

PWC AUSTRALIA
JAMES DICKIE
2 Riverside Quay
SOUTHBANK VIC 3006

Remove this top section if desired before framing

Certificate of Registration of a Company



ASIC

Australian Securities & Investments Commission

This is to certify that

VIETNAMESE MUSEUM AUSTRALIA LTD

Australian Company Number 635 162 088

is a registered company under the Corporations Act 2001 and
is taken to be registered in Victoria.

The company is **limited by guarantee**.

The company is a **public company**.

The day of commencement of registration is
the eighteenth day of September 2019.

Issued by the
Australian Securities and Investments Commission
on this eighteenth day of September, 2019.

A handwritten signature in black ink that reads "James Shipton".

James Shipton
Chair

CERTIFICATE

**CONSTITUTION
OF
VIETNAMESE MUSEUM AUSTRALIA
LTD**

Australian Company Number (ACN): 635 162 088
Australian Business Number (ABN): 87635162088

A company limited by guarantee

**CONSTITUTION
OF
VIETNAMESE MUSEUM AUSTRALIA
LTD**

Australian Company Number (ACN) [insert ACN]
Australian Business Number (ABN) [insert ABN]

A company limited by guarantee

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Preliminary

1. Name of the company

The name of the **company** is Vietnamese Museum Australia Ltd (the **company**), and the Vietnamese translation of the name of the **company** is Viện Bảo Tàng Người Việt Tự Do Úc Châu.

2. Type of company

The **company** is a not-for-profit public **company** limited by guarantee which is established to be, and to continue as, a charity.

3. Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 4.

4. The guarantee

Each member must contribute an amount not more than \$100 (the guarantee) to the property of the **company** if the **company** is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- (a) debts and liabilities of the **company** incurred before the member stopped being a member, or
- (b) costs of winding up.

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 75 to 77 (inclusive).

6. Key Principles

- (a) The **company** solely recognises and uses the following yellow flag with three horizontal red stripes as its symbol of representation:



- (b) The **company** does not accept communism, anti-democratic values, dictatorial regimes, or any values, ideology or systems which restricts the freedom or rights of individuals.
- (c) The **company's** activities must always defend and promote human rights, democracy and freedom in Australia, Vietnam and other places in the world.

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Charitable purposes and powers

7. Mission Statement

To establish and operate a cultural museum, and undertake ancillary activities, in order to:

- (a) enhance understanding and appreciation of the Vietnamese diaspora in Australia, their flight to freedom and their contributions to Australia (between generations of Vietnamese Australians and the wider Australian and international community)
- (b) impart knowledge to Australians of Vietnamese background so they can be proud and feel connected to their Vietnamese identity and heritage, and
- (c) embrace connectedness, connectivity and sharing of artefacts and stories between the Vietnamese diaspora community in Australia and overseas.

8. Object

The **company's** object is to pursue the following charitable purposes:

- (a) to collect and protect stories and artefacts that characterise the Vietnamese diaspora and their presence in Australia
- (b) to establish and operate a state of the art, world class museum for:
 - (i) the public exhibition of stories and artefacts that characterise the Vietnamese diaspora and their presence in Australia
 - (ii) to educate, promote and preserve the Vietnamese culture and history that reflect the Vietnamese identity in Australia and overseas, and
 - (iii) to promote and enhance the multicultural wealth of Australia by showcasing the contributions of Australians with a Vietnamese background in all areas of endeavour (for the benefit of all Australians)
- (c) to build a repository of historical knowledge and scholarship, oral histories of interest, and research associated with the artefacts and the people who used the artefacts, and
- (d) to take a strategic lead in engagement with other galleries, libraries, archives, museums and record keeping organisations in Australia and overseas which are connected with or have interest in the Vietnam War.

9. Powers

Subject to clause 10, the **company** has the following powers, which may only be used to carry out its purposes set out in clause 8:

- (a) the powers of an individual, and
- (b) all the powers of a **company** limited by guarantee under the **Corporations Act**.

10. Not-for-profit

- 10.1 The **company** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 10.2 and 74.
- 10.2 Clause 10.1 does not stop the **company** from doing the following things, provided they are done in good faith:

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- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**, or
- (b) making a payment to a member in carrying out the **company's** charitable purposes.

11. Amending the constitution

- 11.1 Subject to clauses 11.2 and 11.3, the members may amend this constitution by passing a **special resolution**.
- 11.2 The members must not pass a **special resolution** that amends this constitution if passing it causes the **company** to no longer be a charity.
- 11.3 Clause 6 of this constitution may only be amended with the written consent of each **full member**.

