less than two-thirds of the Directors present; and
 - 13.1.4.2 at least 21 days' notice in writing of the resolution has been given to the Secretary and to the person who is the subject of the resolution.

13.2 Secretary

- 13.2.1 The Directors must appoint at least one Secretary.
- 13.2.2 The Secretary is to be appointed on such terms and conditions as the Board deems fit.
- 13.2.3 A person may not be appointed as Secretary unless the person:
 - 13.2.3.1 consents in writing to being appointed as Secretary;
 - 13.2.3.2 is at least 18 years of age; and
 - 13.2.3.3 is resident in Australia.
- 13.2.4 The Board may suspend or remove a Secretary.
- 13.2.5 The position of Secretary must not remain vacant for more than 14 days.

13.3 Treasurer

- 13.3.1 The Directors may appoint a Treasurer.
- 13.3.2 The Treasurer is to be appointed on such terms and conditions as the Board deems fit.
- 13.3.3 The Treasurer must:
 - 13.3.3.1 arrange for the collection and receipt of all moneys due to the Company and arrange for all payments authorised by the Company to be made;

13.3.3.2 ensure that the financial records of the Company are kept in accordance with the requirements of the Act and the ACNC Legislation; and

13.3.3.3 coordinate the preparation of the financial statements of the Company and their certification by the Board prior to their submission to the Annual General Meeting of the Company.

13.3.4 The Treasurer must ensure that at least one other Director has access to the accounts and financial records of the Company.

14. Indemnities And Insurance

14.1 The Company indemnifies every present and past Director and executive officer of the Company to the full extent permitted by law against all losses and liabilities incurred as a result of their position as an officer of the Company.

14.2 This indemnity:

14.2.1 is a continuing obligation and is enforceable even if the person has ceased to be an officer of the company; and

14.2.2 is not subject to any requirement to first incur an expense or make a payment.

14.3 The Company may, to the extent permitted by law, pay or agree to pay, a premium in respect of a contract insuring its officers.

14.4 Nothing in this clause 14 limits the Company's ability to indemnify or pay for insurance for any person not expressly covered by this clause.

15. Administration

15.1 Minutes and records

15.1.1 The Board must ensure that:

15.1.1.1 minutes of all General Meetings, Board meetings and committee meetings; and

15.1.1.2 records of resolutions passed by Members, Directors and committees without a meeting;

are recorded and kept with the Company's records as soon as practicable (being no later than one month after the meeting or passing of the resolution).

15.1.2 The Company must ensure that minutes of a Board or General Meeting are signed within a reasonable time by the chairperson of the meeting or of the next meeting.

15.2 Members' access to Company records

The Company must give Members access to Company records as required by the Act.

15.3 Common seal

The Company does not have a common seal.

15.4 Execution of documents

The Company may execute documents by the signature of:

15.4.1 two Directors;

15.4.2 one Director and the Secretary; or

15.4.3 such other persons appointed by the Board for that purpose.

16. Records, Accounting and Audit

16.1 Accounts and other records of the Company

16.1.1 The Board must:

16.1.1.1 ensure that proper financial records are kept in accordance with all legal and regulatory requirements; and

16.1.1.2 ensure that records of its operations are kept; and

16.1.1.3 take reasonable steps to ensure that the Company's records are kept safe.

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

16.2 Audit

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

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

16.2.3 The Company may give any auditor all communications relating to the General Meeting that the Members of the Company are entitled to receive.

16.3 Financial year

The financial year will begin on 1 July and end on 30 June, unless the Board passes a resolution to change the financial year.

17. Amending This Constitution

17.1 The Company may only alter this Constitution by special resolution in accordance with the Act.

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

18. Notices

18.1 Notices can be served on Members or Directors personally, by post, email or other electronic means.

18.2 Notices are taken to be served:

18.2.1 in the case of a properly addressed and posted notice, five Business Days after the date of posting; and

18.2.2 in the case of a notice sent by email or other electronic means, at the time of sending.

18.3 The non-receipt of notice or a failure to give notice, does not invalidate any thing done or resolution passed at the meeting if:

18.3.1 the non-receipt or failure occurred by accident or error;

18.3.2 the individual waives notice before or after the meeting (including by attending the meeting); or

18.3.3 the individual notifies the Company of their agreement to that thing or resolution before or after the meeting.

18.4 In calculating a period of notice, both the days on which the notice is given or taken to be given and the day of the meeting must be included.

19. Winding Up or Revocation of Endorsement

19.1 Contribution of a Member on winding up

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

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

19.1.2 costs, charges and expenses of winding up.

