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**Corporations Act 2001  
A Company Limited by Guarantee**

**TRACKSAFE FOUNDATION LIMITED  
ACN 155 604 872  
CONSTITUTION 2020**

Versions: 28 November 2012 9 December 2020
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**CONSTITUTION**  
of  
**TRACKSAFE FOUNDATION LIMITED**  
**ACN 155 604 872**

**DATED 9 DECEMBER 2020**

**1. DEFINITIONS AND INTERPRETATION**

The defined terms and rules of interpretation used in this Constitution are located at the end of this Constitution.

**2. PRELIMINARY**

**2.1 Name and ACN of Company**

The name of the Company is Tracksafe Foundation Limited (ACN 155 604 872).

**2.2 Nature of the Company**

(a) The Company is limited by guarantee and does not have share capital.

**2.3 Replaceable Rules**

The Replaceable Rules contained in the Corporations Act do not apply to the Company.

**3. OBJECTS & POWERS**

**3.1 Principal Activity of the Company**

(a) The principal activity of the Company is the promotion of the prevention or control of suicide upon rail operations and rail assets.

(b) The principal activity shall be pursued through activities including:

- (i) Awareness campaigns;
- (ii) Education campaigns;
- (iii) Joint initiatives with recognised organisations;
- (iv) Initiatives to reduce injury and deaths including suicide on rail assets; and
- (v) Initiatives to improve the mental health of rail industry employees.

**3.2 Tax Concession Charity**

The Company has been endorsed as exempt from tax under Subdivision 50-B of the Income Tax Assessment Act 1997 (endorsement as a Tax Concession Charity). The Company is established as a charitable Company, pursues charitable purposes only and applies its income in promoting these purposes.

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### 3.3 **Intention to Establish and Maintain a Public Fund**

The Company shall establish and maintain the Public Fund for the specific purpose of furthering the objects set out in paragraph 3.1 above. The Public Fund is to be established to receive all gifts of money or property or in-kind resources for this purpose and any money received because of such gifts must be credited to its bank account. The Public Fund shall not receive any other money or property into its account and it shall comply with Subdivision 30-EA of the *Income Tax Assessment Act 1997*.

### 3.4 **Powers of the Company**

The Company has all of the powers set out in the Corporations Act as may from time to time be necessary to enable the Company to do all things that are necessary, convenient or incidental to carrying out the Objects.

## 4. **HARM PREVENTION CHARITY REQUIREMENTS**

### 4.1 **Not-for-profit**

The income and property of the Company shall be used and applied solely in promotion of its objects and no portion shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to the Member or directors of the Company.

### 4.2 **Ministerial Rules**

The Company shall comply with any rules that the Minister for Families, Housing, Community Services and Indigenous Affairs and the Treasurer may make to ensure that gifts made to the Public Fund are only used for its principal activity.

### 4.3 **Statistical Information**

The Company shall ensure that the Public Fund it establishes will provide statistical information on donations requested by the Department of Families, Housing, Community Services and Indigenous Affairs within four months of the end of the financial year. The Company shall ensure that an audited financial statement for itself and its Public Fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of Public Fund monies and the management of Public Fund assets.

### 4.4 **Informing the Department**

The Company shall inform the Department of Families, Housing, Community Services and Indigenous Affairs as soon as possible if:

- (a) it changes its principal activity; or
- (b) it changes its name or the name of the Public Fund; or
- (c) there is any change to the membership of the management committee of the Public Fund; or
- (d) there has been any departure from the model rules for public funds located in the Guidelines to the Register of Harm Prevention; or
- (e) it or the Public Fund, suffers any financial difficulties.

### 4.5 **Conduit Policy**

The Company shall have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons. Any allocation of funds or property to other persons or charities or the undertaking of any specific activities by the Company will be made in

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accordance with the established objectives and activities of the Company and shall not be influenced by the preference of the donor.

#### 4.6 **Winding-up**

- (a) In the case of the winding-up of the Company, the provisions of paragraph 10.3(a) hereof shall apply.
- (b) In the case of the winding-up of the Public Fund, the provisions of paragraph 10.3(b) hereof shall apply.

#### 4.7 **Requirements Regarding the Public Fund**

The following requirements shall be observed by the Company in relation to the Public Fund to be established as outlined in paragraph 3.3 above:

- (a) **(Objective of the Public Fund)** The objective of the Public Fund is to support the principal activity of the Company to promote the prevention or the control of suicide.
- (b) **(Seek funds from the public)** Members of the public are to be invited to make gifts of money or property to the Public Fund for the promotion of the prevention or the control of behaviour that is harmful or abusive to human beings.
- (c) **(Separate bank account for the Public Fund)** A separate bank account shall be opened to deposit money donated to the Public Fund, including interest accruing thereon, and gifts to it are to be kept separate from other funds of the Company.
- (d) **(Public Fund management committee)** The Public Fund shall be administered from a separate bank account managed by a committee ("**Committee**") of no fewer than three persons. The Committee will be appointed by the Company. A majority of members of the Committee shall be "responsible persons" as defined by the Guidelines for the Register of Harm Prevention Charitable Institutions.
- (e) **(Income)** Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the Public Fund.
- (f) **(Not for profit)** The Public Fund will be operated on a not-for-profit basis.
- (g) **(Receipts)** Receipts containing the elements specified by the Harm Prevention Charity Register Guidelines are to be issued in the name of the Public Fund and proper accounting records and procedures are to be kept and used for the Public Fund.

