Constitution of **Manufacturing Industry Skills Alliance Ltd**

ABN 74 109 600 302

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CONSTITUTION OF MANUFACTURING INDUSTRY SKILLS ALLIANCE LTD

1. PRELIMINARY

1.1 Company limited by guarantee

The Company is limited by guarantee and the liability of Members is limited as provided at rule 3.5 of this Constitution.

1.2 Replaceable rules

The replaceable rules referred to in section 141 of the Corporations Act do not apply to the Company and are replaced by the rules set out in this Constitution.

1.3 Definitions

The following definitions apply in this Constitution:

AASN Provider means an organisation engaged by the Commonwealth of Australia in relation to the Australian Apprenticeship Support Network.

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

Advisory Committee has the meaning provided at rule 9.1(a)(ii).

Annual General Meeting means the annual general meeting of the Company, held as required by section 250N of the Corporations Act.

Audit and Risk Committee means the committee established in accordance with rule 9.3(a) to perform the functions detailed at rule 9.3(b).

Board means the Directors acting collectively under this Constitution.

Board Committee has the meaning provided at rule 9.1(a)(i).

Business Day means any day that is not a Saturday, Sunday or a national public holiday, where a 'national public holiday' is a public service holiday throughout Australia promulgated in the Australian Government Gazette.

By-Laws means any rules or procedures made by the Board for the purpose of giving effect to this Constitution.

Chair means the chair of a meeting, being either a meeting of the Board or the Members as the context provides.

Chief Executive Officer means a chief executive officer of the Company appointed under rule 7.1.

Committee means either a Board Committee or an Advisory Committee (as the case may be) established in accordance with rule 9.1(a).

Company means the company, being Manufacturing Industry Skills Alliance Ltd, whatever its name is for the time being.

Competition and Consumer Act means the *Competition and Consumer Act 2010* (Cth).

Constitution means this constitution for the Company.

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

Director means a person who is, for the time being, a director of the Company.

Employee Organisation means an organisation or association of employees registered under the *Fair Work (Registered Organisations) Act 2009*, or as determined by the Board from time to time, and includes Australian Manufacturing Workers' Union (ABN 59 459 725 116) and Australian Council of Trade Unions (ABN 67 175 982 800).

Employer Organisation means an organisation or association of employers registered under the Fair Work (Registered Organisations) Act 2009, or as determined by the Board from time to time, and includes The Australian Industry Group (ABN 76 369 958 788) and Australian Chamber of Commerce and Industry (ABN 85 008 391 795).

Employment Service Provider means an organisation that is funded by the Commonwealth of Australia as part of a program for the provision of employment services.

Foundation Member Directors has the meaning provided at rule 4.3(a)(i).

Foundation Members means each of the following whilst it is a Member:

(a) The Australian Industry Group (ABN 76 369 958 788);

(b) Australian Manufacturing Workers' Union (ABN 59 459 725 116);

(c) Australian Chamber of Commerce and Industry (ABN 85 008 391 795); and

(d) Australian Council of Trade Unions (ABN 67 175 982 800).

Government Agency means a:

(a) government or government department or other body;

(b) governmental, semi-governmental or judicial person; or

(c) person (whether autonomous or not) who is charged with the administration of the law.

Group Training Organisation means an organisation which hires apprentices and trainees and places them with the host employer.

Independent Director means a Director who is free of any interest, position or relationship that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring an independent judgement to bear on issues before the Board and to act in the best interests of the Company as a whole rather than in the interests of an individual Member or other party.

Industry means any industry sector that the Company represents from time to time.

Industry Cluster Organisation means an organisation funded by the Commonwealth of Australia as represented by the Department of Education, Skills and Employment (whatever its name may be from time to time), as part of the *Industry Clusters – Strengthening Australia's National Vocational Education and Training System* program or any equivalent successor program relating to the VET sector.

The constituent documents of any Industry Cluster Organisation must:

(a) require the Industry Cluster Organisation to pursue objects similar to those of the Company in respect of the VET sector and to apply its income solely towards promoting those objects; and

(b) prohibit the Industry Cluster Organisation from making distributions to its members.

Initial Directors means the Directors in office immediately before the Transition Time.

Initial Members means the Members immediately before the Transition Time.

Liability has the meaning provided at rule 12.1(b).

Member means a member of the Company whose name is entered in the Register.

Nominations Committee means the committee established in accordance with rule 9.3(a) to perform the functions detailed at rule 9.3(b).

Officer has the meaning provided in the Corporations Act.

Ordinary Member Directors the meaning provided at rule 4.3(a)(ii).

Ordinary Members means all Members other than Foundation Members.

Ordinary Resolution means a resolution passed at a meeting of Members by a majority of the votes cast by the Members entitled to vote on the resolution.

Register means the register of members kept as required by sections 168 and 169 of the Corporations Act.

Registered Training Organisation means a training provider registered by the Australian Skills Quality Authority or a State regulator to deliver VET services.

Secretary means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this Constitution.

Special Resolution has the meaning given by section 9 of the Corporations Act.

Transition Time means the time of adoption of this Constitution.

VET means vocational education and training.