Members

12. Membership and register of members

- 12.1 The members of the **company** are:
 - (a) **founding members**, and
 - (b) any other person that the directors allow to be a member, in accordance with this constitution, which includes **observer members** and **full members**.
- 12.2 The **company** must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
 - (a) for each current member:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices, and
 - iv. date the member was entered on to the register.
 - (b) for each person who stopped being a member in the last 7 years:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices, and
 - iv. dates the membership started and ended.
- 12.3 The **company** must give current members access to the register of members.
- 12.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

13. Invitation to apply to become a member

- 13.1 The directors of the **company** may, at any time, approve an invitation to a person who supports the purposes of the **company** to apply to be a member of the **company** under clause 14.
- 13.2 An invitation must be approved by the directors of the **company** in accordance with clause 13.1, in writing and signed by a director of the **company**.
- 13.3 In this clause, clause 14, and clause 18, 'person' means an individual or incorporated body.

14. How to apply to become a member

A person (as defined in clause 13.3) who receives an invitation from the **company** in accordance with clause 13 may apply to become a member of the **company** by writing to the secretary stating that they:

- (a) want to become a member
- (b) support the purposes of the **company**, and
- (c) agree to comply with the **company's** constitution, including paying the guarantee under clause 4 if required.

15. Directors decide whether to approve application for membership

- 15.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- 15.2 In considering whether to approve an application for membership, the directors must have regard to:
 - (a) the applicant's involvement with the Vietnamese Community in Australia (ABN 51 934 809 450) or any local incorporated chapter of that organisation
 - (b) the experience of the applicant in the Vietnamese community in Australia
 - (c) the applicant's support for the key principles set out in clause 6
 - (d) the applicant's understanding of the Vietnamese diaspora, particularly in Australia, and
 - (e) any policy adopted by the directors of the **company** from time to time relating to the acceptability criteria of prospective members.
- 15.3 Provided the directors have given due and proper consideration to the factors set out in clause 15.2, the directors may, in their sole and absolute discretion, approve or reject an application for membership.
- 15.4 If the directors approve an application for membership, the secretary must as soon as possible:
 - (a) enter the new member on the register of members, and
 - (b) write to the applicant to tell them that their application for membership was approved, and the date that their membership started (see clause 16).
- 15.5 If the directors reject an application for membership, the secretary must write to the applicant as soon as possible to tell them that their application for membership has been rejected, but does not have to give reasons.
- 15.6 For the avoidance of doubt, the directors may approve an application for membership even if the application does not state the matters listed in clause 14. In that case, by applying to be a member, the applicant agrees to those three matters.

16. When a person becomes an observer member

Other than **founding members**, an applicant will become an **observer member** when they are entered on the register of members.

17. When an observer member becomes a full member

- 17.1 Subject to clause 17.2, an **observer member** will become a **full member** on the date that is one year following the date on which they became an **observer member**.
- 17.2 At any time prior to the date on which an **observer member** would become a **full member** in accordance with clause 17.1, the directors may resolve to, for such time as the directors consider fit, reject or delay that **observer member** becoming a **full member** if:

- (a) a **full member** has, by written notice to the directors, objected to that **observer member** becoming a **full member** and stated the reasons for their objection and the directors have considered, in their sole and absolute discretion, that objection to have merit, or
 - (b) the directors consider, in their sole and absolute discretion, that the **observer member** is not ready or fit to become a **full member**.
- 17.3 At least 14 days before the directors' meeting at which a resolution under clause 17.2 will be considered, the secretary must notify the **observer member** in writing:
- (a) that the directors are considering a resolution to reject or delay the **observer member** becoming a **full member**
 - (b) that this resolution will be considered at a directors' meeting and the date of that meeting
 - (c) the reasons why this resolution is being considered, and
 - (d) that the **observer member** may provide a written submission to the directors listing the reasons the **observer member** should not be rejected from or delayed in becoming a **full member**, and details of how that written submission should be provided.
- 17.4 The secretary must give written notice to the **observer member** of the outcome of a resolution under clause 17.2 as soon as possible.