### 5. **ACKNOWLEDGEMENT OF CONTRIBUTION**

5.1 The Company acknowledges the contribution of the Founding Partners in its establishment.

### 6. **MEMBERSHIP**

#### 6.1 **Members**

- (a) At the date of this Constitution the Company will have one (1) Member.
- (b) The Member at the date of this Constitution will be the ARA.
- (c) The ARA agrees to provide a guarantee of ten dollars (\$10.00) to defray such liabilities and expenses of the Company upon its winding up or dissolution.
- (d) The Company may pass a resolution by the Member signing a record in writing of that Resolution.

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- (e) From time to time, the Company may accept other members in accordance with clause 6.3.

## 6.2 Fees

- (a) The Board may in its discretion fix:
  - (i) an entrance fee payable by the Member on entry to membership; and / or
  - (ii) an annual subscription fee payable by the Member for each year of membership.
- (b) If the Member's entrance or subscription fee remains unpaid for a period of 30 days after it becomes due, the Board may direct the Secretary to give notice to the Member of that fact. If the subscription remains unpaid on the expiration of 21 days after the date of such notice, the Board may proceed to expel the Member from membership of the company and remove the Member's name from the register of members.
- (c) If the Board fixes an entrance fee or annual subscription fee, the Member shall be and remain debarred from exercising any and all rights and privileges of membership until such time as all fees are paid in full.

## 6.3 Applications for Membership

An application for membership must be:

- (a) accompanied by any applicable entrance and subscription fee (if any);
- (b) made in the form (if any) approved by the Board from time to time provided that each such application must contain:
  - (i) an undertaking on the part of the applicant to be bound by this Constitution;
  - (ii) an undertaking on the part of the applicant to be bound by the Company's Code of Conduct in force from time to time (if any);
  - (iii) the postal address and electronic mail address of the applicant;
  - (iv) particulars of the applicant's qualifications for membership;
  - (v) if the applicant is an organisation, the name of an authorised contact within the organisation; and
  - (vi) the signature (or where applicable, the seal) of the applicant, or such other form of authentication (electronic or otherwise) approved by the Board from time to time; and
- (c) lodged with the Company at the place (if any) and in the manner (if any) approved by the Board from time to time.

## 6.4 Determination of Applications for Membership

- (a) The Board may in its discretion admit or reject any applicant for membership provided that if an applicant is not admitted to membership in due course, all monies paid by that applicant to the Company must be returned in full.
- (b) The Board must determine whether or not to approve an application for membership at its next meeting after receipt of the application.
- (c) The Board may require an applicant to give such further information as it considers relevant before approving or refusing the admission of an applicant for membership.



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- (d) An applicant for membership is taken to be admitted as a Member upon the Board approving the application and the name, address and email address of the Member being entered in the Register as a Member.
  - (e) The Board shall not be obliged to provide reasons, written or otherwise, for any decision it makes concerning membership applications.

#### 6.5 Change in Qualifications

- (a) Members must promptly notify the Company of any change in the qualification of the Member to be a member of the Company.
- (b) If the Board in its absolute discretion determines that a Member no longer qualifies to remain a Member, the Board may by notice in writing to the Member terminate the Member's membership.
- (c) The Secretary must make appropriate amendments to the Register to reflect any changes effected to a membership as a result of a decision made by the Board.

#### 6.6 Register of Members

- (a) The Secretary must maintain a Register of Members of the Company.
- (b) The address of a Member in the Register will be the address of the Member for the purpose of service of any notices to the Member.
- (c) The rights of a Member are not transferable.

#### 6.7 Liability of Members

The liability of the Members is limited to the amount of the guarantee provided pursuant to paragraph 6.1(c) and to any unpaid amount of contribution referred to in paragraph 6.2(a).