1.4 **Interpretation**

The following rules apply in interpreting this Constitution, except where the context makes it clear that a rule is not intended to apply:

(a) headings and marginal notes are for convenience only and do not affect interpretation;

(b) a reference to:

(i) any legislation is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;

(ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

(iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and

(iv) anything (including a right, obligation or concept) includes each part of it;

(c) a singular word includes the plural, and vice versa;

(d) a word that suggests one gender includes the other genders;

(e) the word **includes** in any form is not a word of limitation;

(f) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning. The meaning of general words is not limited by specific examples;

(g) the word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing;

(h) a power to do something includes a power, exercisable in the like circumstances, to revoke or undo it;

(i) a reference to a power is also a reference to authority or discretion;

(j) a reference to "$" means the Australian dollar;

(k) a reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form;

(l) a word (other than a word defined in rule 1.3) which is defined by the Corporations Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act; and

(m) a provision of the Corporations Act mentioned in this Constitution will apply to the Company despite section 111L of the Corporations Act.

2. OBJECTS AND POWERS

2.1 Objects of the Company

(a) The Company is formed with the object of fostering industry collaboration, and engagement with other stakeholders, to address the skills need of both employers and learners for the purpose of advancing education.

(b) The Company will achieve its objects in the manner determined by the Board from time to time, which may include:

(i) acting as an Industry Cluster Organisation or other organisation similarly funded or supported by government;

(ii) understanding, planning for and addressing workforce skills needs and related requirements;

(iii) developing training products that meet evolving industry skills needs;

(iv) driving continuous improvements in the development and delivery of training and assessment;

(v) providing a strong, strategic industry voice;

(vi) providing industry stewardship and oversight in respect of education, training and skills development programs, delivery, assessment, accountability and planning for future needs; as well as

(vii) undertaking any other activities in the furtherance of its objects.

(c) The Company may do all things that are necessary, convenient or incidental to carrying out, or for the attainment of, its objects.

2.2 **Objects do not limit powers**

The objects in rule 2.1 do not limit the powers of the Company under the Corporations Act or otherwise.

2.3 **Application of income and property**

(a) Subject to rules 2.4 and 11, the Company must only apply its income and assets solely towards promoting the objects of the Company as set out in rule 2.1.

(b) Subject to rule 2.4, no part of the Company's income or assets may be paid, or transferred directly or indirectly by way of dividend, bonus or otherwise to Members.

2.4 **Certain payments allowed**

Rule 2.3 does not prevent the Company from paying to a Member, provided these payments are made in good faith:

(a) reasonable remuneration to any Officer or employee of the Company, or to any Member or other person, in return for services rendered to the Company on an arm's length basis;

(b) interest on money lent by the Member to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts; and

(c) reasonable remuneration for goods supplied by the Member in the ordinary course of business or reasonable rent for any premises leased by the Member on an arm's length basis.

2.5 **By-Laws**

(a) The Board may pass a resolution to make any By-Laws considered necessary or convenient.

(b) Subject to rule 2.5(c), Members and Directors must comply with By-Laws as if they were part of this Constitution.

(c) If there is any inconsistency between this Constitution and any By-Laws created, the terms of this Constitution will prevail to the extent of the inconsistency.

3. **MEMBERSHIP**

3.1 **Membership**

Subject to rules 3.6 and 3.7, the Members are:

(a) the Initial Members; and

(b) any other person the Board admits to membership of the Company in accordance with rule 3.4.

3.2 **Eligibility for membership**

(a) Subject to rule 3.2(b), any individual or organisation who supports the purposes of the Company and has a connection to an Industry sector is eligible to apply to be a Member under rule 3.4.

(b) An individual or organisation is not eligible to be a Member if they are, or are an Officer of, any of the following, and the Company has not received prior written consent of the Department of Education, Skills and Employment (whatever its name may be from time to time) for that individual or organisation to be a Member:

(i) a Commonwealth, State, Territory or local government agency or body (including government business enterprises);

(ii) a Registered Training Organisation;

(iii) a Group Training Organisation;

(iv) an Employment Service Provider; or

(v) AASN Provider.

(c) An individual or organisation will not be eligible to become a Member if the Board consider that, as the case may be, either:

(i) the individual; or

(ii) any one or more of the Officers or shareholders of the organisation,

are of bad character.

(d) Subject to the terms of this Constitution and the ultimate discretion of the Board, every individual or organisation eligible to be a Member will be entitled to:

(i) apply to be admitted as a Member of the Company; and

(ii) remain a Member so long as that individual or organisation remains eligible to be a Member and complies with this Constitution and the By-Laws of the Company.

(e) An individual or organisation is not entitled to remain a Member of the Company if that individual or organisation ceases to be eligible to be a Member of the Company and this Constitution and the By-Laws do not otherwise permit that individual or company to remain a Member.

3.3 **Rights and Powers of Members**

Subject to this Constitution, all Members are entitled to:

(a) attend and participate in meetings;

(b) vote in the election of Directors in accordance with rules 4.1 and 4.5;

(c) seek election to the Board; and

(d) exercise any other rights provided for under this Constitution.

3.4 **Process for applying for membership**

(a) An individual or organisation may apply to become a Member by writing to the Company stating:

(i) that they want and consent to becoming a Member;

(ii) how they comply with any eligibility criteria established under rule 3.2, including providing any supporting evidence; and

(iii) that they agree to comply with this Constitution and the By-Laws (if any) of the Company, including paying the guarantee under rule 3.5(a) if required.

(b) If the Directors approve an application for membership, the Secretary must as soon as possible:

(i) enter the applicant on the Register; and

(ii) write to the applicant to tell them that their application was approved, and the date that their membership started (which will be the date the applicant was entered on the Register).

(c) If the Directors reject an application for membership, the Secretary must write to the applicant as soon as reasonably practicable to tell them that their application was rejected, but does not have to give reasons.

3.5 **Limited liability of Members**

(a) If the Company is wound up, each Member undertakes to contribute to the assets of the Company up to an amount not exceeding $2.00 for payment of the debts and liabilities of the Company, including the costs of the winding up.

