

**ADELAIDE SYMPHONY ORCHESTRA HOLDINGS LIMITED**  
**ACN 122 259 036**

**A public company limited by guarantee**

**Constitution**

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# Adelaide Symphony Orchestra Holdings Limited – Constitution

## PART A: INTRODUCTION

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### 1 Name and Status

- (a) The name of the Company is “Adelaide Symphony Orchestra Holdings Limited”.
- (b) The Company is a public company limited by guarantee.

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### 2 Objects

The objects for which the Company is established are:

- (a) To promote, encourage and produce and join in promoting, encouraging and producing orchestral music through the ASO and other forms of entertainment consistent with the ASO's artistic standing and role.
- (b) To acknowledge the ASO as a community icon and to foster community involvement in the development and activities of the ASO.
- (c) To advance the work and profile of the ASO in the Australian and international orchestral music communities as one of Australia's major symphony orchestras, including through concert performances, touring, recording, broadcasting, fundraising and obtaining sponsorship.
- (d) To develop and maintain widely-based audiences for the performance of orchestral music.
- (e) To facilitate the provision of rewarding employment and career development opportunities for talented Australian musicians and administrative staff and high calibre international musicians.
- (f) To promote the public benefit derived from the maintenance of a symphony orchestra recognised internationally for its high quality.
- (g) To encourage the participation of young people in the orchestral music art form through the provision of music education programs, young performers and young artists programs and other musical appreciation activities.
- (h) To actively promote, initiate and commission, in the first instance, Australian musical composition and performance.
- (i) To establish, promote, concur or assist in establishing, forming or promoting any other company, corporation or joint venture whose objects shall in any manner enhance either directly or indirectly the interests of the Company and to conduct and carry on or liquidate or wind up any such company, corporation or joint venture and to take or otherwise acquire and hold shares, securities or any other interest in, and to guarantee payment of any obligations of, any such company, corporation or joint venture.

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### 3 Income and Property

- (a) The income and property of the Company shall be applied solely towards the promotion of the objects of the Company set out in Clause 2 and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to Members of the Company.

- (b) Nothing in this Clause 3 prevents the payment in good faith by the Company of any payment permitted by Clause 4.2.
- (c) This Clause 3 applies despite any other provision of this Constitution and overrides any other provision of this Constitution to the extent of any inconsistency.

## **PART B: COMMON PROVISIONS<sup>1</sup>**

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### **4 Directors**

#### **4.1 Directorship of Adelaide Symphony Orchestra Pty Ltd**

- (a) For as long as Adelaide Symphony Orchestra Pty Ltd is a wholly-owned subsidiary of the Company, a Director of the Company shall also be a director of Adelaide Symphony Orchestra Pty Ltd and, for that purpose, as a condition of a person's appointment as a director of the Company, the person must also give a director's consent to act as a director of Adelaide Symphony Orchestra Pty Ltd.
- (b) A person who is appointed a Director of the Company shall also be taken to be appointed as a director of Adelaide Symphony Orchestra Pty Ltd at the same time.
- (c) A Director may be an employee of the Company or an employee of Adelaide Symphony Orchestra Pty Ltd.
- (d) The Directors acknowledge that the board of Directors is intended to be a skills based board and any appointment of a Director is intended to be based on the required skills determined by the Members as they see fit from time to time.

#### **4.2 Remuneration of Directors**

- (a) The Directors will be paid such remuneration as is from time to time determined by the Company in general meeting. That remuneration will be taken to accrue from day to day.
- (b) If authorised by a resolution of the Directors, a Director may be paid any fee, remuneration or commission for services rendered or goods provided to the Company (including professional or other charges for work done by a Director other than as a Director).
- (c) The Directors may also be paid all reasonable travelling and other expenses properly incurred by them in attending and returning from meetings of Directors or any committee or general meetings of the Company or otherwise in connection with the business of the Company.

#### **4.3 Directors' Interests**

Subject to prior disclosure of the Director's material personal interests to the other Directors, and authorisation by a resolution of the Directors, and complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office in the Company on a voluntary basis, except that of Auditor of the Company;
- (b) hold any office on a voluntary basis in any other company, body corporate, trust or entity promoted by the Company or in which the Company has an interest of any kind;

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<sup>1</sup> **NOTE:** Except for clauses 4.1 and 4.4(l), the provisions in "Part B: Common Provisions" of the Company's Constitution and Adelaide Symphony Orchestra Pty Ltd's Constitution are identical. Clauses 4.1 and 4.4(l) in both Constitutions are similar and they operate together dealing with the same concepts.