#### 6.8 Cessation of Membership

- (a) A Member ceases to be a Member if:
  - (i) the Member resigns by written notice to the Secretary;
  - (ii) the Member, being a natural person:
    - A. dies or becomes incapable of managing his or her own affairs by reason of illness, injury or any other medical (including mental) conditions;
    - B. commits an act of bankruptcy within the meaning of section 40 of the *Bankruptcy Act 1966* (Cth); or
  - (iii) any of the following happens in relation to the Member, being a body corporate or incorporated association:
    - A. an application is made, proceedings are commenced or a meeting of members is held with a view to winding up the Member or the Member entering administration;
    - B. a receiver, liquidator or administrator is appointed to the Member;
    - C. a compromise or arrangement of the kind referred to in part 5.1 of the *Corporations Act* is proposed or entered into by the Member;

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- D. an application is made or proceedings are commenced by any person or other entity with a view to obtaining cancellation of registration of the Member or appointment of an inspector or other officer to investigate the Member's affairs pursuant to any legislation;
  - E. the Member is, or may be deemed within the meaning of any applicable law to be, insolvent or unable to pay its debts; or
  - F. circumstances exist which would enable a court upon application to order the Member to be wound-up;
- (iv) the Board makes a decision, pursuant to paragraph 6.9(a), to expel a Member from membership.
- (b) Any Member whose membership of the Company ceases will be liable for all monies due by that Member to the Company in addition to any sum not exceeding ten dollars (\$10.00) for which the Member is liable under paragraphs 6.1(c) and 6.2(a).under this Constitution. A Member may not make any claim, monetary or otherwise, on the Company, its funds or its property, except as a creditor of the Company.

## 6.9 Conduct of Members & Member Discipline

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

the Board has the power to censure, fine, suspend or expel the Member from the Company.
- (b) At least one week before the meeting of the Board at which a resolution under paragraph 6.9(a) is to be considered, the Board must provide the Member with:
  - (i) notice of the meeting;
  - (ii) any allegations against them;
  - (iii) the intended resolution; and
  - (iv) advice that the Member may, at the meeting and before the passing of the resolution, have an opportunity to give, orally or in writing, any explanation of defence they think fit.

## 7. MEETINGS OF MEMBERS

### 7.1 Calling of General Meetings

- (a) Subject to the Corporations Act, the Directors may call a General Meeting of Members at a time and place as the Directors see fit.
- (b) The Directors must call and arrange to hold a General Meeting at the request of the Members made in accordance with the Corporations Act.
- (c) The Members may call and arrange to hold a General Meeting as provided by the Corporations Act.

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## 7.2 Annual General Meeting

- (a) The Company will in each year within five months from the end of the financial year hold a General Meeting as its Annual General Meeting in addition to any other meetings in that year, and will specify the meeting as an Annual General Meeting in the notices calling it.
- (b) The business of the Annual General Meeting may include any of the following, even if not referred to in the notice of meeting:
  - (i) the consideration of the Annual Financial Report, Directors' Report and Auditor's Report
  - (ii) the election of Directors;
  - (iii) the appointment of the Auditor; or
  - (iv) the fixing of the auditor's remuneration.
- (c) All business that is transacted at the Annual General Meeting other than that business referred to in subclause (b) must be referred to in the notice of meeting.

## 7.3 Notice of Meetings

- (a) Subject to s. 249H(2) of the Corporations Act, the Company must give not less than twenty one (21) days' notice of a General Meeting
- (b) A notice of a General Meeting sent by post is taken to be given three (3) days after it is posted.
- (c) A notice of General Meeting sent by fax, or other electronic means, is taken to be given on the Business Day after it is sent.
- (d) Notice of a General Meeting must be given to the Members, each Director and any auditor of the Company.
- (e) A notice of a General Meeting must:
  - (i) set out the place, date and time for the meeting;
  - (ii) state the general nature of the business of the meeting; and
  - (iii) set out or include any other information or documents specified by the Corporations Act.
- (f) The accidental omission to give notice to, or the non-receipt of notice by, the Members or another entitled person, will not invalidate the proceedings or any resolution at any Company meeting.
- (g) With the consent in writing of the Member and as required by the Corporations Act, a meeting may be convened by a shorter notice and in any manner the Member may think fit.

## 7.4 Right to Attend Meetings

- (a) The Member, each Director and auditor of the Company is entitled to receive notice of and attend any General Meeting.

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## 7.5 Quorum

- (a) While the Company remains a one member company, a quorum for a General Meeting is one (1) Member. If the Company has two Members a quorum for a General Meeting will be increased to two (2) members. In the event that the Company accepts more than two Members in accordance with clause 6.4, a quorum for a General Meeting will be increased to at least 60% of the total Members of the Company.
- (b) In determining whether a quorum for a General Meeting is present:
  - (i) where more than one proxy, attorney or representative of a Member is present, only one of those persons is counted;
  - (ii) where a person is present as a Member and as a proxy, attorney or representative of another Member, that person is counted once for the purposes of the quorum;
- (c) A quorum for a General Meeting must be present at all times during the General Meeting;
- (d) If a quorum is not present within thirty (30) minutes after the time appointed for a General Meeting called pursuant to paragraph 7.1(a), then the meeting will stand adjourned to such date, time and place as the Directors may by notice to the Members appoint or, failing any appointment, to the same day in the next week at the same time and place as the meeting adjourned.
- (e) If a quorum is not present within thirty (30) minutes after the time appointed for a General Meeting called pursuant to either paragraph 7.1(b) or (c) then the meeting is dissolved.