(b) The undertaking in rule 3.5(a) continues for one year after a person ceases to be a Member.

3.6 **Resigning as a Member**

A Member may resign from the Company by giving written notice to the Board.

3.7 **Expelling a Member**

(a) Subject to rule 3.7(b), the Board may, by resolution, expel from the Company any Member:

(i) who does not comply with this Constitution, the By-Laws or any other rules or regulations of the Company; or

(ii) who is, in the opinion of the Board, no longer relevant to the Company's activities or Industry; or

(iii) whose conduct in the opinion of the Board is prejudicial to the interests of the Company,

and remove that Member's name from the Register.

(b) At least 21 days before the Board holds a meeting to expel a Member, the Board must give a written notice to the Member which states:

(i) the allegations against the Member;

(ii) the proposed resolution for the Member's expulsion;

(iii) that the Member has an opportunity at the meeting to address the allegations either orally or in writing; and

(iv) that, if the Member notifies the Secretary in writing at least 48 hours before the meeting, the Member may elect to have the question of that Member's expulsion dealt with by the Company in general meeting.

(c) The Company must expel a Member and remove the Member's name from the Register where:

(i) a general meeting is held to expel a Member; and

(ii) a Special Resolution is passed by those present at the meeting and voting for the Member to be expelled. The vote must be taken by ballot.

(d) A Member expelled from the Company does not have any claim on the Company, its funds or its property.

3.8 **Membership not transferrable**

A right, privilege, or obligation which a person has by reason of being a Member:

(a) is not capable of being transferred or transmitted to another person;

(b) remains with that person; and

(c) expires upon cessation of their membership.

4. DIRECTORS

4.1 Number of Directors

The Company must have at least three Directors and not more than nine Directors.

4.2 Eligibility of Directors

(a) In accordance with section 201B of the Corporations Act a Director must be an individual who is at least 18 years of age.

(b) A Director need not be a Member.

(c) A person is not eligible to serve as a Director unless they are capable of demonstrating:

(i) practical experience in, or a strong connection to, an Industry sector;

(ii) experience or expertise in one of the following fields: accounting, finance, marketing, law, corporate governance, vocational education and training or technology; or

(iii) that they meet any other eligibility category that the Board determines is necessary to ensure the Board has a broad skillset and provides for a diverse range of backgrounds.

(d) A person is not eligible to serve as a Director if the person is also an Officer of:

(i) a Commonwealth, State, Territory or local government agency or body (including government business enterprises);

(ii) an Registered Training Organisation;

(iii) a Group Training Organisation;

(iv) an Employment Service Provider; or

(v) AASN Provider.

unless the Company has received prior written consent of the Department of Education, Skills and Employment (whatever its name may be from time to time) for that individual to be a Director.

(e) Neither the auditor of the Company nor any partner, director or employee of the auditor is eligible to act as a Director.

4.3 **Composition of Board**

(a) The Board is to comprise of:

(i) up to four Directors elected by Foundation Members (**Foundation Member Directors**) of whom:

(A) one must be nominated by an Employer Organisation that is a Foundation Member;

(B) one must be nominated by an Employee Organisation that is a Foundation Member;

(C) two must be Independent Directors nominated by any Foundation Member or by the Board after considering any recommendations from the Nominations Committee;

(ii) up to four Directors elected by Ordinary Members (**Ordinary Member Directors**) of whom:

(A) one must be nominated by an Employer Organisation that is an Ordinary Member;

(B) one must be nominated by an Employee Organisation that is an Ordinary Member;

(C) two must be Independent Directors nominated by any Ordinary Member or by the Board after considering any recommendations from the Nominations Committee; and

(iii) the Chair of the Board who must be an Independent Director nominated by any Member or by the Board after considering any recommendations from the Nominations Committee and appointed by the Board in accordance with rule 4.8.

(b) Without limiting the foregoing, the Board is to comprise a majority of Independent Directors.

(c) The Company must publicly:

(i) disclose to the Members the names of the Directors;

(ii) identify those Directors who the Board considers to be Independent Directors; and

(iii) identify which position under rule 4.3(a) each Director fills.

4.4 **Term of Initial Directors**

(a) In order to facilitate transition, and implement a system of rotation the Board must, at its first Board Meeting after this Constitution takes effect, determine by lot or by majority decision:

(i) Which position under rule 4.3(a) each Initial Director will be taken to fill;

(ii) One third of the Initial Directors (or if the number of Initial Directors is not a multiple of three then the number nearest to but not exceeding one-third) who will hold office until the conclusion of the first Annual General Meeting after this Constitution takes effect. The initial term served by these Directors will not be counted for the purpose of rules 4.7(c) to (e);

(iii) One third of the Initial Directors (or if the number of Initial Directors is not a multiple of three then the number nearest to but not exceeding one-third) who will hold office until the conclusion of the second Annual General Meeting after this Constitution takes effect. The initial term served by these Directors is deemed to be a full three year term, and will be counted as their first three year term, for the purpose of rules 4.7(c) to (e); and

(iv) The remaining Initial Directors who will hold office until the conclusion of the third Annual General Meeting after this Constitution takes effect. The Chair will be one of the Initial Directors who holds office until the conclusion of the third Annual General Meeting. The initial term served by these Directors is deemed to be a full three year term, and will be counted as their first three year term, for the purpose of rules 4.7(c) to (e) and 4.8.

(b) An Initial Director who is required to retire under rule 4.4(a) may seek re-election at the relevant Annual General Meeting by providing a nomination in accordance with rule 4.6.