18. When a person stops being a member

A person (as defined in clause 13.3) immediately stops being a member if they:

- (a) die (for an individual)
- (b) are wound up or otherwise dissolved or deregistered (for an **incorporated member**)
- (c) resign, by writing to the secretary
- (d) are expelled under clause 20, or
- (e) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

Dispute resolution and disciplinary procedures

19. Dispute resolution

- 19.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
- (a) one or more members
 - (b) one or more directors, or
 - (c) the **company**.
- 19.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 20 until the disciplinary procedure is completed.
- 19.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 19.4 If those involved in the dispute do not resolve it under clause 19.3, they must within 10 days:
- (a) tell the directors about the dispute in writing

- (b) agree or request that a mediator be appointed, and
 - (c) attempt in good faith to settle the dispute by mediation.
- 19.5 The mediator must:
- (a) be chosen by agreement of those involved, or
 - (b) where those involved do not agree:
 - i. for disputes between members, a person chosen by the directors, or
 - ii. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **company** has its registered office.
- 19.6 A mediator chosen by the directors under clause 19.5(b)(i):
- (a) may be a member or former member of the **company**
 - (b) must not have a personal interest in the dispute, and
 - (c) must not be biased towards or against anyone involved in the dispute.
- 19.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard
 - (b) allow those involved a reasonable chance to review any written statements
 - (c) ensure that those involved are given natural justice, and
 - (d) not make a decision on the dispute.

20. Disciplining members

- 20.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **company** if the directors consider that:
- (a) the member has breached this constitution, or
 - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the **company**, or
 - (c) the member no longer supports one or more of the key principles set out in clause 6.
- 20.2 At least 14 days before the directors' meeting at which a resolution under clause 20.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member
 - (b) that this resolution will be considered at a directors' meeting and the date of that meeting
 - (c) what the member is said to have done or not done
 - (d) the nature of the resolution that has been proposed, and
 - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 20.3 Before the directors pass any resolution under clause 20.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the directors a written explanation before that directors' meeting, and/or
 - (b) speaking at the meeting.
- 20.4 After considering any explanation under clause 20.3, the directors may, in its sole and absolute discretion:
- (a) take no further action
 - (b) warn the member
 - (c) suspend the member's rights as a member for a period of no more than 12 months

- (d) expel the member
 - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
 - (f) require the matter to be determined at a **general meeting**.
- 20.5 The directors cannot fine a member.
- 20.6 The secretary must give written notice to the member of the decision under clause 20.4 as soon as possible.
- 20.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 20.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

General meetings of full members

21. General meetings called by directors

- 21.1 The directors may call a **general meeting**.
- 21.2 If **full members** with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held, the directors must:
- (a) within 21 days of the **full members'** request, give all members notice of a **general meeting**, and
 - (b) hold the **general meeting** within 2 months of the **full members'** request.
- 21.3 The percentage of votes that **full members** have (in clause 21.2) is to be worked out as at midnight before the **full members** request the meeting.
- 21.4 The **full members** who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting
 - (b) sign the request, and
 - (c) give the request to the **company**.
- 21.5 Separate copies of a document setting out the request may be signed by **full members** if the wording of the request is the same in each copy.

22. General meetings called by full members

- 22.1 If the directors do not call the meeting within 21 days of being requested under clause 21.2, 50% or more of the **full members** who made the request may call and arrange to hold a **general meeting**.
- 22.2 To call and hold a meeting under clause 22.1 the **full members** must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution
 - (b) call the meeting using the list of members on the **company's** member register, which the **company** must provide to the **full members** making the request at no cost, and
 - (c) hold the **general meeting** within three months after the request was given to the **company**.
- 22.3 The **company** must pay the **full members** who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.

23. Annual general meeting

- 23.1 A **general meeting**, called the **annual general meeting**, must be held:
- (a) within 18 months after registration of the **company**, and
 - (b) after the first **annual general meeting**, at least once in every calendar year.
- 23.2 Even if these items are not set out in the notice of meeting, the business of an **annual general meeting** may include:
- (a) a review of the **company's** activities
 - (b) a review of the **company's** finances
 - (c) any auditor's report
 - (d) the election of directors, and
 - (e) the appointment and payment of auditors, if any.
- 23.3 Before or at the **annual general meeting**, the directors must give information to the members on the **company's** activities and finances during the period since the last **annual general meeting**.
- 23.4 The chairperson of the **annual general meeting** must give **full members** as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.
- 23.5 Observer members may attend the **annual general meeting** but are not entitled to speak or vote at the meeting.