## 7.6 Chair for General Meetings

- (a) The Chair of the Board is to act as chair for all General Meetings.
- (b) Where a General Meeting is held and the Chair is not present within 15 minutes after the time appointed for the meeting or does not wish to act as chair of the meeting, the Directors present shall choose one of their number or, in the absence of all Directors or if none of the Directors present wish to act, the Members present shall elect one of their number to be chair of the meeting.
- (c) Unless the chair of a General Meeting is a Member representative, the chair shall not vote.

## 7.7 Adjourned Meetings

- (a) The chair of any General Meeting may, if a quorum is present (and shall as directed by that meeting), adjourn the meeting to another time and/or another place, but no further business may be transacted at the meeting from which the adjournment took place until the meeting is resumed.
- (b) Where a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more.

## 7.8 General Conduct of Meetings

- (a) Subject to the Corporations Act, the chair of a General Meeting is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chair of a General Meeting may delegate any power conferred by this Constitution in respect of the conduct of the meeting to any person.

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- (c) Only unfinished business is to be transacted at a General Meeting resumed after an adjournment.

#### 7.9 **Voting**

- (a) While the Company remains a one Member company, a resolution may be passed by the Member signing a record in writing of that Resolution.
- (b) If the Company has two or more Members, any resolution to be considered at a General Meeting shall be decided on a show of hands unless a poll is demanded.
- (c) A declaration by the chair of a General Meeting that a resolution has on a show of hands been carried or lost and an entry to that effect in the minutes of the meeting shall be taken as conclusive evidence of the fact without the need to show the number or proportion of the votes recorded in favour of or against the resolution.
- (d) Subject to paragraph 7.9(e) and despite any law to the contrary, a poll for a resolution may be demanded by at least 2 Members present and entitled to vote on the resolution.
- (e) A poll may not be demanded where there are 2 or less Members of the Company.
- (f) A poll may not be demanded on the election of a chair or on a resolution for adjournment.

#### 7.10 **Procedure for Polls**

- (a) If the Company has two or more Members, a poll when demanded by the Members shall be taken in the manner and at the time the chair directs.
- (b) The result of the poll shall be a resolution of the General Meeting at which the poll was demanded.
- (c) The demand for a poll shall not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded.

#### 7.11 **Chair's Casting Vote**

In the case of an equality of votes on a show of hands or on a poll, the chair of a General Meeting will not have a casting vote and the resolution shall not be passed.

#### 7.12 **Voting of Members**

- (a) Subject to this Constitution:
  - (i) at any General Meeting each Member entitled to attend and vote may attend and vote in person or by proxy or attorney and (where the Member is a body corporate) by representative;
  - (ii) on a show of hands, every Member present in person, by proxy, by attorney or by representative and having the right to vote at the meeting has one vote; and
  - (iii) on a poll, every Member present in person, by proxy, by attorney or by representative and having the right to vote at the meeting has one vote.
- (b) A Member is not entitled to speak or vote at a General Meeting unless all sums then payable by the Member to the Company in respect of membership have been paid.

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### 7.13 **Objections to Qualification to Vote**

A challenge to a right to vote at a General Meeting may only be made at the meeting and will be determined by the chair, whose decision is final. A vote allowed after an objection shall be valid for all purposes.

### 7.14 **Proxies**

- (a) A Member who is entitled to attend and cast a vote at a General Meeting may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.
- (b) Subject to paragraph 7.14(c), an instrument appointing a proxy must:
  - (i) be in writing under the hand of the appointor or of the appointer's attorney duly authorised in writing or, if the appointor is a corporation, be either under seal or under the hand of a duly authorised officer or attorney;
  - (ii) include the name of the Member, the name of the proxy and the signatures of both;
  - (iii) be in any form and contain any other information that the Board may from time to time determine;and may specify the proportion or number of votes that the proxy may exercise.
- (c) If an instrument appointing a proxy fails to state the name of the proxy appointed then the appointment shall not be invalid but shall instead be taken to be given in favour of the chair of the relevant meeting.
- (d) A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- (e) For an instrument appointing a proxy to act on behalf of a Member at a General Meeting to be effective, the Company must receive the documents referred to in paragraph 7.14(b) prior to commencement or resumption of the General Meeting (as the case may be) to which the proxy relates.
- (f) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
  - (i) the appointing Members dies; or
  - (ii) the Members are mentally incapacitated; or
  - (iii) the Members revoke the proxy's appointment; or
  - (iv) the Members revoke the authority under which the proxy was appointed by a third party.
- (g) A proxy's authority to vote is suspended while the Member is present at the General Meeting to which the appointment relates.

### 7.15 **Resolutions of a One Member Company**

- (a) Subject to the Corporations Act, a resolution is passed if the Member vote is cast in favour of the resolution.
- (b) A challenge to a right to vote at a meeting of the Member may only be made at the meeting and must be determined by the Chairperson, whose decision is final.