4.5 **Election of Directors**

Subject to rules 4.2 and 4.3, section 201E of the Corporations Act and to the number of Directors for the time being fixed under rule 4.1 not being exceeded:

(a) the Foundation Members may elect Foundation Member Directors at an Annual General Meeting in accordance with rule 4.6;

(b) the Ordinary Members may elect Ordinary Member Directors at an Annual General Meeting in accordance with rule 4.6; and

(c) the Board may appoint an eligible person to be the Chair in accordance with rule 4.8.

4.6 **Nomination for Directors**

(a) A person cannot be validly elected as a Foundation Member Director or an Ordinary Member Director at an Annual General Meeting unless at least 30 days (or any other period fixed by the Board) before the date of the Annual General Meeting at which the election is to occur, the Company receives both:

(i) a nomination of the person from a party which is entitled to nominate that person for the position under rule 4.3(a); and

(ii) a consent to act as a Director signed by the person.

(b) A nomination provided under rule 4.6(a)(i) must identify:

(i) the position for which the person is nominated;

(ii) whether the person and nominating party considers they meet all requirements for the position including (if applicable) whether they are capable of meeting the requirements of being an Independent Director.

(c) The Company must:

(i) notify Members of every candidate for election as a Director at least 21 days before the relevant Annual General Meeting, including the position(s) for which they are nominated; and

(ii) identify those candidates who have self-assessed and been assessed by the nominating party as being capable of meeting the requirements of being an Independent Director.

(d) If insufficient nominations are received to fill any vacant position on the Board:

(i) the candidates nominated for that position are taken to be elected; and

(ii) any vacant positions remaining on the Board are taken to be vacancies.

(e) If the number of nominations received is equal to the number of vacancies to be filled, the people nominated are taken to be elected.

(f) If the number of nominations received exceeds the number of vacancies to be filled, a ballot must be held, with the Foundation Members to vote on the Foundation Member Director positions and the Ordinary Members to vote on the Ordinary Member Director positions in accordance with any system and procedures determined by the Board from time to time.

4.7 **Term of elected Directors**

(a) An elected Director's term of office:

(i) starts at the end of the Annual General Meeting at which they were elected; and

(ii) ceases at the end of the third Annual General Meeting after the Director was last elected, at which time they must retire.

(b) Subject to rule 4.7(c), a Director who is required to retire under rule 4.7(a)(ii) may seek re-election for a further term (subject to the restriction at rule 4.7(c)) at the relevant Annual General Meeting, provided the Director has given the Company notice of their intention to do so by way of a nomination provided in accordance with rule 4.6.

(c) A Director must retire from office at the end of the sixth consecutive Annual General Meeting after the Director was first elected to office in accordance with rule 4.5, and is prohibited from seeking further consecutive re-election at that Annual General Meeting.

(d) Despite rule 4.7(c), a Director may seek re-election at the sixth Annual General Meeting after the Director was first elected to office in accordance with rule 4.5 for one further term if the Board has determined, prior to the Annual General Meeting, that exceptional circumstances exist which justify re-election (such as a special need to retain that person's knowledge or expertise).

(e) A former Director, having retired after serving two or three consecutive terms from the date of their first election (as applicable), will become eligible for re-election after a lapse of one year from the Annual General Meeting at which they ceased to be a Director.

4.8 **Appointment of Chair**

(a) The Board is to appoint an eligible person to be a Director and Chair of the Board.

(b) The Chair must be an Independent Director.

(c) The Chair:

(i) holds that office until the end of the third Annual General Meeting after the Chair was appointed, at which time they must retire; and

(ii) may seek re-appointment as Chair for a maximum of two consecutive terms.

(d) A former Chair, having retired after serving two consecutive terms, will become eligible for re-appointment after a lapse of one year from the Annual General Meeting at which they ceased to be Chair.

4.9 **Cessation of Director's appointment**

A person automatically ceases to be a Director if the person:

(a) is not permitted by the Corporations Act or the ACNC Act (or an order made under the Corporations Act or the ACNC Act) to be a director of a company;

(b) becomes disqualified from managing companies under Part 2D.6 of the Corporations Act and is not given permission or leave to manage the Company under either sections 206GAB or 206G of the Corporations Act;

(c) is deceased, or becomes of unsound mind or physically or mentally incapable of performing the functions of that office;

(d) fails to personally attend three consecutive Board meetings (not including meetings of a Board Committee) without leave of absence from the Board;

(e) resigns by notice in writing to the Company;

(f) is removed from office under rule 4.10; or

(g) ceases to be eligible to act as a Director under rule 4.2.

4.10 **Removal from office**

Whether or not a Director's appointment was expressed to be for a specified period, the Company may by Ordinary Resolution, and subject to section 203D of the Corporations Act, remove a Director from office.

4.11 **Too few Directors**

If the number of Directors is reduced below three, the continuing Directors may act as the Board only:

(a) to appoint additional Directors in accordance with rule 4.12;

(b) to convene a meeting of the Members; and

(c) in emergencies.

4.12 **Board vacancies**

(a) The Board may act despite a vacancy occurring in any position on the Board.

(b) The Board may appoint any person who is eligible and nominated by a relevant party under rules 4.2 and 4.3 to fill a position on the Board that:

(i) has become vacant under rule 4.8; or

(ii) that remains vacant following an Annual General Meeting,

and that person holds office for the remainder of the term which the Director they replaced would have served.

