

Execution version

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Constitution

No Sweat Fashions Limited

MinterEllison

L A W Y E R S

25 NATIONAL CIRCUIT, FORREST, CANBERRA ACT 2601, DX 5601 CANBERRA
TEL: +61 2 6225 3000 FAX: +61 2 6225 1000
www.minterellison.com

Constitution of No Sweat Fashions Limited

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1. Preliminary

1.1 Defined terms

- (a) In this Constitution unless the contrary intention appears:

Alternate Director means a person appointed as an alternate director under clause 20.

Auditor means the Company's auditor.

Board means all or some of the Directors acting as a board.

Company means No Sweat Fashions Limited.

Company Secretary means any person appointed by the Board to perform the duties of a secretary of the Company and if there are joint secretaries, any one or more of those joint secretaries.

Constitution means the constitution of the Company as amended from time to time.

Corporations Act means the *Corporations Act 2001* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

Director includes any person occupying the position of director of the Company and, where appropriate, includes an Alternate Director.

Member means a member under clause 7.1.

Register means the register of Members of the Company.

Refugee has the meaning given to it by the *1951 Convention relating to the Status of Refugees* (and its 1967 Protocol).

Representative means a person appointed as such under clause 9.

Seal means the Company's common seal (if any).

Tax Act means the *Income Tax Assessment Act 1997* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any rulings or requirements of the Commissioner of Taxation of the Commonwealth of Australia.

- (b) In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

2. Interpretation

- (a) In this Constitution, except where the context otherwise requires:

- (i) the singular includes the plural and vice versa, and a gender includes other genders;
- (ii) another grammatical form of a defined word or expression has a corresponding meaning;

- (iii) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
 - (iv) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (v) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency; and
 - (vi) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions.
- (b) Headings are for ease of reference only and do not affect interpretation.
- (c) The Corporations Act prevails over any inconsistency with this Constitution.

3. Replaceable rules

To the extent permitted by law, the provisions of the Corporations Act that apply to certain companies as replaceable rules are displaced by this Constitution in their entirety and do not apply to the Company.

4. Objects

- (a) The objects for which the Company is established are:
- (i) to conduct initiatives aimed at directly relieving the helplessness and distress faced by Refugees and other disadvantaged migrants to Australia (including their social isolation, lack of access to employment and training and other challenges they face), and to provide such Refugees and other disadvantaged migrants with a direct pathway to financial and emotional self-sufficiency, including by:
 - (A) creating and supporting the creation of jobs for Refugees and other disadvantaged migrants to Australia; and
 - (B) providing training and supporting the provision of training to Refugees and other disadvantaged migrants to Australia;
 - (ii) to work in concert with the network of existing bodies, establishing new programs where necessary, to relieve such helplessness and distress faced by Refugees and other disadvantaged migrants to Australia;
 - (iii) to encourage the community engagement and social inclusion of Refugees and other disadvantaged migrants to Australia; and
 - (iv) do all other things as may be incidental and ancillary to the attainment of these objects.
- (b) The Company may only exercise the powers in section 124(1) of the Corporations Act to:
- (i) carry out the objects in this clause; and
 - (ii) do all things incidental or convenient in relation to the exercise of power under clause 4(b)(i).

5. Income and property of Company

- (a) The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 4.
- (b) No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:
 - (i) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
 - (ii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent;
 - (iii) by way of reimbursement of expenses incurred by any Member on behalf of the Company; or
 - (iv) in good faith, of reasonable remuneration as an employee of the Company.

6. Receipts

If the Company accepts a gift, contribution or donation of money or property, the Company must give the donor a receipt, and otherwise comply with all applicable laws in relation to any such gift, contribution or donation, including without limitation the provisions of section 30-228 of the Tax Act and the provisions of the *Charitable Collections Act 2003* (ACT).

7. Membership

7.1 Admission

- (a) The number of Members with which the Company proposes to be registered is unlimited.
- (b) The Members of the Company are:
 - (i) the persons who consented to become Members in the application for registration of the Company; and
 - (ii) any other persons, corporations or organisations whom or which the Board admits to membership in accordance with this Constitution,and whose membership has not ceased pursuant to clause 7.3.
- (c) Applications for membership of the Company must be in writing, signed by the applicant and in a form approved by the Board in their absolute discretion.
- (d) The Board will consider each application for membership at the next meeting of the Board after the application is received. In considering an application for membership, the Board may:
 - (i) accept or reject the application; or
 - (ii) ask the applicant to give more evidence of eligibility for membership.
- (e) If the Board asks for more evidence under clause 7.1(d), their determination of the application for membership is deferred until the evidence is given.