24. Notice of general meetings

- 24.1 Notice of a **general meeting** must be given to:
- (a) each member entitled to vote at the meeting
 - (b) each **observer member**
 - (c) each director, and
 - (d) the auditor (if any).
- 24.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 24.3 Subject to clause 24.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an **annual general meeting**, all the **full members** entitled to attend and vote at the **annual general meeting** agree beforehand, or
 - (b) for any other **general meeting**, **full members** with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 24.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director
 - (b) appoint a director in order to replace a director who was removed, or
 - (c) remove an auditor.
- 24.5 Notice of a **general meeting** must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
 - (b) the general nature of the meeting's business
 - (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution
 - (d) a statement that **full members** have the right to appoint proxies and that, if a **full member** appoints a proxy:
 - i. the proxy does not need to be a member of the **company**

- ii. the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
 - iii. the proxy form must be delivered to the **company** at least 48 hours before the meeting.
- 24.6 If a **general meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

25. Quorum at general meetings

- 25.1 For a **general meeting** to be held, at least 2 **full members**, which must include at least one **founding member** (where a **founding member** is a member of the **company**) (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 25.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 25.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week
 - (b) if the time is not specified – the same time, and
 - (c) if the place is not specified – the same place.
- 25.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

26. Auditor's right to attend meetings

- 26.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 26.2 The **company** must give the auditor (if any) any communications relating to the **general meeting** that a member of the **company** is entitled to receive.

27. Representatives of members

- 27.1 An **incorporated member** may:
- (a) appoint as a representative one individual to represent that member at **general meetings**, and
 - (b) if a **full member**, to sign circular resolutions under clause 34.
- 27.2 The appointment of a representative by a member must:
- (a) be in writing
 - (b) include the name of the representative
 - (c) include a statement that the representative supports the key principles set out in clause 6
 - (d) be signed on behalf of the member, and
 - (e) be given to the **company** or, for representation at a meeting, be given to the chairperson before the **general meeting** starts.

- 27.3 A representative has all the rights of its appointing member relevant to the purposes of the appointment as a representative.
- 27.4 The appointment may be standing (ongoing).

28. Using technology to hold meetings

- 28.1 The **company** may hold a **general meeting** at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 28.2 Anyone using this technology is taken to be present in person at the meeting.

29. Chairperson for general meetings

- 29.1 The **elected chairperson** is entitled to chair **general meetings**.
- 29.2 The **full members** present and entitled to vote at a **general meeting** may choose a director or **full member** to be the chairperson for that meeting if:
- (a) there is no **elected chairperson**, or
 - (b) the **elected chairperson** is not present within 30 minutes after the starting time set for the meeting, or
 - (c) the **elected chairperson** is present but says they do not wish to act as chairperson of the meeting.

30. Role of the chairperson

- 30.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give **full members** a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 30.2 The chairperson does not have a casting vote.
- 30.3 The chairperson of the **general meeting** may, in its sole discretion and acting reasonably, expel any **observer member** during the course of the **general meeting** for any reason whatsoever.

31. Adjournment of meetings

- 31.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **full members present** direct the chairperson to adjourn it.
- 31.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

32. Members' resolutions and statements

- 32.1 **Full members** with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the **company** of a resolution they propose to move at a **general meeting** (members' resolution), and/or
 - (b) a written request to the **company** that the **company** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 32.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the **full members** proposing the resolution.
- 32.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the **full members** making the request.

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- 32.4 Separate copies of a document setting out the notice or request may be signed by **full members** if the wording is the same in each copy.
- 32.5 The percentage of votes that **full members** have (as described in clause 32.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 32.6 If the **company** has been given notice of a members' resolution under clause 32.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 32.7 This clause does not limit any other right that a **full member** has to propose a resolution at a **general meeting**.

33. Company must give notice of proposed resolution or distribute statement

- 33.1 If the **company** has been given a notice or request under clause 32:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **company's** cost, or
 - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the **full members** who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the **full members** may pass a resolution that the **company** will pay these expenses.
- 33.2 The **company** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) it is more than 1 000 words long
 - (b) the directors consider it may be defamatory
 - (c) clause 33.1(b) applies, and the **full members** who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
 - (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the **full members**.

34. Circular resolutions of full members

- 34.1 Subject to clause 34.3, the directors may put a resolution to the **full members** to pass a resolution without a **general meeting** being held (a circular resolution).
- 34.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to **full members**, and set out the wording of the resolution.
- 34.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director, or
 - (b) where the **Corporations Act** or this constitution requires a meeting to be held.
- 34.4 A circular resolution is passed if all the **full members** entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 34.5 or clause 34.6.

- 34.5 **Full members** may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 34.6 The **company** may send a circular resolution by email to **full members** and **full members** may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at general meetings

35. How many votes a member has

- 35.1 An **observer member** does not have any votes.
- 35.2 Each **full member** has one vote.