- (c) enter into any contract or arrangement with the Company;
- (d) enter into any sponsorship contract or arrangement with the Company, including as a member of a firm or organisation that enters into a sponsorship contract or arrangement with the Company;
- (e) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or persons dependent on or connected with them;
- (f) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company on a voluntary basis, except as Auditor of the Company;
- (g) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors;
- (h) sign or participate in the execution of a document by or on behalf of the Company; and
- (i) do any of the above despite the fiduciary relationship of the Director's office:
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.

A reference to the Company in this Clause 4.3 is also a reference to each related body corporate of the Company.

#### **4.4 Vacation of Office**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act and this Constitution, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) resigns by written notice to the Company;
- (c) is removed from office by a resolution of the Members of the Company;
- (d) is removed from office as required or permitted by the Corporations Act or this Constitution;
- (e) becomes prohibited from being a Director by reason of the Corporations Act or an order made under the Corporations Act;
- (f) becomes disqualified by the Commissioner of the Australian Charities and Not-for-profits Commission from being eligible to be a “responsible entity” for the purposes of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);
- (g) dies;
- (h) is convicted of an indictable offence;
- (i) becomes bankrupt or makes any general arrangement or composition with his or her creditors;
- (j) is not present at meetings of the Directors for a continuous period of 3 months without leave of absence from the Directors;

- (k) at the time of his or her appointment as a Director he or she was also the Chief Executive Officer, ceases to hold the office of Chief Executive Officer of the Company (unless the other Directors decide otherwise);
- (l) at the time of his or her appointment as a Director he or she was an employee of the Company or Adelaide Symphony Orchestra Pty Ltd, ceases to be an employee of the Company or Adelaide Symphony Orchestra Pty Ltd (unless the other Directors decide otherwise);
- (m) at the time of his or her appointment as a Director he or she was a current serving musician of the ASO orchestra ensemble, ceases to be a serving musician of the ASO orchestra ensemble (unless the other Directors decide otherwise); or
- (n) ceases to be a director of Adelaide Symphony Orchestra Pty Ltd.

#### **4.5 Actions of Directors**

- (a) All bona fide acts of the Directors in meeting or committee or by any person acting as a Director shall, notwithstanding any defect in the appointment of any such Director or that any of them were disqualified or, subject to paragraph (b), that due notice of any such meeting had not been given, be as valid as if all necessary requirements had been complied with.
- (b) Acts carried out at a Directors' meeting will be void if, within one month from the date of such meeting, objection is taken by a Director who did not receive due notice of the meeting.

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## **5 Powers and Duties of Directors**

### **5.1 Directors to Manage Company**

- (a) The business of the Company is to be managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.
- (b) The Company will only engage in a business or other activity that furthers the objects set out in Clause 2.

### **5.2 Specific Powers of Directors**

Without limiting the generality of Clause 5.1, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or give any security for a debt, liability or obligation of the Company or of any other person.

### **5.3 Appointment of Attorney**

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.

### **5.4 Provisions in Power of Attorney**

A power of attorney granted under Clause 5.3 may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

### **5.5 Minutes**

The Directors must cause minutes of meetings to be made and kept in accordance with the Corporations Act.



## 5.6 Signing of Cheques

The Directors may determine the manner in which, and persons by whom, cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

## 5.7 Code of Conduct

The Directors must comply with the Company's Code of Conduct as amended from time to time.

## 5.8 Confidentiality

- (a) Each Director must not disclose any Confidential Information received in their capacity as Director other than in accordance with their duties as a Director and applicable law.
- (b) A Director who has received Confidential Information must not use it except for the purpose of exercising his or her rights or performing his or her obligations as a Director in relation to the Company or the business of the Company.

## 5.9 Conflicts of Interests and Declaration of Interests

- (a) 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) to the other Directors.
- (b) The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- (c) 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 clause 5.9(d):
  - (i) be present at the meeting while the matter is being discussed; or
  - (ii) vote on the matter.
- (d) A Director may still be present and vote if:
  - (i) their interest arises because they are a Member of the company, and the other Members have the same interest;
  - (ii) 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;
  - (iii) their interest relates to a payment by the Company under clause 15 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
  - (iv) the Australian Securities and Investments Commission makes an order allowing the director to vote on the matter; or
  - (v) the Directors who do not have a material personal interest in the matter pass a resolution that:
    - (A) 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
    - (B) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

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## **6 Proceedings of Directors**

### **6.1 Directors' Meetings**

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit. The Directors may use any form of technology to conduct their meetings (including at two or more venues) as they think fit that provides each Director present at meetings with the means to participate in meetings.