5. POWERS OF THE BOARD

5.1 Powers generally

Except as otherwise required by the Corporations Act, any other applicable law or this Constitution, the Board:

(a) has power to manage the business of the Company;

(b) may engage and determine the remuneration and entitlements of the employees of the Company; and

(c) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the Members.

5.2 Exercise of powers

A power of the Board can be exercised only:

(a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 13; or

(b) in accordance with a delegation of the power under rules 7 or 8.

6. EXECUTING NEGOTIABLE INSTRUMENTS

6.1 Requirements for execution of negotiable instruments

Negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company by being signed by two Directors, or a Director and Secretary, or in such other manner (including the use of facsimile or electronic signatures if thought appropriate) as the Board may decide.

7. CHIEF EXECUTIVE OFFICER

7.1 Appointment of Chief Executive Officer

(a) The Board may:

(i) appoint one or more persons to be the Chief Executive Officer for such term as the Board thinks fit; and

(ii) subject to rule 7.1(c), determine the remuneration and entitlements (in addition to any entitlements required by law) for the Chief Executive Officer.

(b) The Chief Executive Officer is not to be a Director.

(c) At the conclusion of the Chief Executive Officer's term the Board may choose to re-appoint the person for an additional term, in accordance with this rule 7.1.

7.2 Delegation to the Chief Executive Officer

(a) The Board may delegate any of the powers and functions of the Board (other than those matters reserved for the Board under rule 8.2 and the powers and functions required by law to be dealt with by the Directors as a Board) to the Chief Executive Officer:

(i) on the terms and subject to any restrictions the Board decides; and

(ii) so as to be concurrent with the powers of the Board,

and may revoke the delegation at any time.

(b) This rule 7.2 does not limit rule 8.

7.3 Termination of appointment of Chief Executive Officer

Subject to any agreement between the Company and the Chief Executive Officer, the Board may at any time remove or dismiss the Chief Executive Officer from employment of the Company, whether or not the appointment was expressed to be for a specified term.

8. DELEGATION OF BOARD POWERS AND FUNCTIONS

8.1 Power to delegate

Subject to rule 8.2, the Board may delegate any of its powers and functions (other than those powers and functions required by law to be dealt with by the Directors as a Board) as permitted by section 198D of the Corporations Act.

8.2 Board reservation

Without limitation, the following powers and functions are reserved for the Board:

(a) approval of:

(i) the Company's strategy and annual budget;

(ii) significant changes to the organisational structure of the Company;

(iii) the acquisition, establishment, disposal or cessation of any significant assets of the Company;

(b) entry into any agreement which exceed limits set by the Board from time to time or which pose a significant reputational risk to the Company; and

(c) the appointment, reappointment or replacement of the:

(i) Chief Executive Officer; and

(ii) Secretary.

8.3 **Power to revoke delegation**

The Board may revoke a delegation previously made, whether or not the delegation is expressed to be for a specified period.

8.4 **Terms of delegation**

(a) A delegation of powers under rule 8.1 may be made:

(i) for a specified period or without specifying a period; and

(ii) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

(b) A document of delegation may contain any provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

9. **COMMITTEES**

9.1 **Establishment and operation of Committees**

(a) The Board may establish either or both of the following:

(i) committees with powers delegated by the Board, comprising of only Directors (**Board Committees**); and

(ii) advisory committees, with no delegated powers of the Board to advise the Board on specified matters (**Advisory Committees**),

where such a Committee will:

(iii) promote the efficient and effective governance of the Company; or

(iv) will otherwise assist the Company in furthering its objects set out at rule 2.

(b) The Board may develop terms of reference to govern each Committee's operations.

(c) Subject to any specific terms of the Board, the meetings and proceedings of Committees are, to the greatest extent practical, governed by the rules of this Constitution which regulate the meetings and proceedings of the Board.

(d) The Board must publicly disclose to the Members of the Company:

(i) the nature and purpose of any Committees established;

(ii) whether the Committee is a Board Committee or an Advisory Committee; and

(iii) the members of any such Committee, including details of the relevant qualifications and experience of the members of the Committee.

(e) The Board may, at any time and at its discretion, either:

(i) amend the terms of reference of;

(ii) revoke any delegations to (in respect of a Board Committee); or

(iii) otherwise abolish,

any Committee previously established.

(f) Committee members are required to:

(i) disclose any actual, potential or perceived conflicts of interest they have in relation to affairs of the Committee to the other members of the Committee; and

(ii) must not:

(A) be present while any matter which relates to their conflict of interest is being considered at the meeting; or

(B) vote on the matter,

unless those Committee members who do not have a conflict of interest in the matter have passed a resolution that:

(C) identifies the Committee member;

(D) the nature and extent of their conflict of interest; and

(E) states that those Committee members are satisfied that the interest should not disqualify the Committee member from voting or being present.

(g) The Board must document the formation of any Committee in the minutes of the Board.

9.2 **Board Committees**

(a) All members of a Board Committee must be Directors.

(b) Subject to the restrictions applying to the delegation of Board powers and functions under rule 8 and as otherwise permitted under section 198D of the Corporations Act, the Board may delegate any of its powers and functions to a Board Committee.

(c) If the Board delegates any of its powers and functions to a Board Committee under rule 9.2:

(i) the Board may impose any restrictions or duties on the exercise of those delegated powers and functions (including by specifying those matters reserved for the Board);

(ii) the relevant Board Committee must comply with any restrictions or duties imposed in accordance with rule 9.2(c)(i); and

(iii) the delegation must be recorded in the minutes of the Board.

(d) A Board Committee which is delegated the power and functions of the Board under rule 9.2 is not permitted to further sub-delegate these powers or functions.