36. Challenge to member's right to vote

- 36.1 A **full member** or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 36.2 If a challenge is made under clause 36.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

37. How voting is carried out

- 37.1 Voting must be conducted and decided by:
- (a) a show of hands
 - (b) a vote in writing, or
 - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 37.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 37.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 37.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

38. When and how a vote in writing must be held

- 38.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five **full members present**
 - (b) **full members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
 - (c) the chairperson.
- 38.2 A vote in writing must be taken when and how the chairperson directs, unless clause 38.3 applies.
- 38.3 A vote in writing must be held immediately if it is demanded under clause 38.1:
- (a) for the election of a chairperson under clause 29.2, or
 - (b) to decide whether to adjourn the meeting.
- 38.4 A demand for a vote in writing may be withdrawn.

39. Appointment of proxy

- 39.1 A **full member** may appoint a proxy to attend and (if applicable) vote at a **general meeting** on their behalf.
- 39.2 A proxy does not need to be a member.
- 39.3 A proxy appointed to attend and vote for a **full member** has the same rights as the **full member** to:
- (a) speak at the meeting
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
 - (c) join in to demand a vote in writing under clause 38.1.
- 39.4 An appointment of proxy (proxy form) must be signed by the **full member** appointing the proxy and must contain:
- (a) the **full member's** name and address
 - (b) the **company's** name
 - (c) the proxy's name or the name of the office held by the proxy, and
 - (d) the meeting(s) at which the appointment may be used.
- 39.5 A proxy appointment may be standing (ongoing).
- 39.6 Proxy forms must be received by the **company** at the address stated in the notice under clause 24.5(d) or at the **company's** registered address at least 48 hours before a meeting.
- 39.7 A proxy does not have the authority to speak and vote for a **full member** at a meeting while the **full member** is at the meeting.
- 39.8 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing **full member**:
- (a) dies
 - (b) is mentally incapacitated
 - (c) revokes the proxy's appointment, or
 - (d) revokes the authority of a representative or agent who appointed the proxy.
- 39.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

40. Voting by proxy

- 40.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a **full member** appointed as a proxy from voting as a **full member** on a show of hands).
- 40.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
 - (b) if the way they must vote is specified on the proxy form, must vote that way, and
 - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

Directors

41. Number of directors

The **company** must have at least three and no more than eleven directors, unless resolved otherwise by the directors by **special resolution**.

42. Election and appointment of directors

42.1 The **founding directors** are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the **company**.

42.2 If a director intends to retire or is obliged to retire in accordance with this constitution or (subject to the maximum set out in clause 41) the directors have resolved by **special resolution** that there be an increase to the number of directors of the **company**, the **company** must call for nominations for directors from the **full members** by giving written notice to each full member no less than 30 days before the date of the relevant retirement or **special resolution**.

42.3 Apart from the **founding directors** and directors appointed under clause 42.7 or 42.8, a person is eligible to stand for election as a director of the **company** if they are:

- (a) a retiring director who is standing for re-election, or
- (b) nominated by two **full members** entitled to vote and the **company** receives written notices of their nomination within 14 days of the date of the call for nominations under clause 42.2

(**Director Candidates**).

42.4 If the number of Director Candidates:

- (a) is less than or equal to the number of vacant offices available, each Director Candidate will be appointed as a director of the **company**, or
- (b) exceeds the number of vacant offices available, a ballot must be held in accordance with clause 42.5.

42.5 If a ballot is required for the election of directors:

- (a) the **company** must call a **general meeting** to hold the ballot
- (b) before the ballot is taken, each candidate may make a short speech in support of his or her election
- (c) the existing directors may make a recommendation as to which persons (if any) they support being elected as director. Any directors' recommendation must be included with the notice of meeting for the **general meeting**
- (d) the election must be by secret ballot
- (e) the **company** must give a blank piece of paper to each **full member** present in person and each proxy validly appointed by a **full member**
- (f) if the ballot is for:
 - (i) a single position, the voter must write on the ballot paper the name of the Director Candidate for whom they wish to vote

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- (ii) if the ballot is for more than one position, the voter must write on the ballot paper the name of each Director Candidate for whom they wish to vote, provided that the number of Director Candidates listed on the ballot paper does not exceed the number of vacant offices
 - (g) ballot papers that do not comply with clause 42.5(f) are not to be counted
 - (h) each ballot paper on which the name of a Director Candidate has been written counts as one vote for that Director Candidate
 - (i) the Director Candidate/s (as applicable) who receive the most votes will be appointed as directors to fill the vacant offices
 - (j) in the case where the result of the ballot cannot be determined because 2 or more Director Candidates received the same number of votes, the appointment of the director/s to fill the vacant offices will be decided by lot.
- 42.6 Notwithstanding anything else in this constitution, a person is only eligible for election as a director of the **company** if they:
 - (a) give the company their signed consent to act as a director of the **company**, and
 - (b) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 42.7 For so long as a **founding member** remains a member of the **company**, that **founding member** is entitled to appoint, remove or substitute one director. Clauses 42.2 to 42.5 (inclusive) do not apply to any appointment made in accordance with this clause 42.7.
- 42.8 The directors may appoint a person as a director to fill a casual vacancy, if that person is a **full member** of the **company**, or a representative of a **full member** of the **company**. Clauses 42.2 to 42.5 (inclusive) do not apply to any appointment made in accordance with this clause 42.8.
- 42.9 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.