### **6.2 Director May Convene a Meeting**

At any time, the Secretary must, on the written request of the Chairperson or 3 Directors, convene a meeting of the Directors. At least 48 hours notice of any meeting, and the agenda that is to be relevant to it, shall be given to all the Directors unless all the Directors waive that requirement.

### **6.3 Voting**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

### **6.4 Chairperson's Casting Vote**

In the event of an equality of votes, the Chairperson of the meeting has a casting vote except at any meeting at which only two of the Directors who are present are entitled to vote.

### **6.5 Quorum for Directors' Meeting**

- (a) No business may be transacted at a meeting of Directors unless a quorum is present at the time when the meeting proceeds to business and throughout the meeting.
- (b) At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum shall consist of a simple majority of the Directors entitled to attend.
- (c) If, within 30 minutes after the time appointed for a Directors' meeting, a quorum is not present, the meeting stands adjourned to the same day in the next week and the same time and place.
- (d) If, at an adjourned Directors' meeting, a quorum is not present within 30 minutes after the time appointed for the adjourned Directors' meeting, the meeting is dissolved.

### **6.6 Chairperson and Deputy Chairperson**

The Directors must elect one of their number as Chairperson and may elect another as Deputy Chairperson of their meetings and may also determine the period for which the persons elected are to hold office.

### **6.7 Absence of Chairperson at Directors' Meeting**

If a Directors' meeting is held and:

- (a) a Chairperson has not been elected under Clause 6.6; or
- (b) the Chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act; and
- (c) a Deputy Chairperson is not present to act as chairperson for that meeting,

the Directors present must elect one of their number to be a chairperson of the meeting.

## 6.8 Circular Resolutions

- (a) If a resolution in writing is submitted to the Directors individually and approved of in writing by a majority of the Directors for the time being, that resolution is to be taken as having been passed by a meeting of the Directors.
- (b) For the purposes of paragraph (a):
  - (i) the meeting is taken as having been held on the day on which, and at the time at which, the document was last assented to by a Director whose assent then constituted assent by a majority of the Directors;
  - (ii) two or more separate documents in identical terms each of which is assented to by one or more Directors are to be taken as constituting one document; and
  - (iii) a Director may signify assent to a document by signing the document or by notifying the Company of the Director's assent by email which includes the text of the resolution.
- (c) Where a Director signifies assent to a document otherwise than by signing the document the Director must, by way of confirmation, sign the document at the next meeting of the Directors attended by that Director but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (d) Where a document is assented to in accordance with paragraph (a) the document is to be taken as a minute of a meeting of the Directors.

## 7 Committees

### 7.1 Delegation to Committee

- (a) Without limiting the Directors' power to delegate under section 198D of the Corporations Act, the Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a committee or committees consisting of such persons as they think fit.
- (b) Any such delegation must require (and if not so required, it will be deemed) that a quorum of such committee or committees shall consist of a simple majority of the Committee members entitled to attend.

### 7.2 Powers Delegated to Directors' Committees

A committee to which any powers have been delegated under Clause 7.1 must exercise those powers in accordance with any directions of the Directors. A power so exercised is taken to have been exercised by the Directors.

### 7.3 Meetings of Directors' Committee

- (a) A committee may meet and adjourn as it thinks fit or as determined by the Directors.
- (b) The meetings shall be governed by the provisions of this Constitution for regulating meetings and the proceedings of the Directors so far as they are applicable and are not superseded by any regulations made by the Directors.

### 7.4 Limits on Expenditure

A committee must not authorise expenditure or incur any liability in excess of an amount as determined by the Directors from time to time in a single transaction or in a series of related transactions, without the prior written approval of the Directors.

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## **8 Chief Executive Officer and Managing Director**

- (a) The Directors may from time to time appoint a person to the office of Chief Executive Officer for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.
- (b) The Chief Executive Officer in office at the time of adoption of amendments to this Constitution continues in office subject to this Constitution.
- (c) The Directors may also appoint the Chief Executive Officer as the Managing Director of the Company (subject to receiving a written consent to act as a director of the Company from the Chief Executive Officer).
- (d) The person holding office of the Chief Executive Officer (and the office of the Managing Director as the case may be) will, subject to the terms of any agreement entered into in a particular case, receive such remuneration (whether by way of salary or commission) as the other Directors determine.
- (e) The other Directors may, on terms and conditions as they think fit, confer on the Chief Executive Officer (and the office of the Managing Director as the case may be) any of the powers exercisable by the other Directors.
- (f) Any of those powers so conferred may be concurrent with the powers of the other Directors and the other Directors may at any time withdraw or vary any of those powers.
- (g) The Managing Director's appointment (and his or her appointment as a Director) automatically ceases in accordance with Clause 4.4(k).