9.3 **Audit and Risk Committee**

(a) The Board is to:

(i) establish and maintain an Audit and Risk Committee;

(ii) develop and make publicly available to the Members a copy of the charter for the Audit and Risk Committee; and

(iii) publicly disclose to the Members of the Company the relevant qualifications and experience of the members of the Audit and Risk Committee.

(b) The Audit and Risk Committee's functions must include reviewing the appropriateness of the Company's:

(i) financial reporting; and

(ii) performance reporting; and

(iii) system of risk oversight and management; and

(iv) system of internal controls,

for the Company.

(c) The Audit and Risk Committee must:

(i) be a Board Committee;

(ii) have at least three members, all of whom are Independent Directors, and otherwise be comprised of a majority of Independent Directors; and

(iii) be chaired by an Independent Director, who is not the Chair of the Board.

(d) At the end of each reporting period, the Company must disclose to the Members the number of times the Audit and Risk Committee met throughout the reporting period and the individual attendances of the members at those meetings.

9.4 **Nominations Committee**

(a) The Board is to:

(i) establish and maintain a Nominations Committee;

(ii) develop and make publicly available to the Members a copy of the charter for the Nominations Committee.

(b) The Nominations Committee will be responsible for seeking nominations for Director positions, evaluating Board candidates and recommending individuals for appointment or election as a Director, and for such other functions as determined by the Board from time-to-time.

(c) The Nominations Committee must:

(i) be a Board Committee; and

(ii) be appointed by the Board and comprised of the Chair of the Board, two Directors who have been nominated by Foundation Members and two Directors who have been nominated by Ordinary Members.

9.5 **Advisory Committees**

(a) Subject to rule 9.5(b), each Advisory Committee may comprise such persons as the Board thinks fit and a member of an Advisory Committee does not need to be a Director or Member.

(b) At least one member of any Advisory Committee established must be a Director.

9.6 **Reimbursement of Advisory Committee members**

(a) Subject to rule 9.6(b), the Company may reimburse an Advisory Committee member for any reasonable expenses (including travelling and accommodation expenses) incurred by the Advisory Committee member:

(i) in attending Advisory Committee meetings;

(ii) on the business of the Company; or

(iii) in carrying out duties as an Advisory Committee member,

upon the receipt of a valid itemised invoice in respect of such expenses.

(b) For the purposes of rule 9.6(a), the Board may by resolution:

(i) determine what constitute reasonable expenses; and

(ii) stipulate any additional procedures to be complied with in relation to the reimbursement of expenses.

10. **DIRECTORS' DUTIES AND INTERESTS**

10.1 **Compliance with duties under the Corporations Act and general law**

Each Director must comply with their respective duties under the Corporations Act and under the general law. Without limitation, these duties require that Directors:

(a) exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;

(b) act for a proper purpose and in good faith in the best interests of the company;

(c) not misuse their position as a Director;

(d) not misuse information they gain in their role as a Director;

(e) disclose any actual, potential or perceived material conflicts of interest; and

(f) not allow the Company to trade while it is insolvent.

10.2 **Director can hold other offices**

Subject to the restriction at rule 4.2(d), a Director may:

(a) hold any office or place of profit or employment other than that of the Company's auditor or any director or employee of the auditor;

(b) be a member of any corporation (including the Company) or partnership, other than the Company's auditor; or

(c) be a creditor of any corporation (including the Company) or partnership; or

(d) enter into any agreement with the Company.

10.3 **Disclosure of interests**

(a) Each Director must comply with the general law in respect of disclosure of conflicts of interest or duty, and with section 191 of the Corporations Act in respect of disclosure of material personal interests.

(b) The Board must agree in writing on its policy for the regulation of conflicts of interest, which must, amongst other things, include a requirement that Directors only be engaged to provide goods or services to or on behalf of the Company if:

(i) that Director is for bona fide reasons considered by the Board and agreed to be a suitable person to provide, such goods or services;

(ii) bona fide attempts have been made to identify others who provide the goods or services and to compare rates and service levels of such others compared with the Director's rates and service levels;

(iii) the goods or services are provided on arms-length terms;

(iv) the provision of the goods and services is disclosed clearly and expressly to the Members in the annual report of the Company; and

(v) the Board agrees by ordinary resolution (excluding the interested Director) to the provision of the goods or services by the Director.

10.4 **Director interested in a matter**

(a) Each Director must comply with section 195 of the Corporations Act in relation to being present and voting at a Board meeting that considers a matter in which the Director has a material personal interest.

(b) Subject to section 195 of the Corporations Act:

(i) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in relation to which that Director has a conflict of interest or duty;

(ii) the Company may proceed with any transaction in relation to which a Director has an interest or conflict of duty and the Director may participate in the execution of any relevant document by or on behalf of the Company;

(iii) the Director may retain any benefits accruing to the Director under the transaction; and

(iv) the Company cannot avoid the transaction merely because of the existence of the Director's interest or conflict of duty.

(c) If the interest is required to be disclosed under section 191 of the Corporations Act, rule 10.4(b)(iii) applies only if it is disclosed before the transaction is entered into.

10.5 **Agreements with third parties**

The Company cannot avoid an agreement with a third party merely because a Director:

(a) fails to make a disclosure of a conflict of interest or duty; or

(b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

10.6 **Obligation of secrecy**

(a) Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:

(i) in the course of their duties as an Officer of the Company;

(ii) by a decision of either the Board or the Company in general meeting; or

(iii) by law (including as a result of any contractual obligations of the Company) or for public accountability reasons (including following a request by either House of Parliament).