43. Retirement of founding directors

- 43.1 Upon the retirement of a **founding director** who is not standing for re-election, the directors may, in their sole and absolute discretion, provide a form of acknowledgement to that **founding director** in recognition and commemoration of their contribution and service to the **company** in any manner determined by the directors.

44. Election of chairperson

The directors must elect a director as the **company's** elected chairperson.

45. Appointment of Chief Executive Officer

- 45.1 The directors are responsible for the appointment of the **company's** Chief Executive Officer, and may appoint the Chief Executive Officer on such terms and for such period as the directors decide fit.

- 45.2 Prior to appointing a Chief Executive Officer:
- (a) the directors must notify each **founding member** of the proposed appointment of the Chief Executive Officer
 - (b) give each **founding member** a reasonable time period to provide written notice of their endorsement or concerns with the proposed Chief Executive Officer, and
 - (c) take into account any such notice provided in accordance with clause 45.2(b).

46. Term of office

- 46.1 Subject to clauses 46.2 to 46.4 (inclusive), each director must retire at least once every three years.
- 46.2 For so long as a **founding member** remains a member of the **company**, a director appointed by a **founding member** in accordance with clause 42.7 will hold office for an indefinite period, subject to that **founding member** removing and substituting that director with another person.
- 46.3 The **founding directors**, who are not appointed by a **founding member** in accordance with clause 42.7, must retire as follows:
- (a) two must retire at the end of the five year period beginning on the date which they became a **founding director**
 - (b) two who did not retire under clause 46.3(a) must retire at the end of the six year period beginning on the date which they became a **founding director**, and
 - (c) the final person(s) who did not retire under clause 46.3(a) or 46.3(b) must retire at the end of the seven year period beginning on the date which they became a **founding director**.
- 46.4 Subject to clause 46.2, at each annual **general meeting**:
- (a) any director appointed by the directors to fill a casual vacancy, and
 - (b) at least one-third of the remaining directors (which are not **founding directors**) must retire.
- 46.5 The directors who must retire at each annual **general meeting** under clause 46.4(b) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.
- 46.6 Other than a director appointed under clause 42.8, a director's term of office starts at the end of the annual **general meeting** at which they are elected and ends at the end of the annual **general meeting** at which they retire.
- 46.7 A director who retires under clause 46.4, and each **founding director** who retires under clause 46.3, may nominate for election or re-election, subject to clause 46.8.
- 46.8 A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a **special resolution**.

47. When a director stops being a director

A director stops being a director if they:

- (a) give written notice of resignation as a director to the **company**



- (b) die
- (c) are removed as a director by a resolution of the **full members**
- (d) are a representative of a **full member**, and that **full member** stops being a **full member**
- (e) are a representative of a **full member**, and the **full member** notifies the **company** that the representative is no longer a representative
- (f) are absent for 3 consecutive directors' meetings without approval from the directors, or
- (g) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**.

Powers of directors

48. Powers of directors

- 48.1 The directors are responsible for managing and directing the activities of the **company** to achieve the purposes set out in clause 8.
- 48.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.
- 48.3 The directors must decide on the responsible financial management of the **company** including:
 - (a) any suitable written delegations of power under clause 49, and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 48.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a **full members'** resolution at a **general meeting**.

49. Delegation of directors' powers

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

50. Payments to directors

- 50.1 The **company** must not pay fees to a director for acting as a director.
- 50.2 The **company** may:
 - (a) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done, or
 - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company**.
- 50.3 Any payment made under clause 50.2 must be approved by the directors.
- 50.4 The **company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

51. Execution of documents

The **company** may execute a document without using a common seal if the document is signed by:

- (a) two directors of the **company**, or
- (b) a director and the secretary.

Duties of directors

52. Duties of directors

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

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **company**
- (b) to act in good faith in the best interests of the **company** and to further the charitable purposes of the **company** set out in clause 8
- (c) not to misuse their position as a director
- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 53
- (f) to ensure that the financial affairs of the **company** are managed responsibly, and
- (g) not to allow the **company** to operate while it is insolvent.