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- (c) A Member who is entitled to attend and cast a vote at a meeting of the Member may appoint a person as the Member's proxy to attend and vote for the Member at the meeting. Such appointment must be in writing and include the name of the Member, the name of the proxy and the signatures of both. Scanned copies of originals are acceptable.
- (d) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
- (i) the appointing Member dies; or
  - (ii) the Member is mentally incapacitated; or
  - (iii) the Member revokes the proxy's appointment; or
  - (iv) the Member revokes the authority under which the proxy was appointed by a third party.

A proxy's authority to vote is suspended while the Member is present at the meeting.

#### 7.16 **Representative**

A Member may appoint a representative to attend and vote on its behalf at any General Meeting of Members and evidence of such appointment shall be presented to the Secretary at the commencement of the General Meeting to which it applies.

#### 7.17 **Attorneys**

- (a) For an instrument appointing an attorney to act on behalf of a Member at any meeting of the company or at any meeting of the Company for a specified period to be effective the Company must receive:
- (i) the power of attorney or a certified copy of that power of attorney; and
  - (ii) any evidence that the Directors may require concerning the validity and non-revocation of that power of attorney.

Prior to commencement or resumption of the meeting (as the case may be) to which the appointment relates.

- (b) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which an attorney votes, a vote cast by the attorney will be valid even if, before the proxy votes:
- (i) the appointing Member dies; or
  - (ii) the Member is mentally incapacitated; or
  - (iii) the Member revokes the attorney's appointment; or
  - (iv) the Member revokes the authority under which the attorney was appointed by a third party.

#### 7.18 **Electronic Meetings of Members**

A General Meeting may be called or held using any technology that provides contemporaneous linking together by an instantaneous communication device.

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## **8. DIRECTORS & BOARD**

### **8.1 Number of Directors**

- (a) Subject to paragraph 8.1(d) there must be no less than three (3) and no more than thirteen (13) Directors at any one time.
- (b) The Directors may appoint any natural person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors.
- (c) The Founding Partners each have the right to nominate a person as a Director and to remove and/or replace that person as their nominated Director by giving notice to the Secretary in writing.
- (d) The Board may, by ordinary resolution, appoint additional Directors or an Independent Chair to the Board above the maximum number stipulated in paragraph 8.1(a) where such persons have special qualities or experience that the Board considers to be desirable to permit the efficient operation of the Company and/or the achievement of the principal activity of the Company.

### **8.2 Eligibility for Appointment**

To be eligible to serve as Director a person must be:

- (a) a natural person over the age of 18 years; and
- (b) not disqualified from being a director of a company or a responsible person of a charity under the Corporations Act or Australian Charities and Not for Profit Commission Act.

### **8.3 Appointment and removal of a Director**

- (a) Subject to the Corporations Act, the Company may at any time by resolution passed in General Meeting:
  - (i) appoint any person as a Director; or
  - (ii) remove any Director from office.
- (b) Should a Director nominated by a Foundation Partner be removed under clause 8.3(a), the Founding Partner may nominate a replacement by giving notice to the Company Secretary.
- (c) Each Director shall hold office until there is a vacancy in his or her office within the meaning of paragraph 8.6.

### **8.4 Interests of Directors**

- (a) Directors are required to act in the interests of the Company as a whole when deciding issues.
- (b) If a Director has a material personal interest in a matter that relates to the affairs of the Company, the Director must:
  - (i) declare the nature and the extent of the interest to the Board (such declaration may be in the form of a standing declaration of interests);
  - (ii) not be present at the Board Meeting while the matter is being considered by the Board; and
  - (iii) not vote on the matter.



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## 8.5 Remuneration

- (a) Subject to paragraph 8.5(b), a Director may be engaged by the Company in any other capacity (other than auditor) and may be appointed on such terms as to remuneration, tenure of office and otherwise as may be agreed by the Board from time to time.
- (b) Any amount paid to a Director under paragraph 8.5(a) or 8.5(d) or 8.5(e) must be considered by the TrackSAFE Remuneration Committee before being presented for approval by the Board.
- (c) The Board may in their absolute discretion resolve to pay a Director travelling and other expenses properly incurred by that Director in connection with the affairs of the Company, including attending General, Board or committee meetings of the Company.
- (d) Subject to paragraph 8.5(b), the Board may in their absolute discretion resolve to pay Director fees to the Independent Chair.
- (e) Subject to paragraph 8.5 (b), the Board may in their absolute discretion resolve to pay Director fees to other Director(s) who do not receive remuneration as an employee or Director of an organisation associated with the rail industry.

## 8.6 Vacation of Office

For the purposes of the Constitution, the office of Board Director or Chair becomes vacant if:

- (a) the Director or Chair:
  - (i) dies;
  - (ii) becomes bankrupt or insolvent;
  - (iii) resigns their office by notice in writing given to the Secretary;
  - (iv) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
  - (v) fails to attend three (3) consecutive Board meetings without prior notice of absence having been approved by the Board; or
- (b) a Founding Partner notifies the Secretary of the removal or resignation of its nominated Directors.