- (f) The Board does not have to give any reason for rejecting an application for membership.
- (g) As soon as practicable following acceptance of an application for membership, the Company Secretary will send the applicant written notice of the acceptance and request payment of the applicant's entrance fee and first annual subscription.
- (h) Subject to clause 7.1(i), an applicant for membership becomes a Member when the applicant's entrance fee and first annual subscription is paid.
- (i) If the entrance fee and first annual subscription of an applicant for membership is not paid within 30 days after the date the applicant is notified of acceptance of their application for membership, the Board may cancel their acceptance of the applicant for membership of the Company.
- (j) The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

7.2 Subscriptions

- (a) The Board may determine the entrance fee and annual subscription payable by each Member or each category of Member. Until otherwise determined by the Board:
 - (i) the entrance fee will be \$10.00; and
 - (ii) the annual subscription will be \$10.00.
- (b) The annual subscription period will commence on 1 July of each year, and the annual subscription will be due in advance within 30 days of this date.
- (c) The first subscription payable by persons who consented to become Members in the application for the Company's registration will be payable within 30 days of the date from which subscriptions are determined by the Board.
- (d) The Board may determine that any Member admitted to membership between 1 January and 30 June will pay only one-half of the annual subscription until that Member's next annual subscription falls due.
- (e) If a Member does not pay a subscription within 30 days after it becomes due the Board:
 - (i) will give the Member notice of that fact; and
 - (ii) if the subscription remains unpaid 21 days from the date of that notice, may declare that Member's membership forfeited.

7.3 Ceasing to be a Member

- (a) A Member's membership of the Company will cease:
 - (i) if the Member gives the Company Secretary written notice of resignation, from the date of receipt of that notice by the Company Secretary;
 - (ii) if a majority of three-quarters of the Board present and voting at a meeting of the Board by resolution terminate the membership of a Member:
 - (A) whose conduct in their opinion renders it undesirable that that Member continue to be a Member of the Company; and

- (B) only after the Member has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed;
- (iii) if membership is forfeited under clause 7.2(e)(ii);
- (iv) where the Member is an individual, if the Member:
 - (A) dies;
 - (B) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
 - (C) is convicted of an indictable offence;
- (v) where the Member is not an individual, if:
 - (A) a liquidator is appointed in connection with the winding- up of the Member; or
 - (B) an order is made by a Court for the winding-up or deregistration of the Member; or
 - (C) is otherwise deregistered or ceases to exist.
- (b) Any Member ceasing to be a Member:
 - (i) will not be entitled to any refund (or part refund) of a subscription; and
 - (ii) will remain liable for and will pay to the Company all subscriptions and moneys which were due at the date of ceasing to be a Member.

8. Powers of attorney

- (a) If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the attorney to the Company for notation.
- (b) The Company may require the Member to lodge a certified copy of the instrument for retention by the Company, and ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.
- (c) Any power of attorney granted by a Member will, as between the Company and the Member who granted the power of attorney:
 - (i) continue in force; and
 - (ii) may be acted on,

unless express notice in writing of its revocation or where the member is a natural person, of the death of the Member who granted it is lodged with the Company.
- (d) Where a Member proposes that an attorney represent the Member at a general meeting or adjourned meeting, the Member must comply with clause 14.6(a) of this Constitution.
- (e) If an attorney is to vote at a meeting of Members, the instrument conferring the power of attorney (or a certified copy of the instrument) must be produced to the Company at least 48 hours before the meeting in the same way as the appointment of a proxy.

9. Representatives of bodies corporate

- (a) Any Member that is a body corporate may by written notice to the Company Secretary:
 - (i) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
 - (ii) remove a Representative.
- (b) A Representative is entitled to:
 - (i) exercise at a general meeting all the powers which the body corporate which appointed him or her could exercise if the Member were a natural person;
 - (ii) stand for election as an office bearer or Director; and
 - (iii) be counted towards a quorum on the basis that the Member is to be considered personally present at a general meeting by its Representative.
- (c) The original form of appointment of a Representative, a certified copy of the appointment, or a certificate of the body corporate evidencing the appointment of a Representative is prima facie evidence of a Representative having been appointed.
- (d) The chairperson of a general meeting may permit a person claiming to be a Representative to exercise the body's powers even if he or she has not produced a certificate or other satisfactory evidence of his or her appointment.
- (e) The appointment of a Representative may set out restrictions on the Representative's powers.