53. Conflicts of interest

53.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):

- (a) to the other directors, or
- (b) if all of the directors have the same conflict of interest, to the **full members** at the next **general meeting**, or at an earlier time if reasonable to do so.

53.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

53.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 53.4:

- (a) be present at the meeting while the matter is being discussed, or
- (b) vote on the matter.

53.4 A director may still be present and vote if:

- (a) their interest arises because they are a member of the **company**, and the other members have the same interest
- (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **company** (see clause 71)

- (c) their interest relates to a payment by the **company** under clause 70 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
 - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
 - (e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) 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
 - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.
- 53.5 Subject at all times to the duties of each director, a director appointed by a **founding member** may in performing any of his duties or exercising any power, right or discretion as a director of the **company**:
- (a) have regard to and represent the interests of that **founding member**
 - (b) act on the wishes of that **founding member**, and
 - (c) disclose to that **founding member** any information obtained in that person's capacity as a director of the **company**.
- 53.6 Subject at all times to the duties of each director, if requested by a **founding member**, the directors must make themselves available to provide such information reasonably requested by that **founding member**, including by way of presenting at public meetings convened by that **founding member**.

Directors' meetings

54. When the directors meet

The directors may decide how often, where and when they meet.

55. Calling directors' meetings

- 55.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 55.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

56. Chairperson for directors' meetings

- 56.1 The **elected chairperson** is entitled to chair directors' meetings.
- 56.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the **elected chairperson** is:
- (a) not present within 30 minutes after the starting time set for the meeting, or
 - (b) present but does not want to act as chairperson of the meeting.

57. Quorum at directors' meetings

- 57.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors.
- 57.2 A quorum must be present for the entirety of the directors' meeting.

58. Using technology to hold directors' meetings

- 58.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 58.2 The directors' agreement may be a standing (ongoing) one.
- 58.3 A director may only withdraw their consent within a reasonable period before the meeting.

59. Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

60. Circular resolutions of directors

- 60.1 The directors may pass a circular resolution without a directors' meeting being held.
- 60.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 60.3 or clause 60.4.
- 60.3 Each director may sign:
 - (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 60.4 The **company** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 60.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 60.3 or clause 60.4.

Secretary

61. Appointment and role of secretary

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

Minutes and records

62. Minutes and records

- 62.1 The **company** must, within one month, make and keep the following records:
 - (a) minutes of proceedings and resolutions of **general meetings**
 - (b) minutes of circular resolutions of **full members**

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- (c) a copy of a notice of each **general meeting**, and
 - (d) a copy of a members' statement distributed to members under clause 32.
- 62.2 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
 - (b) minutes of circular resolutions of directors.
- 62.3 To allow members to inspect the **company's** records:
- (a) the **company** must give a member access to the records set out in clause 62.1, and
 - (b) the directors may authorise a member to inspect other records of the **company**, including records referred to in clause 62.2 and clause 63.1.
- 62.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
 - (b) the chairperson of the next meeting.
- 62.5 The directors must ensure that minutes of the passing of a circular resolution (of **full members** or directors) are signed by a director within a reasonable time after the resolution is passed.

63. Financial and related records

- 63.1 The **company** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 63.2 The **company** must also keep written records that correctly record its operations.
- 63.3 The **company** must retain its records for at least 7 years.
- 63.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.

By-laws

64. By-laws

- 64.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 64.2 Members and directors must comply with by-laws as if they were part of this constitution.

Notice

65. What is notice

- 65.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 66 to 68, unless specified otherwise.
- 65.2 Clauses 66 to 68 do not apply to a notice of proxy under clause 39.6.

66. Notice to the company

Written notice or any communication under this constitution may be given to the **company**, the directors or the secretary by:

- (a) delivering it to the **company's** registered office

- (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided, or
- (c) sending it to an email address or other electronic address notified by the **company** to the members as the **company's** email address or other electronic address.

67. Notice to members

- 67.1 Written notice or any communication under this constitution may be given to a member:
- (a) in person
 - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
 - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any), or
 - (d) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 67.2 If the **company** does not have an address for the member, the **company** is not required to give notice in person.

68. When notice is taken to be given

A notice:

- (a) delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
- (c) sent by email or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 67.1(d) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

69. Company's financial year

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

Indemnity, insurance and access

70. Indemnity

- 70.1 The **company** indemnifies each officer of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company**.
- 70.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 70.3 In this clause, 'to the relevant extent' means:

- (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so, and
 - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 70.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

71. Insurance

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

72. Directors' access to documents

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

Winding up

73. Surplus assets not to be distributed to members

If the **company** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **company**, unless that member or former member is a charity described in clause 74.1.