## 8.7 Board Management & Control

- (a) The affairs of the Company shall be controlled and managed by or under the direction of the Board.
- (b) The Board shall control and manage the affairs of the Company and may:
  - (i) subject to these clauses and the Corporations Act, exercise all such powers of the Company other than those powers and functions that are required by these clauses to be exercised by General Meetings of the Members;
  - (ii) subject to these clauses and the Corporations Act, has power to perform all such acts and things as appear to the Board to be desirable or essential for the proper management of the business affairs of the Board including the arrangement of any insurances;
  - (iii) appoint such other working groups as it deems necessary. Such working groups may include persons who are not the Members;

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- (iv) appoint executives of the Company and determine the terms and conditions of their appointment including but not limited to any associated remuneration;
  - (v) refer issues to the board of ARA , for its review where the intent of an initiative by the company is opposed to the strategic priorities of the ARA.

## 8.8 **Composition of Board**

The Board shall consist of all of the Directors currently in office.

## 8.9 **Board Proceedings**

- (a) The Board shall meet at least twice (2) each calendar year at such places and such times as the Board may determine.
- (b) Meetings of the Board may be convened by the Chair or on request to the Chair by any two (2) Directors.
- (c) Five Directors (5) including the Director nominated by the ARA (personally present or participating by telephonic or electronic media) constitute a quorum for the business of a meeting of the Board.
- (d) No business shall be transacted at a Board meeting unless a quorum is present and if, within thirty (30) minutes of the time appointed for the meeting a quorum is not present, the meeting shall be dissolved.
- (e) Questions arising at a meeting of the Board or of any working group appointed by the Board shall be determined on a show of hands or, if demanded by a Director, by a poll taken in such a manner as the person presiding at the meeting may determine.
- (f) Each Director present at a meeting of the Board (including the person presiding at the meeting) is entitled to one (1) vote and, in the event of an equality of votes on any question, the Chair shall have a second or casting vote.
- (g) Written notice of each meeting of the Board shall be served on each Director at least seven (7) business days before the meeting by:
  - (i) delivering it to them personally; or
  - (ii) sending it by facsimile or electronic transmission to a number or email address nominated by the Director.
- (h) If it is afterwards discovered that there was some defect in the election or appointment of a person to be an officer or a Director by the Board, or to act in that capacity, or that a person so elected or appointed was disqualified, all acts done by that person are valid as if the person had been duly elected or appointed and was qualified to act in that capacity.
- (i) A Meeting of Directors may be called or held using any technology that provides contemporaneous linking together by an instantaneous communication device.
- (j) In the event a Director is unable to attend a Board meeting, with the agreement of the Chair, they may nominate a representative to attend the meeting. This representative may participate in discussions except those held in camera but cannot vote.

## 8.10 **Out of Session Board Decisions**

- (a) A resolution in writing agreed and signed by a majority of the Directors for the time being entitled to receive notice of a meeting of the Board, shall be as valid and effectual as if it has been passed at a meeting of the Board duly convened and held.

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Any such resolution may consist of several documents in like form, each signed by one (1) or more Directors. Electronic copies of scanned originals of signed copies will be sufficient evidence of a signed assent by Directors.

- (b) A facsimile transmission, scanned original, email or other document produced by mechanical means under the name of a Director with the Director's authority is deemed to be a resolution in writing signed by the Director in accordance with 8.10(a).

#### 8.11 **Chair**

- (a) The Directors may elect one of the Directors to the office of Chair of the Board of Directors or may appoint an Independent Chair. By resolution, the Board will determine the period for which that Director is to be Chair of the Board of Directors. The inaugural Chair shall be a representative of UGL for the initial period of two (2) years.
- (b) A person is eligible to be nominated as Independent Chair if he or she meets the following criteria:
  - (i) The person consents to being appointed the Independent Chair of the Company.
  - (ii) The person does not hold any office of profit, nor has any direct pecuniary interest in an institution or body that performs or may perform during the person's tenure as Independent Chair, services for reward for the Company.
  - (iii) The person will promote public confidence in the integrity, legitimacy, impartiality, rigor of work being undertaken, and fairness of the Company.'
- (c) The Board may remove the Chair at any time.
- (d) The Chair must (if present within fifteen (15) minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Directors.
- (e) The Directors present must elect one of themselves to chair all or part of the meeting of Directors if:
  - (i) there is no Chair; or
  - (ii) the Chair is not present within 15 minutes after the time appointed for the holding of a meeting of Directors; or
  - (iii) the Chair is present within that time but is not willing to chair all or part of that meeting.

#### 8.12 **Secretary**

- (a) The secretary shall be the person appointed by the Board from time to time.
- (b) The Secretary of the Board shall:
  - (i) arrange to keep minutes of the resolutions and proceedings of each general meeting and each Board meeting in books provided for that purpose, together with a record of the names of persons present at meetings;
  - (ii) arrange to retain copies of all board papers and if in electronic form to be kept backed up on separate medium on separate systems;
  - (iii) prepare and file on behalf of the Board all Company returns required by the Corporations Act.