10. General meetings

10.1 Calling general meeting

- (a) A Director may call a meeting of Members.
- (b) The Board must call annual general meetings in accordance with the Corporations Act, to be held by the Company at times to be determined by the Board.
- (c) Members may also request or call and arrange to hold general meetings in accordance with the procedures and requirements set out in the Corporations Act.
- (d) A general meeting may be held at two or more venues simultaneously using any technology that gives the Members as a whole a reasonable opportunity to participate.

10.2 Notice of general meeting

- (a) Notice of a general meeting must be given in accordance with the Corporations Act to the persons referred to in clause 32.2(a).
- (b) Except as permitted by the Corporations Act, general meetings must be called on at least the minimum number of days notice required by the Corporations Act and otherwise in accordance with the procedures set out in the Corporations Act.
- (c) Subject to the requirements of the Corporations Act, a notice calling a general meeting must:

- (i) specify the place, date and time of the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (ii) state the general nature of the business to be transacted at the meeting;
- (iii) if a special resolution is to be proposed at the meeting state the resolution;
- (iv) include such statements about the appointment of proxies as are required by the Corporations Act;
- (v) specify a place, facsimile number and electronic address for the purposes of proxy appointments; and
- (vi) comply with any other requirements of the Corporations Act.

10.3 Business

- (a) The business of an annual general meeting may include:
 - (i) any of the following matters, even if not referred to in the notice of meeting:
 - (A) consideration of the annual financial report, directors' report and auditor's report;
 - (B) election of directors;
 - (C) appointment of the auditor; and
 - (D) fixing the auditor's remuneration;
 - (ii) any business which under this Constitution or the Corporations Act is required to be transacted at an annual general meeting; and
 - (iii) any other business which may lawfully be transacted at a general meeting.
- (b) The chairperson of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to:
 - (i) ask questions about or make comments on the management of the Company; and
 - (ii) ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report for the Company.
- (c) The Board may postpone or cancel any general meeting (other than a meeting called as the result of a request under clause 10.1(c)) at any time before the day of the meeting. The Board must give notice of the postponement or cancellation to all persons entitled to receive notices of a general meeting.
- (d) An accidental omission to send a notice of a general meeting (including a proxy appointment form) or the postponement of a general meeting to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings, at or any resolution passed at, the general meeting.

11. Proceedings at general meetings

11.1 Member

In clauses 11.2, 11.3, 11.5 and 14.1, **Member** includes a Member present in person or by proxy, attorney or Representative.

11.2 Quorum

- (a) No business may be transacted at a general meeting unless a quorum of Members is present at the commencement of business.
- (b) A quorum of Members is either 5 members or the number of members holding not less than 5% of the votes that may be cast at a general meeting (whichever is lower).
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (i) the general meeting is automatically dissolved if it was requested or called by Members under clause 10.1(c); or
 - (ii) in any other case:
 - (A) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Board; and
 - (B) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

11.3 Chairperson

- (a) The chairperson, or in the chairperson's absence the deputy chairperson, of Board meetings will be the chairperson at every general meeting.
- (b) If:
 - (i) there is no chairperson or deputy chairperson; or
 - (ii) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
 - (iii) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting,the Directors present may elect a chairperson of the general meeting.
- (c) If no chairperson is elected in accordance with clause 11.3(b), then:
 - (i) the Members may elect one of the Directors present as chairperson; or
 - (ii) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.
- (d) At any time during a meeting and in respect of any specific item or items of business, the chairperson may elect to vacate the chair in favour of another person nominated by the chairperson (which person must be a Director unless no Director is present or is willing to act). That person is to be taken to be the chairperson and will have all the powers of the chairperson (other than the power to adjourn the meeting), during the consideration of that item of business or those items of business.
- (e) If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

- (f) The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting will be determined by the chairperson, including the procedure for the conduct of the election of Directors.

11.4 Adjournment

- (a) The chairperson of a general meeting at which a quorum is present:
 - (i) in his or her discretion may adjourn the general meeting; and
 - (ii) must adjourn the general meeting if the meeting directs him or her to do so.
- (b) An adjourned general meeting may take place at a different venue to the initial general meeting.
- (c) The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- (d) Notice of an adjourned general meeting must only be given in accordance with clause 10.2(a) if a general meeting has been adjourned for more than 21 days.

11.5 Decisions on questions

- (a) Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- (b) A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- (c) Unless a poll is demanded:
 - (i) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
 - (ii) an entry to that effect in the minutes of the meeting,are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- (d) The demand for a poll may be withdrawn.
- (e) A decision of a general meeting may not be invalidated on the ground that a person voting at the general meeting was not entitled to do so.