19.2 Distribution of assets on winding up or revocation of endorsement

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

19.2.2 If the Company is a Deductible Gift Recipient and is wound up, or it ceases to be

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

19.2.3 On the winding up of the Company, any assets remaining after complying with clause 19.2.1 and 19.2.2:

19.2.3.1 must not be paid or distributed to the Members in their capacity as Members, and

19.2.3.2 must be given or transferred to a Charity or Charities which:

19.2.3.2.1 has a similar purpose to the Purpose, and

19.2.3.2.2 prohibits the distribution of income, profit or assets to its Members in their capacity as Members.

19.2.4 The Members must decide before any winding up or revocation which Charity or Charities will receive a distribution under clause 19.2.2 or 19.2.3. If the Members fail to decide, the matter must be determined by application to the Supreme Court in the State of incorporation.

20. Establishment of Public Fund

The Company has established and maintains The Sunburnt Arts Foundation ("the **Public Fund**").

20.1 Administration of Public Fund

20.1.1 Gifts to the Public Fund and any money received by the Company because of those gifts must be deposited into the Public Fund. These monies must be kept in a separate bank account to the other funds of the Company and may only be used for the Purpose.

20.1.2 The Public Fund must be administered by a management committee. The management committee may be, but are not required to be, Directors. A majority of the management committee must, because of their tenure of some public office or their position in the community, have a degree of responsibility to the community as a whole, as distinct from obligations solely in regard to the cultural objectives of the Company.

20.1.3 The public must be invited to contribute to the Public Fund.

20.1.4 No monies/assets in the Public Fund may be distributed to Members or Office Bearers of the Company or members of the management committee, except as reimbursement of out-of-pocket expenses incurred on behalf of the Public Fund or proper remuneration for administrative services.

20.1.5 The Department responsible for the administration of the Register of Cultural Organisations must be notified of any proposed amendments or alterations to provisions for the Public Fund, to assess the effect of any amendments on the Public Fund's continuing Deductible Gift Recipient status.

20.1.6 Receipts for gifts to the Public Fund must state:

20.1.6.1 the name of the Public Fund;

20.1.6.2 the Australian Business Number of the Company;

20.1.6.3 the fact that the receipt is for a gift made to the Public Fund; and

20.1.6.4 any other matter required to be included on the receipt pursuant to the requirements of the ITAA 1997.

20.1.7 The Company must comply with any rules that Treasury Minister or the Minister for the Arts makes to ensure that gifts made to the Public Fund will only be used for the Company's Purpose and the purpose of the Public Fund.

20.1.8 The Company must provide to the Department responsible for the administration of the Register of Cultural Organisations statistical information on the gifts made to the Public Fund every 6 months.

20.2 Winding up, dissolution or revocation of Public Fund

If the Public Fund is wound up or if the endorsement of the organisation as a Deductible Gift Recipient for the operation of the Public Fund is revoked, any surplus assets of the Public Fund remaining after the payment of liabilities attributable to it must be transferred to some other fund, authority or institution:

- 20.2.1 which is a Deductible Gift Recipient;
- 20.2.2 which has objects similar to the objects of the Public Fund;
- 20.2.3 whose rules prohibit the distribution of income to its members; and
- 20.2.4 which is charitable at law.

21. Interpretation

21.1 Definitions

In this Constitution:

- 21.1.1 “**ACNC**” means the Australian Charities and Not-for-profits Commission.
- 21.1.2 “**ACNC Legislation**” means the Australian Charities and Not-for-profits Commission Act 2012 (Cth) and the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012 (Cth).
- 21.1.3 “**Act**” means the *Corporations Act 2001* (Cth).
- 21.1.4 “**Associate Member**” means a person whose name is entered in the Register as an **Associate** Member of the Company.
- 21.1.5 “**auditor**” may mean a reviewer, if permitted by the Act or ACNC Legislation.
- 21.1.6 “**Burning Man Project**” is a registered Non-profit California Public Benefit Corporation exempt from federal income tax under section 501(c)(3) of Title 26 of the United States of America Code.
- 21.1.7 “**chairperson**” means the person chairing a meeting.
- 21.1.8 “**Board**” means the group of individuals that are responsible for the governance, strategy and management of the Company.
- 21.1.9 “**Chair**” means the person appointed to the position of Chair under clause 13.1.1.
- 21.1.10 “**Charity**” means a charity or registered not-for-profit registered under the ACNC Legislation.
- 21.1.11 “**Code of Conduct**” means the Company’s Code of Conduct as amended by the Board from time to time.
- 21.1.12 “**day**” means calendar day except public holidays.
- 21.1.13 “**Deductible Gift Recipient**” means an entity to which tax deductible gifts may be made pursuant to Division 30 of the ITAA 97.
- 21.1.14 “**DGR Gifts**” means:
 - 21.1.14.1 gifts of money or property for the Purpose received during any time that the Company is endorsed as a Deductible Gift Recipient;
 - 21.1.14.2 contributions described in item 7 or 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event (as defined by section 995-1 of the ITAA 97) held for that purpose during any time that the Company is endorsed as a Deductible Gift Recipient; and
 - 21.1.14.3 money received by the Company because of such gifts or contributions during any time that the Company is endorsed as a Deductible Gift Recipient.
- 21.1.15 “**Finance Committee**” means the committee referred to in clause 11.3.1.2.
- 21.1.16 “**General Meeting**” means a meeting of Members (including an Annual General Meeting).