74. Distribution of surplus assets

- 74.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** that remain after the **company** is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purposes in clause 8, including purposes focused on establishing or maintaining the National Vietnam Veterans Museum or other multicultural museums in Victoria or Australia, but in all cases the purpose(s) must support the key principles as set out under clauses 6(b) and 6(c)
 - (b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **company**, and
 - (c) that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth).
- 74.2 The decision as to the charity or charities to be given the **surplus assets** must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the **company** may apply to the Supreme Court to make this decision.

Definitions and interpretation

75. Definitions

In this constitution:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth)

company means the **company** referred to in clause 1

Corporations Act means the *Corporations Act 2001* (Cth)

Director Candidates has the meaning given in clause 42.3

elected chairperson means a person elected by the directors to be the **company's** chairperson under clause 43

founding director means a director who is named in the application for registration of the **company**, with their consent, as a proposed director of the **company** and who has not yet retired in accordance with this constitution

founding member means the following persons who were named in the application for registration of the **company**, with their consent, as a proposed member of the **company**:

(a) Vietnamese Community in Australia - Victoria Chapter, Inc (ABN 99 356 098 668), and

(b) Vietnamese Community in Australia (ABN 51 934 809 450)

full member means a member of the **company** who has been a member for at least one year (subject to clause 17.2) and each **founding member**

general meeting means a meeting of **full members** and includes the annual **general meeting**, under clause 23.1

incorporated member means a member of the **company** which is an incorporated association, body corporate, or other incorporated entity.

observer member means a member of the **company** who has only been a member for less than one year, or a member that has not become a **full member** in accordance with clause 17.2, but does not include **founding members**

registered charity means a charity that is registered under the **ACNC Act**

special resolution means a resolution:

- i. of which notice has been given under clause 24.5(c), and
- ii. that has been passed by at least 75% of the votes cast by **full members present** and entitled to vote on the resolution

surplus assets means any assets of the **company** that remain after paying all debts and other liabilities of the **company**, including the costs of winding up

76. Reading this constitution with the Corporations Act

76.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.

76.2 While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.

76.3 If the **company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.

76.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

77. Interpretation

In this constitution:

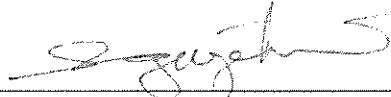
- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).



SIGNED by VIETNAMESE COMMUNITY IN AUSTRALIA (ABN 51 934 809 450) by its authorised representative in accordance with its constituent documents and the laws of the place of its incorporation:



Signature of Witness



Signature of Authorised Representative

THI HET DANG

Print Full Name of Witness

QUOC TOAN NGUYEN

Print Full Name of Authorised Representative

15/09/19

Date

15/09/19

Date



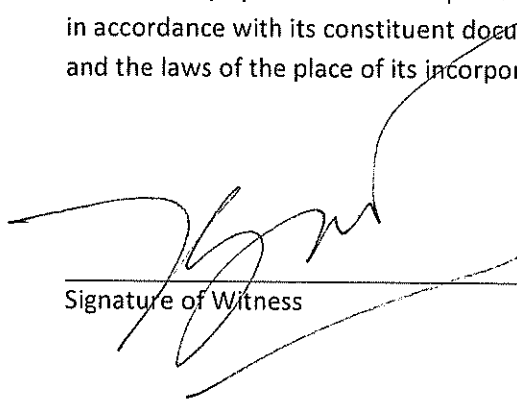


CONSTITUTION OF VIETNAMESE MUSEUM AUSTRALIA LTD

We, the undersigned, each agree:

- (a) to become a **founding member** of the **company**, and
- (b) to be bound by the terms of this constitution.

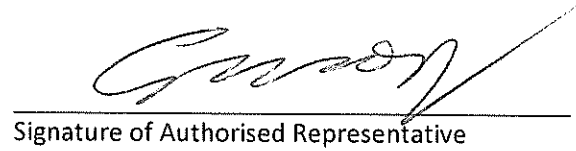
SIGNED by **VIETNAMESE COMMUNITY IN AUSTRALIA - VICTORIA CHAPTER INC (ABN 99 356 098 668)** by its authorised representative in accordance with its constituent documents and the laws of the place of its incorporation:



Signature of Witness

VIVIENNE NGUYEN
Print Full Name of Witness

15/09/2019
Date



Signature of Authorised Representative

PHUONG NGUYEN
Print Full Name of Authorised Representative

15/09/2019
Date

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