11.6 Taking a poll

- (a) Subject to clause 11.6(d), a poll will be taken when and in the manner that the chairperson directs. No notice need be given of any poll.
- (b) The result of the poll will determine whether the resolution on which the poll was demanded is carried or lost.
- (c) The chairperson may determine any dispute about the admission or rejection of a vote, and such determination, if made in good faith, will be final and conclusive.
- (d) A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- (e) After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

11.7 Casting vote of chairperson

The chairperson does not have a casting vote (in addition to the chairperson's votes as a Member, proxy, attorney or Representative) on a show of hands or on a poll.

12. Admission to general meetings

The chairperson of a general meeting may refuse admission to a person, or require a person to leave and not return to, a meeting if the person:

- (a) refuses to permit examination of any article in the person's possession; or
- (b) is in possession of any:
 - (i) electronic or recording device;
 - (ii) placard or banner; or
 - (iii) other article,
 which the chairperson considers to be dangerous, offensive or liable to cause disruption; or
- (c) causes any disruption to the meeting.

13. Auditor's right to be heard

The Auditor is entitled to:

- (a) attend any general meeting of the Company;
- (b) be heard at any general meeting of the Company on any part of the business of the meeting that concerns the Auditor in their capacity as auditor, even if:
 - (i) the Auditor retires at the general meeting; or
 - (ii) Members pass a resolution to remove the Auditor from office; and
- (c) authorise a person in writing to attend and speak at any general meeting as the Auditor's representative.

14. Votes of Members

14.1 Entitlement to vote

- (a) A Member is not entitled to vote at a general meeting if the member's annual subscription is more than one month in arrears at the date of the meeting.
- (b) A Member entitled to vote has one vote.

14.2 Objections

- (a) An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.

- (b) An objection must be referred to the chairperson of the general meeting, whose decision is final.
- (c) A vote which the chairperson does not disallow because of an objection is valid for all purposes.

14.3 Votes by proxy

- (a) If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.
- (b) A proxy need not be a Member.
- (c) A proxy may demand or join in demanding a poll.
- (d) A proxy or attorney may vote on a poll.
- (e) A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.
- (f) If:
 - (i) a Member nominates the chairperson of the meeting as the Member's proxy; or
 - (ii) the chairperson is to act as proxy under clause 14.5 or otherwise under a default appointment according to the terms of the proxy form,

then the person acting as chairperson in respect of an item of business at the meeting must act as proxy under the appointment in respect of that item of business.

14.4 Document appointing proxy

- (a) An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Board may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- (b) For the purposes of clause 14.4(a), an appointment received at an electronic address will be taken to be signed by the Member if:
 - (i) a personal identification code allocated by the Company to the Member has been input into the appointment; or
 - (ii) the appointment has been verified in another manner approved by the Board.
- (c) A proxy's appointment is valid at an adjourned general meeting.
- (d) A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- (e) Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
 - (i) to vote on:
 - (A) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and

- (B) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,

even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and

- (ii) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.

14.5 Proxy in blank

If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Company Secretary.

14.6 Lodgment of proxy

- (a) Subject to clause 14.6(c), the appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting) at which the appointee is to attend and vote.
- (b) If the appointment purports to be executed under a power of attorney or other authority, the original document or a certified copy of it must be received by the Company at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting).
- (c) The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
 - (i) the Company's registered office;
 - (ii) a facsimile number at the Company's registered office; or
 - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

14.7 Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated; or
- (c) revoked the proxy or power,

unless any written notification of the death, mental incapacity or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

15. Appointment and removal of Directors

15.1 Number of Directors

- (a) Subject to the Corporations Act, the Company may by resolution passed at a general meeting increase the minimum number of Directors or increase or reduce the maximum number of Directors.

- (b) Until the Company resolves otherwise in accordance with clause 15.1(a), there will be:
 - (i) a minimum of three Directors; and
 - (ii) a maximum of seven Directors.
- (c) Subject to clause 15.1(b) and any resolution of the Members determining the minimum and maximum numbers of Directors, the Board may from time to time determine the respective numbers of Directors.