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## **9 Secretary**

A Secretary of the Company holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine. The Directors may at any time terminate the appointment of a Secretary. Any termination under this Clause will only be with respect to appointment to the office of Secretary.

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## **10 Audit**

If required by the Corporations Act, the Company shall appoint a properly qualified Auditor or Auditors and shall regulate his or her remuneration and duties.

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## **11 Service of Documents**

### **11.1 Notices**

- (a) A notice may be given by the Company to any Member or Director by:
  - (i) personal service;
  - (ii) sending it by post to the address shown in the Register of Members or to the address supplied by that Member to the Company or the Director's usual place of address (as the case may be) for delivery of notices; or
  - (iii) sending it to an email address or other electronic address nominated by the Member or Director as an address for service of notices.
- (b) Subject to this Constitution, a notice may be given by a Member or Director to the Company:

- (i) by serving it on the Company at the Registered Office;
  - (ii) by sending it by pre-paid post to the Registered Office; or
  - (iii) by sending it to the Company Secretary's email address.
- (c) Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected:
- (i) in the case of a notice of a meeting, on the day after the date of its posting; and
  - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (d) Where notice is given by electronic transmission, service of the notice will be deemed to have been effected on the Business Day the Company transmits the electronic transmission to the electronic address specified by the Member or Director (if transmitted on a non-Business Day, the transmission date is deemed to be the next Business Day), unless the Company has reason to believe that the transmission was not successful.

## 12 Winding Up

### 12.1 Winding Up

If upon the winding up or dissolution of the Company there remains any property, after the satisfaction of all the Company's debts and liabilities, the property shall not be paid to or distributed among the Members of the Company, but shall be given or transferred to such fund, authority or institution:

- (a) having objects similar to the objects of the Company and which shall prohibit the distribution of its or their income and property amongst its and their members to an extent at least as great as is imposed on the Company by virtue of Clause 3; and
- (b) having eligibility for tax deductibility of gifts under Subdivision 30-B, section 30-100 of the *Income Tax Assessment Act 1997*,

to be determined by the Members of the Company at or before the time of dissolution, and in default thereof, by such judge of the Supreme Court of South Australia as may have or acquire jurisdiction in the matter.

### 12.2 Override

This Clause **Error! Reference source not found.** applies despite any other provision of this Constitution and overrides any other provision of this Constitution to the extent of any inconsistency.

## 13 Indemnity

- (a) Every person who is or has been a Director, Secretary or executive officer of the Company will be indemnified (**Indemnified Person**), to the maximum extent permitted by law (but subject to any limitation agreed between the Company and that person from time to time), out of the property of the Company against:
  - (i) any liability incurred to another person (other than the Company or its related bodies corporate) as such an officer unless the liability arises out of conduct involving a lack of good faith or conduct known to the person to be wrongful; and
  - (ii) any liability for costs and expenses incurred by that person:

- (A) in defending any proceedings relating to that person's position with the Company, whether civil or criminal, in which judgment is given in that person's favour or in which that person is acquitted or which are withdrawn before judgment; or
  - (B) in connection with any application in relation to any proceedings relating to that person's position with the Company, whether civil or criminal, in which relief is granted to that person under the Corporations Act by the court.
- (b) The Company need not indemnify a person as provided for in Clause 13(a) in respect of a liability to the extent that the person is entitled to an indemnity in respect of that liability under a contract of insurance.
- (c) To the extent permitted by law and without limiting the powers of the Company, the Directors may authorise the Company to, and the Company may enter into any:
- (i) documentary indemnity in favour of; or
  - (ii) insurance policy for the benefit of,
- a person who is, or has been, a Director, Secretary, Auditor, employee or other officer of the Company, which indemnity or insurance policy may be in such terms as the Directors approve and, in particular, may apply to acts or omissions prior to or after the time of entering into the indemnity or policy.
- (d) The benefit of each indemnity given in Clause 13(a)(i) continues, even after its terms or the terms of this paragraph are modified or deleted, in respect of a liability arising out of acts or omissions occurring prior to the modification or deletion.
- (e) An Indemnified Person must:
- (i) give notice to the Company promptly on becoming aware of any claim against him or her that may give rise to a right to be indemnified under Clause 13;
  - (ii) take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any claim or any adjudication of a claim;
  - (iii) not make any admission of liability in respect of or settle any claim without the prior written consent of the Company;
  - (iv) allow the Company or its insurers to assume the conduct, negotiation or defence of any claim and, on request by the Company, render all reasonable assistance and co-operation to the Company or its insurers in the conduct of any claim, including giving the Company or its insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim; and
  - (v) notify any claim to an insurer or any other person who may be liable to indemnify him or her in respect of that claim and promptly take all reasonable steps to enforce all the his or her rights against the insurer or other person.