- 21.1.17 **“Guaranteed Amount”** means the amount set out in clause 5.11.
- 21.1.18 **“ITAA 97”** means the *Income Tax Assessment Act 1997* (Cth).
- 21.1.19 **“Member”** means a person whose name is entered in the Register as a Member of the Company.
- 21.1.20 **“Membership Class”** means a Membership Class listed in clause 5.2.
- 21.1.21 **“Membership Committee”** means the committee referred to in clause 11.3.1.1.
- 21.1.22 **“Office Bearer”** means Chair, Deputy Chair, Secretary, Treasurer and any other person appointed under clause 13.1.1.
- 21.1.23 **“person”** includes a natural person.
- 21.1.24 **“Purpose”** means the purpose set out in clause 2.
- 21.1.25 **“Register”** means the register of Members under the Act.
- 21.1.26 **“Special Resolution”** means a resolution passed at a general meeting:
- 21.1.26.1 of which notice specifying the intention to propose the resolution as a Special Resolution has been given pursuant to this Constitution and the Act; and
 - 21.1.26.2 by not less than 75% of the votes cast.
- 21.1.27 **“Voting Member”** means a person whose name is entered in the Register as a Voting Member of the Company in accordance with clause 5.6.

21.2 Interpretation

In this Constitution:

- 21.2.1 If an expression in the Constitution has a meaning in the Act, the meaning from the Act will apply to the expression - except where a contrary intention appears in this Constitution.
- 21.2.2 A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.

21.3 Exclusion of replaceable rules

- 21.3.1 The replaceable rules contained in the Act do not apply to the Company.
- 21.3.2 If at any time, the company is not a Charity, the Act (unless it is a replaceable rule) overrides any part of this Constitution or policy of the Company to the extent of any inconsistency.

22. Transitional Provisions

The following clauses apply notwithstanding anything to the contrary in this Constitution.

22.1 Members

The first Members are those named as Members in the application for the Company's registration under the Act.

22.2 Directors

The first Directors are those named as Directors in the application for the Company's registration under the Act.

Appendix 1. Ten Principles of Burning Man (copyright Estate of Larry Harvey)

Radical Inclusion Anyone may be a part of Burning Man. We welcome and respect the stranger. No prerequisites exist for participation in our community.

Gifting Burning Man is devoted to acts of gift giving. The value of a gift is unconditional. Gifting does not contemplate a return or an exchange for something of equal value.

Decommodification In order to preserve the spirit of gifting, our community seeks to create social environments that are unmediated by commercial sponsorships, transactions, or advertising. We stand ready to protect our culture from such exploitation. We resist the substitution of consumption for participatory experience.

Radical Self Reliance Burning Man encourages the individual to discover, exercise and rely on his or her inner resources.

Radical Self Expresssion Radical self-expression arises from the unique gifts of the individual. No one other than the individual or a collaborating group can determine its content. It is offered as a gift to others. In this spirit, the giver should respect the rights and liberties of the recipient.

Communal Effort Our community values creative cooperation and collaboration. We strive to produce, promote and protect social networks, public spaces, works of art, and methods of communication that support such interaction.

Civic Responsibility We value civil society. Community members who organize events should assume responsibility for public welfare and endeavor to communicate civic responsibilities to participants. They must also assume responsibility for conducting events in accordance with local, state and federal laws.

Leave No Trace Our community respects the environment. We are committed to leaving no physical trace of our activities wherever we gather. We clean up after ourselves and endeavor, whenever possible, to leave such places in a better state than when we found them.

Participation Our community is committed to a radically participatory ethic. We believe that transformative change, whether in the individual or in society, can occur only through the medium of deeply personal participation. We achieve being through doing. Everyone is invited to work. Everyone is invited to play. We make the world real through actions that open the heart.

Immediacy Immediate experience is, in many ways, the most important touchstone of value in our culture. We seek to overcome barriers that stand between us and a recognition of our inner selves, the reality of those around us, participation in society, and contact with a natural world exceeding human powers. No idea can substitute for this experience.