15.2 Initial Directors

- (a) The initial Directors of the Company are the persons who have consented to act as directors and are set out in the Company's application for registration as a company. Those persons hold office subject to this Constitution.
- (b) Unless otherwise required or permitted by the Tax Act, the majority¹ of the Directors must at all times be persons having a degree of responsibility to the community as a whole, which persons include:
 - (i) church authorities, school principals, judges, clergymen, solicitors, doctors, other professional persons, mayors, councillors, town clerks and members of Parliament;
 - (ii) persons known to a broad section of the community who perform a public function;
 - (iii) persons known to a broad section of the community who belong to a professional body (including the Institute of Chartered Accountants, State Law Societies and Medical Registration Boards) which has a professional code of ethics and rules of conduct;
 - (iv) appointees of a Chief Justice of the Supreme Court; and
 - (v) persons who have received formal recognition from the Government for their services to the community, including an Order of Australia award.
- (c) The Board shall be composed such that it has the skills necessary to act as an effective board (and, without limitation, may include persons with financial, accounting, legal, welfare or other relevant experience).

15.3 Qualification

In addition to the circumstances which disqualify a person from managing a corporation according to the Corporations Act, no person who has been an insolvent under administration within the previous five years is eligible to become a Director.

15.4 Power to remove and appoint

- (a) The Company may, subject to the Corporations Act, by resolution passed in general meeting:
 - (i) remove any Director before the end of the Director's term of office; and
 - (ii) elect another person to replace the Director.

¹ A majority means more than 50%.

- (b) A person elected under clause (ii) will hold office for the remainder of the term for which the Director replaced would have held office if the Director had not been removed.
- (c) Subject to the provisions of this Constitution, the Company may appoint a person as a Director by resolution passed in general meeting.
- (d) A Director appointed or elected at a general meeting is taken to have been appointed or elected with effect from immediately after the end of that general meeting unless the resolution by which the Director was appointed or elected specifies a different time.
- (e) If the conduct or position of any Director is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of the Company, a majority of Directors at a meeting of the Board specifically called for that purpose may suspend that Director.
- (f) A suspended Director may not take any part in the business or affairs of the Company until the suspension has been terminated.
- (g) Within 14 days of the suspension, the Board must call a general meeting, at which the Members may consider a motion to remove the Director from office in accordance with clause 15.4(a)(i).
- (h) If a motion to remove a suspended Director from office is not carried at the general meeting called to consider the matter, the suspension of the Director is terminated and the Director is reinstated.

15.5 Additional and casual Directors

- (a) Subject to clause 15.1 only, the Board may appoint any person as a Director to fill a casual vacancy or as an addition to the existing Board.
- (b) A Director appointed under clause (a) will hold office until the next general meeting of the Company when the Director may be re-elected.

15.6 Retirement by rotation

- (a) At the close of each annual general meeting one third of the Directors or, if their number is not a multiple of three, then the number nearest to but not more than one third of the Directors, must retire.
- (b) The Directors to retire by rotation at an annual general meeting are those Directors who have been longest in office since their last election.
- (c) Directors elected on the same day may agree among themselves or determine by lot which of them must retire.
- (d) A Director must retire from office at the conclusion of the third annual general meeting after the Director was last elected, even if his or her retirement results in more than one third of all Directors retiring from office.
- (e) A retiring Director remains in office until the end of the meeting and will be eligible for re-election at the meeting.
- (f) When a Director retires at a general meeting, the Company may by ordinary resolution elect a person to fill the vacated office.

- (g) If the vacated office is not filled and the retiring Director has offered himself or herself for re-election, the retiring Director will be deemed to have been re-elected unless, at the meeting at which he or she retires, it is resolved not to fill the vacated office.

15.7 Nomination of Director

- (a) A person, other than a Director retiring under clause 15.6(a) who seeks re-election, is not eligible for election as a Director at a general meeting unless:
 - (i) the person is proposed as a candidate by a Member (who may be the candidate); and
 - (ii) the proposing Member leaves a notice at the Company's registered office which nominates the candidate for the office of Director and includes the signed consent of the candidate.
- (b) A notice given in accordance with clause (ii) must be left at the Company's registered office not less than 30 days before the relevant general meeting.
- (c) A written notice referring to all Director vacancies and each candidate for election, must be sent to all Members at least seven days before every general meeting at which an election of a Director will take place.