(b) The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

11. **DIRECTORS' REMUNERATION**

11.1 **Directors' remuneration and expenses**

(a) Subject to this rule 11.1, the Directors are to be remunerated for their services as Directors at a daily fee to be determined and payable in the manner agreed by the Board.

(b) The maximum fee payable to a Director for any one day is one daily fee.

(c) The total amount of remuneration payable via a daily fee to each Director will be subject to a limit determined by the Board, provided that the Board-approved limit must not exceed the relevant limit approved by the Department of Education, Skills and Employment (whatever its name may be from time to time) and notified to the Company from time to time.

(d) The amount of a daily fee paid to an office holder for a meeting day is:

(i) if the Director's qualifying meeting day time is less than 2 hours— 40% of the daily fee;

(ii) if the Director's qualifying meeting day time is at least 2 hours and less than 3 hours—60% of the daily fee; or

(iii) otherwise—100% of the daily fee.

(e) Subject to rule 11.1(f), the Company may pay a Director (in addition to any remuneration) all reasonable expenses (including travelling and accommodation expenses) incurred by the Director:

(i) in attending meetings of the Company, the Board, or a Committee;

(ii) on the business of the Company; or

(iii) in carrying out duties as a Director,

upon the receipt of a valid itemised invoice in respect of such expenses.

(f) For the purposes of rule 11.1(e), the Board may by resolution:

(i) determine what constitute reasonable expenses; and

(ii) stipulate additional procedures to be complied with in relation to the reimbursement of expenses.

11.2 **Payments to Directors with Board approval**

With the approval of the Board, the Company may pay to a Director:

(a) reasonable remuneration for any service rendered to the Company by the Director in a professional or technical capacity where the amount payable is approved by the Board and is on reasonable commercial terms;

(b) reasonable remuneration where the Director is an employee of the Company and the terms of employment have been approved by the Board; and

(c) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business or reasonable rent for premises leased by the Director to the Company.

12. INDEMNITY AND INSURANCE

12.1 Indemnity

(a) Subject to and so far as permitted by the Corporations Act, the Competition and Consumer Act and any other applicable law:

(i) the Company must indemnify every Officer of the Company and may indemnify its auditor against any Liability incurred as such an Officer or auditor, unless the Liability arises out of conduct involving a lack of good faith; and

(ii) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an Officer or auditor in defending an action for a Liability incurred as such an Officer or auditor or in resisting or responding to actions taken by a Government Agency or a liquidator.

(b) In this rule, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a Government Agency or a liquidator.

12.2 Insurance

Subject to the Corporations Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

12.3 Former Officers and auditors

The indemnity in favour of Officers under rule 12.1 is a continuing indemnity. The indemnity applies in respect of all acts done by a person while an Officer or auditor of the Company

even though the person may not be an Officer or auditor of the Company at the time the claim is made.

12.4 **Director's Access, Indemnity and Insurance Deed**

Subject to the Corporations Act, the Competition and Consumer Act and any other applicable law, the Company may, without limiting a person's rights under this rule 12:

(a) enter into an agreement with; or

(b) execute a deed in favour of,

a person who is or has been an Officer of the Company to give effect to the rights of the person under this rule 12 on any terms and conditions that the Board thinks fit.

13. **BOARD MEETINGS**

13.1 **Convening Board meetings**

The Board or a Director may at any time, and a Secretary must on request from the Board or any Director, convene a Board meeting.

13.2 **Minimum number of Board meetings**

The Board must convene, as a minimum, at least four times annually.

13.3 **Notice of Board meeting**

The convenor of each Board meeting:

(a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director; and

(b) may give that notice orally (including by telephone) or in writing,

but accidental failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

13.4 **Use of technology**

(a) A Board meeting may be held using any means of audio or audio-visual communication through which each Director participating can hear and be heard by each other Director participating, or in any other way permitted by Part 2G.5 of the Corporations Act.

(b) A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the Chair of the meeting is located.

13.5 **Chairing Board meetings**

(a) The Chair will chair Board meetings.

(b) If there is no Chair or the Chair is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

13.6 **Quorum of Board meetings**

(a) Unless the Board decides otherwise, the quorum for a Board meeting is a majority of current Directors, and a quorum must be present for the whole meeting.

(b) A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending.

(c) If a meeting is held in another way permitted by Part 2G.5 of the Corporations Act, the Board must resolve the basis on which Directors are to be treated as present.

13.7 **Majority decisions of the Board**

(a) A resolution of the Board is passed if a majority of the votes cast by Directors entitled to vote on the resolution are in favour of it.

(b) The Chair of a Board meeting does not have a casting vote.

(c) If an equal number of votes is cast for and against a resolution of the Board, the matter is decided in the negative.

13.8 **Procedural rules**

(a) The Board may adjourn and, subject to this Constitution, otherwise regulate its meetings as it decides (including through procedures detailed in any By-Laws).

(b) The procedural rules of the Board may, amongst other things, detail the circumstance in which observers and advisers are permitted to attend and speak at meetings of the Board.

13.9 **Circular resolutions of the Board**

(a) The Directors may pass a resolution without a directors' meeting being held if all Directors are given a document which contains the resolution and a majority of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

(b) A resolution made in accordance with rule 13.9(a) is taken to be passed when the last Director signs the resolution.

13.10 **Additional provisions concerning circular resolutions**

For the purpose of rule 13.9:

(a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and

(b) a facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

13.11 **Valid proceedings of the Board**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a Board Committee is valid even if it is later discovered that:

(a) there was a defect in the appointment of the person; or

(b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

13.12 **Observers**

(a) The Board may, at its discretion, permit observers to attend and speak at meetings of the Board.