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## 14 Amendment

This Constitution may be amended in accordance with section 136 of the Corporations Act.

## **PART C: NON-COMMON PROVISIONS**

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### **15 Limited Liability**

- (a) The liability of Members of the Company is limited.
- (b) Every Member of the Company undertakes to contribute to the assets of the Company in the event of it being wound up during the time that he or she is a Member or within one year afterwards for payment of the debts and liabilities of the Company contracted before he or she ceased to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of contributories among themselves such amount as may be required not exceeding the sum of twenty dollars (\$20).

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### **16 Membership**

#### **16.1 Members**

The Directors for the time being of the Company shall be Members of the Company and only Directors of the Company may be Members of the Company.

#### **16.2 Cessation of Membership**

A Member shall cease to be a Member of the Company if that Member ceases to hold office as a Director.

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### **17 Subscriptions**

The subscription fee and annual membership fee (if any) payable by Members shall be those amounts as the Directors may from time to time prescribe.

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### **18 General Meetings**

#### **18.1 Annual General Meeting**

- (a) The Directors may convene and arrange to hold an annual general meeting of the Company within 5 months of the end of the financial year and must do so if required under the Corporations Act.
- (b) The business of an annual general meeting is to receive and consider the profit and loss account, the balance sheet, and the reports of the Directors and Auditor and to transact any other business of which notice has been duly given under this Constitution.

#### **18.2 Convening General Meeting**

The Directors may convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Corporations Act.

#### **18.3 Notice of General Meeting**

- (a) Notice of a meeting of Members must be given in accordance with Clause 11 of this Constitution and Part 2G.2, Division 3 of the Corporations Act.
- (b) A person may waive notice of any general meeting by giving notice in writing to the Company to that effect.

**18.4 Persons Entitled to Notice of Meeting**

A Director, the Auditor and the Chief Executive Officer of the Company are entitled to receive notice of and to attend all annual general meetings of the Company and are entitled to speak at those meetings.

**18.5 Quorum for meeting of Members**

- (a) No business may be transacted at a meeting of Members unless a quorum is present at the time when the meeting proceeds to business and throughout the meeting.
- (b) At a meeting of Meetings, the number of Members whose presence in person is necessary to constitute a quorum shall consist of a simple majority of Members entitled to attend.

**18.6 Cancellation or Postponement**

- (a) Where a meeting of Members (including an annual general meeting) is convened by the Directors they may, whenever they think fit, cancel or relocate the meeting or postpone the holding of the meeting to a date and time determined by them.
- (b) This Clause 18.6 does not apply to a meeting convened in accordance with the Corporations Act by Members or by the Directors on the requisition of Members.

**18.7 Notice of Cancellation or Postponement**

Notice of cancellation or postponement of a general meeting must state the reason for cancellation or postponement and the postponed date, time and location for the holding of the meeting and must be given:

- (a) to each Member; and
- (b) to each other person entitled to be given notice of a meeting of the Company's Members under the Corporations Act.

**18.8 Time for Postponement of Meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the general meeting required to be given by the Corporations Act.

**18.9 Business at Postponed Meeting**

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

**18.10 Appointment of Proxy, Attorney or Representative**

- (a) Subject to the Corporations Act, a Member who is entitled to participate in and vote at a meeting of the Company may appoint a person as the Member's proxy, or may appoint a Representative or an attorney, to participate in and vote at all meetings or a specified meeting for the Member.
- (b) An instrument appointing a proxy will be in writing under the hand of the appointer containing the information required by section 250A of the Corporations Act or of that appointer's attorney duly authorised in writing or, if the appointer is a corporation, either under the hands of a director and a director or secretary of the corporation or under the hand of a duly authorised officer or attorney of the corporation.
- (c) For the purposes of paragraphs (a) and (b) above, the Company receives documents when they are received at any of the following:



- (A) the Company's registered office;
  - (B) a fax number at the Company's registered office; or
  - (C) a place, fax number or electronic address specified for the purpose in the notice of meeting.
- (d) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
  - (e) An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.
  - (f) The documents to be received by the Company under the Corporations Act for an appointment of a proxy to be effective must be received by the Company at least 48 hours (or any shorter period as the Directors may permit) before the meeting commences or resumes (as the case may be).
  - (g) For an instrument appointing an attorney to act on behalf of a Member at all meetings of the Company or at all meetings for a specified period to be effective, the following documents must be received by the Company at least 48 hours (or any shorter period as the Directors may permit) before commencement of the meeting or adjourned meeting at which the attorney proposes to vote:
    - (A) the power of attorney or a certified copy of that power of attorney; and
    - (B) any evidence that the Directors may require of the validity and non-revocation of that power of attorney.

#### **18.11 Proxy, Attorney or Representative at Postponed Meeting**

Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative, a proxy or an attorney or a Representative is authorised to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this Clause 18.11, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at the Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

#### **18.12 Non-Receipt of Notice**

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

#### **18.13 Electronic Lodgement of Proxies**

The Directors may permit proxy appointments to be lodged electronically and, subject to any applicable law, may determine what will constitute acceptable authentication or signing of proxy appointments for

the purpose of electronic lodgement, and may determine such other incidental matters or procedures as are necessary or desirable to permit or facilitate electronic lodgement of proxy appointments.

#### **18.14 Directors May Waive Requirements of Proxies**

Subject to the Corporations Act, the Directors may waive any requirements in relation to the form, execution and lodgement of appointments of a proxy, attorney or Representative and, in particular, may, upon the production of such other evidence as the Directors require to prove the validity of the appointment, accept an oral appointment of a proxy, attorney or Representative or an appointment that is not properly executed.

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### **19 Proceedings at General Meetings**

#### **19.1 Reference to a Member**

Unless the contrary intention appears, a reference to a Member in this Clause 19 means a person who is a Member, or is a proxy, attorney or Representative of that Member.

#### **19.2 Quorum**

- (a) No business may be transacted at a general meeting unless a quorum is present at the time when the meeting proceeds to business and throughout the meeting.
- (b) At a general meeting, the number of Members whose presence in person is necessary to constitute a quorum shall consist of a simple majority of Members entitled to attend.

#### **19.3 Quorum and Time**

If, within 30 minutes after the time appointed for a meeting, a quorum is not present, the meeting:

- (a) if convened at the requisition of Members, is dissolved; and
- (b) in any other case stands adjourned to the same day in the next week and the same time and place or to such other day, time and place as the Directors resolve and notify to the Members and others entitled to notice of the meeting.

#### **19.4 Adjourned Meeting**

If, at an adjourned meeting, a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

#### **19.5 Chairperson of General Meeting**

The person appointed as Chairperson in accordance with Clause 6.6, or in his or her absence the Deputy Chairperson, shall preside as chairperson at a general meeting.

#### **19.6 Absence of Chairperson**

If a general meeting is held and:

- (a) the Chairperson has not been elected by the Directors; or
- (b) the Chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairperson of the meeting (in order of precedence):

- (c) the Deputy Chairperson;

- (d) a Director chosen by a majority of the Directors present (if more than one Director present);
- (e) the only Director present; or
- (f) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

#### **19.7 Conduct of General Meetings**

The chairperson of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairperson under this Clause 19.7 is final.

#### **19.8 Adjournment of General Meeting**

- (a) The chairperson of a general meeting may, at any time during the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
- (b) In exercising the discretion in paragraph (a), the chairperson may, but need not, seek the approval of the Members present. Unless required by the chairperson, a vote may not be taken or demanded by the Members present in respect of any adjournment.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

#### **19.9 Notice of Adjourned Meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

#### **19.10 Questions Decided by Majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

#### **19.11 Casting Vote for Chairperson**

If there is an equality of votes, either on a show of hands or on a poll, the chairperson of the meeting is entitled to a casting vote in addition to any votes to which the chairperson is entitled as a Member or proxy or attorney or Representative.

#### **19.12 Declaration of Results**

- (a) At any general meeting, a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is, before or on the declaration of the result on the show of hands, demanded:

- (i) by the chairperson; or
- (ii) by at least five Members present in person or by proxy or, in the case of a corporation, by Representative,

and the demand is not withdrawn.