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- (c) The accounts and books shall be available for inspection at all reasonable times by the Members.

**8.13 Patron**

The Board may approve the appointment of a patron of the Company on the terms and conditions as approved by the Board from time to time.

**8.14 Committees**

The Board may appoint such other committees as it deems appropriate and which may include persons who are not Directors or Members of the Company.

**9. ADMINISTRATION**

**9.1 Execution of Documents**

- (a) Without limiting the ways in which the Company may execute documents in accordance with Corporations Act, if the Directors so decide, the Company may have a common seal and the Directors may determine the procedures for the use of the seal.
- (b) The Company may execute a document as a Deed if the document is expressed to be executed as a Deed and is executed in accordance with s 127 Corporations Act or is executed by a person duly appointed as an attorney of the Company under a valid Power of Attorney or is executed by a person duly appointed as a representative of the Company in writing and executed in accordance with s 127 Corporations Act.
- (c) The Directors may resolve, generally or in a particular case, that any signature on of a Director of the Company may be affixed by mechanical or other means.
- (d) Negotiable instruments may be signed, drawn, accepted, endorsed or otherwise executed by or on behalf of the Company in the manner and by the persons as the Directors resolve.

**9.2 Minutes and Board Papers**

- (a) The Board will cause minutes to be made in books in accordance with the Corporations Act.
- (b) The minute book must be held at the registered office of the Company.

**9.3 Accounts**

- (a) The Board will cause proper books of account to be kept in which shall be kept full, true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give true and fair view of the state of the Company's affairs and explain the transactions.
- (b) Subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the Constitution, the books of account must be kept at the registered office and any other place the Board requires and will be open to the inspection of the Board at any time.
- (c) The Board will provide financial reports, which comprise a balance sheet and an income statement in respect of the last completed financial year of the Company and as required by the Corporations Act.

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#### 9.4 **Payments**

All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments for payment shall be signed by at least two (2) accredited officers authorised to do so by the Board or if electronic via two independent electronic signoffs by separate accredited officers.

#### 9.5 **Audit**

- (a) The books of account, and financial reports and records shall be audited each year by an auditor or auditors appointed by the Board in accordance with the Corporations Act.
- (b) The remuneration of the auditor must be fixed and the Auditor's duties regulated in accordance with the Corporations Act.
- (c) If any casual vacancy occurs in the office of the auditor the Board shall appoint the auditor and fix the auditor's fee within one month of the vacancy. The auditor so chosen will hold Office as auditor of the Company until the next General Meeting following their appointment.
- (d) The auditor or the auditor's agent so authorised in writing is entitled:
  - (i) to attend any General Meeting;
  - (ii) for that purpose to receive all notices of and other communications relation to any General Meeting which the Members is entitled to receive; and
  - (iii) to be heard at any General Meeting which he or she attends on any part of the business of the meeting which concerns the Auditor as Auditor, and is entitled to be heard.

#### 9.6 **Custody of Records**

- (a) Except as otherwise provided in the Constitution, the Secretary shall keep in their custody or under their control all books, documents and securities of the Company, which shall be available for inspection at all reasonable times by the Members.
- (b) Upon the request of a Member the Secretary will arrange to provide the Members with copies of:
  - (i) the current Constitution of the Company; and
  - (ii) the Deeds of any trust of the Company.

#### 9.7 **Inspection of Records**

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of the Members, and a Member does not have any right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in meeting of the Company's Members.

### 10. **WINDING UP AND LIABILITY**

#### 10.1 **Resolution for Winding Up**

The Company may be dissolved by a special resolution of the Members at a General Meeting.

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## 10.2 Contribution of the Members on Winding Up

Every person who is or has been a Member undertakes to contribute to the assets of the Company in the event of the Company being wound up while he or she is a Member, or within one year of ceasing to be a Member, such amount as may be required not exceeding ten dollars (\$10.00), for the payment of the debts and liabilities of the Company contracted whilst the Members or past Members as the case may be was a Member of the Company, and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributors amongst themselves.

## 10.3 Distribution of Property on Winding Up

### (a) Winding up of the Company

Where on the winding up of the Company or dissolution of the Company there is a surplus of assets after satisfying all the Company's liabilities and expenses, the surplus will not be paid or distributed to the Members but will be given or transferred to another institution or company nominated by the Board with similar objectives that is on the Register for Harm Prevention Charities.

### (b) Winding up of the Public Fund

Where on the winding up of the Public Fund there is a surplus of assets will not be paid or distributed to the Member but will be given or transferred to another fund nominated by the Board with similar objectives that is on the Register for Harm Prevention Charities

## 10.4 Officers Indemnities and Insurance

### (a) To the extent permitted by the Corporations Act:

- (i) the Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company against any liability for costs and expenses incurred by that person in defending any proceedings in which judgement is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any proceedings in which the Court grants relief to the person under the Law; and
- (ii) the Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company against any liability incurred by that person, as an Officer of the Company or of a wholly-owned subsidiary of the Company, to another person (other than the Company or a related body corporate of the Company) unless the liability arises out of conduct involving a lack of good faith.