15.8 Vacation of office

The office of a Director immediately becomes vacant if the Director:

- (a) ceases to be a Director by virtue of the Corporations Act;
- (b) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (c) is prohibited from holding or is removed from the office of Director by an order made under the Corporations Act;
- (d) becomes bankrupt or makes any general arrangement or composition with his or her creditors;
- (e) cannot fully participate in the management of the Company because of his or her mental incapacity or is a person whose estate is liable to have a person appointed, under the law relating to the administration of estates of persons who through mental or physical infirmity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Board incapable of performing his or her duties;
- (f) resigns from his or her office of Director by notice in writing to the Company;
- (g) is removed by a resolution of the Company;
- (h) is resident in Australia and not being engaged abroad on the business of the Company, is absent from Board meetings for [three] consecutive months without the leave of absence from the Board;
- (i) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act; or
- (j) dies.

16. Powers and duties of the Board

- (a) The business of the Company is managed by or under the direction of the Board who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.
- (b) Without limiting the generality of clause 16(a), the Board may exercise all the powers of the Company to:
 - (i) borrow money;
 - (ii) charge any property or business of the Company; and
 - (iii) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

17. Proceedings of the Board

17.1 Board meetings

- (a) A Director may at any time, and the Company Secretary must on the request of a Director, call a Directors' meeting.
- (b) A Board meeting must be called by not less than 48 hours notice of a meeting to each Director, unless the Board unanimously agree otherwise. The notice may be in writing or given using any technology consented to by all of the Directors.
- (c) It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Company Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- (d) An accidental omission to send a notice of a meeting of the Board to any Director or the non-receipt of such a notice by any Director does not invalidate the proceedings, or any resolution passed, at the meeting.
- (e) Subject to the Corporations Act, a Board meeting may be held by the Board communicating with each other by any technological means consented to by all the Directors. The consent may be a standing one.
- (f) The Board need not all be physically present in the same place for a Board meeting to be held.
- (g) A Director who participates in a meeting held in accordance with clause 17.1(e) is taken to be present and entitled to vote at the meeting.
- (h) A Director can only withdraw his or her consent under clause 17.1(e) to the means of communication between the Board proposed for a Board meeting if the Director does so at least 48 hours before the meeting.
- (i) Clause 17.1(d) applies to meetings of Board committees as if all committee members were Directors.
- (j) The Directors may meet together, adjourn and regulate their meetings as they think fit.
- (k) A quorum for meetings of the Board may be fixed by the Board and unless so fixed, is a two Directors. The quorum must be present at all times during the meeting.

- (l) Where a quorum cannot be established for the consideration of a particular matter at a meeting of the Board, one or more of the Directors may call a general meeting to deal with the matter.

17.2 Decision

- (a) Questions arising at a meeting of the Board are to be decided by a majority of votes of the Directors present and voting and, subject to the Corporations Act, each Director has one vote.
- (b) In the case of an equality of votes the chairperson of a meeting, has a casting vote in addition to his or her deliberative vote.
- (c) An Alternate Director has one vote for each Director for whom he or she is an alternate.
- (d) If the Alternate Director is also a Director, he or she also has a vote as a Director.

18. Payments to Directors

18.1 Payments to Directors

No payment will be made to any Director of the Company other than payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Board of the Company;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board of the Company and where the amount payable is approved by the Board of the Company and is not more than an amount which commercially would be reasonable payment for the service;
- (c) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Board of the Company; and
- (d) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B.

19. Directors' interests

- (a) As required by the Corporations Act, a Director must give the Board notice of any material personal interest in a matter that relates to the affairs of the Company.
- (b) Subject to the provisions of this clause 19, a Director or a body or entity in which a Director has a direct or indirect interest may:
 - (i) enter into any agreement or arrangement with the Company;
 - (ii) hold any office or place of profit other than as auditor in the Company; and
 - (iii) act in a professional capacity other than as auditor for the Company,

and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.

- (c) The fact that a Director holds office as a director, and has fiduciary obligations arising out of that office:
 - (i) will not void or render voidable a contract made by a Director with the Company;
 - (ii) will not void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may have any interest; and
 - (iii) will not require the Director to account to the Company for any profit realised by or under any contract or arrangement entered into by or on behalf of the Company and in which the Director may have any interest.
- (d) A Director may be or become a director or other officer of, or otherwise be interested in:
 - (i) any related body corporate of the Company; or
 - (ii) any other body corporate promoted by the Company or in which the Company may be interested as a supplier, shareholder or otherwise,

and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.
- (e) A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:
 - (i) be present while the matter is being considered at the meeting; or
 - (ii) vote on the matter,

unless permitted to do so by the Corporations Act, in which case the Director may:

 - (iii) be counted in determining whether or not a quorum is present at any meeting of the Board considering that contract or arrangement or proposed contract or arrangement;
 - (iv) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (v) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