- (b) A declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact.
- (c) Neither the chairperson nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

### **19.13 Poll**

- (a) If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairperson and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) No poll shall be demanded for the election of a chairperson.
- (c) A poll demanded on a question of adjournment must be taken immediately.
- (d) A demand for a poll may be withdrawn.
- (e) A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

### **19.14 Entitlement to Vote**

- (a) Subject to any rights or restrictions contained in this Constitution on both a show of hands and a poll, each Member present in person and each other person present as proxy, attorney or Representative of a Member has one vote.
- (b) A Member is not entitled to vote at a general meeting unless all subscription fees and annual membership fees (if any) presently payable by the Member have been paid to the Company and the Member otherwise satisfies the qualifications for membership of the relevant class of membership.

### **19.15 Votes of Two Proxies or Attorneys**

If a Member appoints two proxies or attorneys to vote on behalf of the Member and both proxies or attorneys are in attendance at a general meeting only the first person named in the instrument appointing the proxies or attorneys or, if they are named in separate instruments, the person whose surname is earlier in alphabetical sequence, may vote on behalf of that Member.

### **19.16 Validity of Votes**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the Member is mentally incapacitated;
- (c) the Member revokes the appointment or authority; or

- (d) the Member revokes the authority under which the appointment was made by a third party.

### **19.17 Objection to Voting Qualification**

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except before or at that meeting or adjourned meeting; and
- (b) must be referred:
- (i) if the objection is raised before the meeting, to the Directors; and
- (ii) if the objection is raised at the meeting, to the chairperson of the meeting,
- whose decision is final.

Subject to the Corporations Act, a vote not disallowed under the objection is valid for all purposes.

### **19.18 Director Entitled to Notice of Meeting**

A Director is entitled to receive notice of and to attend all general meetings of the Company and is entitled to speak at those meetings.

### **19.19 Members' Resolution in Writing**

A resolution signed by all Members for the time being shall be as valid and as effectual as if it had been passed at a general meeting duly convened and constituted and the Members may sign separate copies of the resolutions or document circulated for that purpose.

## **20 Directors: Non-Common Provisions**

### **20.1 Number of Directors**

- (a) The number of Directors is to be not less than 6 nor, subject to ordinary resolution of the Company in general meeting, more than 12.
- (b) Subject to paragraph (a) and any ordinary resolution of the Company in general meeting, the number of Directors shall, from time to time, be determined by the Directors.
- (c) At least 2 Directors must ordinarily reside in Australia.
- (d) A Director must be a Member of the Company
- (e) A Director may be an employee of the Company an employee of Adelaide Symphony Orchestra Pty Ltd.

### **20.2 Change of Number of Directors**

The Company in general meeting may, by resolution, increase or reduce the number of Directors and may also determine the rotation in which the increased or reduced number are to retire from office.

### **20.3 Appointment and Removal of Directors**

- (a) The Company may by resolution in general meeting appoint or remove Directors.
- (b) No Director will hold office beyond midnight on the third anniversary of the date of his or her appointment without being nominated for re-appointment, and re-appointed, under this Clause 20.3 or under Clause 20.5.

- (c) A person will not be eligible for appointment or re-appointment as a Director:
  - (i) if that person has served 2 consecutive 3 year terms as a Director unless:
    - (A) a period of 3 years following the conclusion of that second consecutive term has expired; or
    - (B) the Directors have resolved by Special Resolution that the person should be entitled to serve an additional term of up to 3 years.

#### **20.4 Eligibility for Election**

Except for:

- (a) a person who is eligible for election or re-election under Clause 20.5; or
- (b) a person whose office as a Director becomes vacant by operation of the Corporations Act,

a person is not eligible for election as a Director at a general meeting of the Company unless a consent to act as Director signed by the person has been lodged at the Registered Office at least 10 Business Days before the general meeting.

Notice of every candidate shall be served by the Company on the Members at least 5 Business Days prior to the meeting at which the election takes place.

#### **20.5 Appointment by Directors**

- (a) The Directors may, at any time, appoint any person to be a Director provided the total number of Directors does not exceed the maximum number determined in accordance with Clause 20.1(a).
- (b) A Director appointed under this Clause 20.5 shall, unless removed or his or her office vacated earlier in accordance with this Constitution, hold office until midnight on the third anniversary of the date of his or her appointment at which time he or she retires from office in accordance with clause 20.8(a) unless re-elected in accordance with this Constitution.

#### **20.6 Casual vacancy or additional Director**

Subject to clause 20.5, the Directors will have power at any time to appoint any other person as a Director either to fill a casual vacancy or as an addition to the Directors but the total number of Directors must not at any time exceed the maximum number under clause 20.1(a).