### (b) The Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Company or of a subsidiary of the Company against a liability:

- (i) incurred by the person in their capacity as an Officer of the Company or of a subsidiary of the Company or in the course of acting in connection with the affairs of the Company of a subsidiary of the Company or otherwise arising out of the Officer holding such office provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of Sections 182 and 183 of the Corporations Act; or
- (ii) for costs and expenses incurred by that person in defending proceedings, whatever their outcome.

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- (c) In this paragraph 10.4 the term “proceedings” means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in their capacity as Officer, or in the course of acting in connection with the affairs of the Company or a wholly-owned subsidiary or subsidiary of the Company, or otherwise out of the Officer holding such office, including proceedings alleging that he or she was guilty of negligence, default, breach of trust or breach of duty in relation to the Company or a wholly-owned subsidiary or subsidiary of the Company, and

## **11. BY-LAWS**

Subject to the Corporations Act and the Constitution, the Board may make By-Laws as it may deem appropriate for the proper conduct, control and management of the Company and, in particular:

- (a) the management and good governance of the affairs of the Company;
- (b) the conduct of the Company’s employees;
- (c) the setting a part of any part or parts of the Company’s premises or properties for particular purposes;
- (d) the procedure at meetings of the Company and its committees;
- (e) the formation of any committee including the composition, terms of reference and other relevant matters of such committees;
- (f) generally, all such matters as are commonly the subject matter of regulations for the proper conduct of companies similar to the Company and are not expressly dealt with in this Constitution and
- (g) capacity to establish and administer the Company.

## **12. VARIATION OF CONSTITUTION**

The Constitution may not be varied except by a special resolution passed at a General Meeting of the Company.

## **13. SEVERING INVALID PROVISIONS**

If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that does not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Constitution.

## **14. DEFINITIONS & INTERPRETATION**

### **14.1 Incorporation of Legislative Definitions**

Unless the contrary intention appears or the context otherwise requires words and phrases used in this Constitution that are defined in the Corporations Act or Corporations Regulations have the same meaning in this Constitution as in that legislation.

### **14.2 Specific Definitions**

In this Constitution unless the context requires otherwise:

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- (a) **Annual General Meeting** means a General Meeting held in accordance with s250N of the Act;
  - (b) **ARA** means the Australasian Railway Association Inc. (ABN 64 217 302 489);
  - (c) **Board** means the board of Directors comprised as described in paragraph 8.7;
  - (d) **Business Day** means a day on which trading banks are open for ordinary business in the Australian Capital Territory;
  - (e) **Chair** means the person appointed under paragraph 8.11;
  - (f) **Company** means Tracksafe Foundation Limited;
  - (g) **Corporations Act** means the *Corporations Act 2001* (Cth), except to the extent of any exemption, modification, declaration or order made in respect of that legislation which applies to the Company;
  - (h) **Corporations Regulations** means the *Corporations Regulations 2001* (Cth), except to the extent of any exemption, modification, declaration or order made in respect of that legislation which applies to the Company;
  - (i) **Directors** means the directors of the Company for the time being appointed to that office pursuant to subparagraph 8.3(a)(i) and any Alternate Director;
  - (j) **Founding Partners** means ARA and UGL.
  - (k) **General Meeting** means any meeting of the Member;
  - (l) **Independent Chair** means the person appointed as the Independent Chair in accordance with paragraph 8.11 to preside over Board meetings, General Meetings and Annual General Meetings.
  - (m) **Member** means a person for the time being registered as a member of the Company;
  - (n) **Objects** means the objects of the Company as described in paragraph 3.1 of this Constitution;
  - (o) **Public Fund** means the Tracksafe Foundation Public Fund
  - (p) **Register** means the register of Members of the Company;
  - (q) **Secretary** means a company secretary of the Company for the time being; and
  - (r) **UGL** means UGL Rail Services Pty Limited (ACN 58 000 003 136).

#### 14.3 Interpretation

In this Constitution, unless a contrary intention appears:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include all other genders;
- (c) words importing persons include companies and corporations;
- (d) headings and tables of contents are inserted for convenience only and have no effect on interpretation;
- (e) "including" and similar expressions are not and must not be treated as words of limitation;



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- (f) the word "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (g) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.
  - (a) a reference to a clause, subclause or paragraph is a reference to a clause, subclause or paragraph of or to this Agreement;
  - (b) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
  - (c) a reference to any legislation or statutory instrument or regulation is to be construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State or Territory legislation, as applicable;
  - (d) where words or phrases are given a defined meaning, any other part of speech or other grammatical form of those words or phrases shall have a corresponding meaning; and
  - (e) the term "notice" shall include notice, authorisation, request, nomination, notification and any other form of communication.