20. Alternate Directors

- (a) A Director may, with the approval of the Board, appoint any person as his or her alternate for a period determined by that Director.
- (b) An Alternate Director is entitled to notice of Board meetings while he or she is acting in that capacity and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- (c) An Alternate Director is an officer of the Company and is not an agent of the appointor.
- (d) The provisions of this Constitution which apply to the Board also apply to Alternate Directors.
- (e) The appointment of an Alternate Director:
 - (i) may be revoked at any time by the appointor; and

- (ii) ends automatically when his or her appointor ceases to be a Director.
- (f) Any appointment or revocation under this clause must be effected by written notice delivered to the Company Secretary.
- (g) An Alternate Director does not have an interest in a contract or arrangement or a material personal interest in a matter by reason only of the fact that his or her appointor has such an interest.

21. Remaining Directors

- (a) The Board may act even if there are vacancies on the Board.
- (b) If the number of Directors is not sufficient to constitute a quorum at a Board meeting, the Board may act only to:
 - (i) appoint a Director or Directors; or
 - (ii) call a general meeting.

22. Chairperson

- (a) The Board may elect a Director as chairperson of Board meetings and may determine the period for which the chairperson will hold office.
- (b) If no chairperson is elected or if the chairperson is not present at any Board meeting within ten minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.
- (c) The Board may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

23. Committees

- (a) The Directors may establish either or both of the following:
 - (i) committees with powers delegated by the Directors (**Board Committees**); and
 - (ii) advisory committees, with no delegated powers, to advise the Directors on specified matters (**Advisory Committees**).
- (b) Board Committee members and Advisory Committee members will be appointed by the Directors.
- (c) At least one member of each Board Committee must be a Director.
- (d) Meetings of any Board Committee or Advisory Committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each Board Committee or Advisory Committee member was a Director.

24. Written resolutions

- (a) If all the Directors entitled to vote on a resolution have signed a document containing a statement that they are in favour of the resolution set out in the document, then a resolution in those terms is taken to have been passed by the Board without a meeting. The resolution is passed when the last Director signs.
- (b) For the purposes of clause 24(a), separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) Any document referred to in this clause may be in the form of a facsimile transmission or electronic notification.
- (d) If a resolution is taken to have been passed in accordance with this clause 24, the minutes must record that fact.
- (e) This clause 24 applies to meetings of Board committees as if all members of the committee were Directors.
- (f) Any document referred to in this clause 24 must be sent to every Director who is entitled to vote on the resolution.

25. Validity of acts of Directors

- (a) An act done by a Director is effective even if his or her appointment, or the continuance of his or her appointment, is invalid because the Company or Director did not comply with this Constitution or any provision of the Corporations Act.
- (b) Clause 25(a) does not deal with the question whether an effective act by a Director:
 - (i) binds the Company in its dealings with other people; or
 - (ii) makes the Company liable to another person.

26. Minutes and Registers

- (a) The Board must cause minutes to be made of:
 - (i) the names of the Directors present at all Board meetings and meetings of Board committees;
 - (ii) all proceedings and resolutions of general meetings, Board meetings and meetings of Board committees;
 - (iii) all resolutions passed by the Board in accordance with clause 24;
 - (iv) all appointments of officers; and
 - (v) all disclosures of interests made in accordance with the Corporations Act.
- (b) Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting, and if so signed will be conclusive evidence of the matters stated in such minutes, unless the contrary is proved.
- (c) The Company must keep all registers required by this Constitution and the Corporations Act.

27. Appointment of attorneys and agents

- (a) The Board may from time to time by resolution or power of attorney appoint any person to be the attorney or agent of the Company:
 - (i) for the purposes;
 - (ii) with the powers, authorities and discretions (not exceeding those exercisable by the Board under this Constitution);
 - (iii) for the period; and
 - (iv) subject to the conditions,

determined by the Board.
- (b) A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- (c) An attorney or agent appointed under this clause may be authorised by the Board to sub-delegate all or any of the powers, authorities and discretions for the time being vested in it.

28. Chief Executive Officer

The Directors may appoint and remove any person, including a Director, to the position of Chief Executive Officer for the period and on the terms (including as to remuneration) that the Directors see fit.

29. Company Secretary

- (a) There must be at least one secretary of the Company appointed by the Board for a term and at remuneration and on conditions determined by the Board.
- (b) The Company Secretary is entitled to attend and be heard on any matter at all Board meetings and general meetings.
- (c) The Board may, subject to the terms of the Company Secretary's employment contract, suspend, remove or dismiss the Company Secretary.