#### **20.7 Advisers**

The Directors shall have the power to allow any person it sees fit to attend a meeting or meetings of the board of Directors or a board committee as an adviser. Such advisers may give advice to the board of Directors or a board committee and assist in the conduct of the business of the board or board committee as the Directors may deem necessary or expedient, but shall not be a Director, a board committee member nor be entitled to vote on any issue.

#### **20.8 Retirement of Directors**

- (a) Each Director retires from office at midnight on the third anniversary of the date of his or her appointment.
- (b) Subject to clause 20.3(c), a retiring Director shall be eligible for re-election.

## 20.9 Remaining Directors May Act

If, due to a vacancy or vacancies in the offices of Directors, the number of Directors is reduced below the minimum fixed by Clause 20.1(a), the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting of the Company.

## PART D: COMMON MISCELLANEOUS PROVISIONS<sup>2</sup>

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### 21 Miscellaneous

#### 21.1 Definitions

In this Constitution, unless the contrary intention appears:

“**ASO**” means the orchestral ensemble and associated support services trading under the name Adelaide Symphony Orchestra, presently owned and operated by Adelaide Symphony Orchestra Pty Ltd ACN 079 016 738.

“**Auditor**” means the appointed auditor of the Company.

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in South Australia.

“**Chairperson**” means the chairperson of the Directors appointed pursuant to Clause 6.6.

“**Clause**” means a clause of this Constitution.

“**Code of Conduct**” means the code of conduct that applies to Directors (as amended from time to time).

“**Company**” means Adelaide Symphony Orchestra Holdings Limited ACN 122 259 036.

“**Confidential Information**” means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the Company, Directors and its Members before, on or after the date of this Constitution relating to the business, technology or other affairs of the Company or the Members including all trade secrets, business plans, financial, marketing, systems, technology, ideas, concepts, know how, techniques, specifications, diagrams, models, functions, capabilities and designs (including without limitation, computer software or other information embodied in drawings or specifications), intellectual property or any other information which is indicated to be subject to an obligation of confidence, owned or used by or licensed to the Company.

“**Constitution**” means this constitution as amended from time to time.

“**Corporations Act**” means the *Corporations Act 2001* (Cth).

“**Deputy Chairperson**” means the deputy chairperson of the Directors appointed pursuant to Clause 6.6.

“**Director**” means a person holding office as a director of the Company.

“**Directors**” means all or some of the Directors acting as a board.

“**Managing Director**” means a managing director appointed under clause 8.

“**Member**” means a person entered in the Register as a member of the Company.

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<sup>2</sup> **NOTE:** The provisions in “Part D: Common Miscellaneous Provisions” of the Company’s Constitution and Adelaide Symphony Orchestra Pty Ltd’s Constitution are identical, except for the **exclusion** of the definitions of “Corporate Plan” and “ASO Holdings” in this Constitution.

“**Register**” means the register of Members of the Company under the Corporations Act.

“**Registered Charity**” means a charity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth)

“**Registered Office**” means the registered office of the Company.

“**Representative**” means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

“**Secretary**” means a person appointed as a secretary of the Company pursuant to the Corporations Act and, where appropriate, includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

“**Special Resolution**” means a resolution passed by at least 75% of the votes cast by Directors entitled to vote on the resolution.

## 21.2 Interpretation

In this Constitution, unless the contrary intention appears:

- (a) words or expressions importing a gender include each other gender;
- (b) words or expressions denoting individuals include corporations, firms, unincorporated bodies, government authorities and instrumentalities;
- (c) words or expressions importing the singular include the plural and vice versa;
- (d) a reference to legislation or a provision of legislation includes:
  - (i) all regulations, orders or instruments issued under the legislation or provision; and
  - (ii) any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;
- (e) a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (f) where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors; and
- (g) “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

## 21.3 Headings

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

## 21.4 Submission to Jurisdiction

Each Member submits to the non-exclusive jurisdiction of the Supreme Court of South Australia, the Federal Court of Australia and the courts which may hear appeals from those courts.



**21.5 Reading this constitution with the Corporations Act**

- (a) In this Constitution, unless the contrary intention appears an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act
- (b) The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.
- (c) While the Company is a Registered Charity, the Australian Charities and Not-for-profits Commission Act 2012 (Cth) and the Corporations Act override any clauses in this Constitution which are inconsistent with those Acts.
- (d) 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.