30. Seals

30.1 Common Seal

If the Company has a Seal:

- (a) the Board must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Board or a Board committee authorised to permit use of the Seal; and
- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Company Secretary or another person appointed by the Board to countersign the document.

30.2 Duplicate Seal

If the Company has a Seal, the Company may have one or more duplicate seals of the Seal each of which:

- (a) must be a facsimile of the Seal with the addition on its face of the words 'Duplicate Seal'; and
- (b) must only be used with the authority of the Board.

31. Inspection of records

- (a) Except as otherwise required by the Corporations Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- (b) A Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Board.
- (c) Notwithstanding clauses 31(a) and 31(b), the books of the Company containing the minutes of general meetings will be kept at the Company's registered office and will be open to inspection of Members at all times when the office is required to be open to the public.

32. Notices

32.1 Service of notices

- (a) Notice may be given by the Company to any person who is entitled to notice under this Constitution by:
 - (i) serving it on the person; or
 - (ii) sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- (b) A notice sent by post is taken to be served:
 - (i) by properly addressing, prepaying and posting or directing the delivery of the notice; and
 - (ii) on the day after the day on which it was posted or given to the courier for delivery.
- (c) A notice sent by facsimile transmission or electronic notification is taken to be served:
 - (i) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
 - (ii) on the day of its transmission except if transmitted after 5.00pm in which case it is taken to be served the next day.

- (d) If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Company's registered office.
- (e) A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's for the purposes of clause 32.1.
- (f) A document in writing signed by a Director, Company Secretary or other officer of the Company, or by any person that the Company has engaged to maintain the Register, that a document or its envelope or wrapper was addressed and stamped and was posted or given to a courier is conclusive evidence of posting or delivery by courier.
- (g) Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- (h) All notices sent by post outside Australia must be sent by prepaid airmail post.

32.2 Persons entitled to notice

- (a) Notice of every general meeting must be given to:
 - (i) every Member;
 - (ii) every Director and Alternate Director; and
 - (iii) the Auditor.
- (b) No other person is entitled to receive notice of a general meeting.

33. Audit and financial records

- (a) The Board must cause the Company to keep written financial records and to prepare financial documents and reports in accordance with the Corporations Act.
- (b) The Board must cause the financial records and financial documents of the Company to be audited in accordance with the Corporations Act.

34. Winding up

- (a) If the Company is wound up:
 - (i) each Member; and
 - (ii) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the Company for the:
 - (iii) payment of debts and liabilities of the Company (in relation to clause 34(a)(ii), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
 - (iv) adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding \$1.00.

- (b) On the winding up of the Company, or the Company ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act, any surplus remaining following satisfaction of all debts and liabilities of the Company will not be paid to or distributed amongst Members, but will be given or transferred to another corporation which is endorsed by the Australian Taxation Office as a deductible gift recipient under Division 30 of the Tax Act on the basis that it is a public benevolent institution, with such corporation to be determined by the Members (at or before the winding up or revocation) or, in default, by application to the Supreme Court of the Australian Capital Territory for determination.

35. Indemnity

- (a) To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company may indemnify every person who is or has been an officer of the Company against:
- (i) any liability (other than for legal costs) incurred by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment); and
 - (ii) reasonable legal costs incurred in defending an action for a liability incurred or allegedly incurred by that person as an officer of the Company (including such legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- (b) Where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company.
- (c) The amount of any indemnity payable under clauses 35(a)(i) or 35(a)(ii) will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.
- (d) The Board may agree to advance to an officer an amount which it might otherwise be liable to pay to the officer under clause 35(a)(i) on such terms as the Board thinks fit but which are consistent with this clause, pending the outcome of any findings of a relevant court or tribunal which would have a bearing on whether the Company is in fact liable to indemnify the officer under clause 35(a)(i). If after the Company makes the advance, the Board forms the view that the Company is not liable to indemnify the officer, the Company may recover any advance from the officer as a debt due by the officer to the Company.
- (e) For the purposes of this clause 35, **officer** means:
- (i) a Director;
 - (ii) a Company Secretary; or
 - (iii) a person who has formerly been a director or secretary of the Company.

36. Insurance

- (a) To the extent permitted by law and subject to the restrictions in section 199B of the Corporations Act 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 (including a related body corporate) against any liability incurred by the person as an officer of the Company.
- (b) Despite anything in this Constitution, a Director is not precluded from voting on a contract (or proposed contract) of insurance, merely because the contract insures (or would insure) the Director against a liability incurred by the Director as an officer of the Company (or of a related body corporate).