(b) In no circumstance will an observer be counted in constituting a quorum or be permitted to vote on any decision of the Board.

(c) The Board may revoke it permission granted under rule 13.12(a) at any time.

14. MEETINGS OF MEMBERS

14.1 Annual General Meeting

The Company must hold an Annual General Meeting in accordance with the requirements of section 250N of the Corporations Act.

14.2 Calling meetings of Members

A meeting of Members:

(a) may be convened at any time by the Board or any Director; and

(b) must be convened by the Board when required by section 249D or 250N of the Corporations Act or by order made under section 249G of the Corporations Act.

14.3 Notice of meeting

(a) Subject to rule 14.4, at least 21 days' written notice of a meeting of Members must be given individually to:

(i) each Member (whether or not the Member is entitled to vote at the meeting);

(ii) each Director; and

(iii) to the auditor.

(b) Subject to any regulation made under section 249LA of the Corporations Act, the notice of meeting must comply with section 249L of the Corporations Act and may be given in any manner permitted by section 249J(3) of the Corporations Act.

14.4 Short notice

Subject to sections 249H(3) and (4) of the Corporations Act:

(a) if the Company has elected to convene a meeting of Members as the Annual General Meeting, and if all the Members entitled to attend and vote agree; or

(b) otherwise, if Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

14.5 **Postponement or cancellation**

Subject to sections 249D(5) and 250N of the Corporations Act, the Board may:

(a) postpone a meeting of Members;

(b) cancel a meeting of Members; or

(c) change the place for a general meeting,

by written notice given individually to each person entitled to be given notice of the meeting.

14.6 **Fresh notice**

If a meeting of Members is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

14.7 **Technology**

The Company may hold a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

14.8 **Accidental omission**

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of Members.

15. **PROCEEDINGS AT MEETINGS OF MEMBERS**

15.1 **Member present at meeting**

If a Member has appointed a proxy or attorney or (in the case of a Member which is a body corporate) a representative to act at a meeting of Members, that Member is taken to be present at a meeting at which the proxy, attorney or representative is present.

15.2 **Quorum of Members meetings**

(a) The quorum for a meeting of Members is a majority of current Members.

(b) Each individual present at a meeting of Members may only be counted once toward a quorum.

(c) If a Member has appointed more than one proxy or representative only one of them may be counted towards a quorum.

15.3 **Quorum not present**

If a quorum is not present within 15 minutes after the time for which a meeting of Members is called:

(a) if called as a result of a request of Members under section 249D of the Corporations Act, the meeting is dissolved; and

(b) in any other case:

(i) the meeting is adjourned to the day, time and place that the Board decides and notifies to Members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and

(ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

15.4 **Chairing meetings of Members**

(a) If Chair will chair meetings of the Members.

(b) If:

(i) there is no Chair in office for the time being; or

(ii) the Chair is not present at the time for which a meeting of the Members is called or is not willing to chair the meeting,

the Members present must elect a Member or Director present to chair the meeting.

15.5 **Attendance and participation at general meetings**

(a) Every Member has the right to attend all meetings of Members.

(b) Every Director has the right to attend and speak at all meetings of Members.

(c) The auditor has the right to attend any meeting of the Members and to speak on any part of the business of the meeting which concerns the auditor in their capacity as an auditor.

15.6 **Adjournment**

Subject to rule 14.6, the Chair of a meeting of Members at which a quorum is present:

(a) may; and

(b) must, if directed by Ordinary Resolution of the meeting,

adjourn it to another time and place.

15.7 **Business at adjourned meetings**

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

15.8 **Circular resolution of Members**

If all Members entitled to receive notice of a meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a resolution in those terms is passed at the time when the last Member signs.

15.9 **Additional provisions concerning circular resolutions of Members**

For the purpose of rule 15.8:

(a) two or more separate documents in identical terms, each of which is signed by one or more Members, are treated as one document;

(b) signature of a document by the Member who appointed a proxy, attorney or (in the case of a Member which is a body corporate) a representative is not required if that proxy, attorney or representative has signed the document in that capacity; and

(c) a facsimile or electronic message containing the text of the document expressed to have been signed by a Member that is sent to the Company is a document signed by that Member at the time of its receipt by the Company.

16. **PROXIES, ATTORNEYS AND REPRESENTATIVES**

16.1 **Appointment of proxies**

(a) Each Member may appoint a proxy (who is to be a natural person) to attend and act for the Member at a meeting of the Members.

(b) An appointment of a proxy must be made by written notice to the Company that:

(i) complies with section 250A(1) of the Corporations Act; or

(ii) is in a form and mode, and is signed or otherwise authenticated by the Member, in a manner satisfactory to the Board.

16.2 **Member's attorney**

(a) A Member may appoint an attorney to act, or appoint a proxy to act, at a meeting of Members.

(b) If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

16.3 **Deposit of proxy appointment forms, authorities and powers of attorney**

An appointment of a proxy or an attorney is not effective for a particular meeting of the Members unless:

(a) in the case of a proxy, the proxy appointment form and, if it is executed or otherwise authenticated in a manner prescribed by a regulation made for the purposes of section 250A(1) of the Corporations Act by an attorney, the relevant power of attorney or other authority under which the appointment was authenticated or a certified copy of it; and

(b) in the case of an attorney, the power of attorney or a certified copy of it,

are received by the Company in accordance with section 250B(3) of the Corporations Act at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

16.4 **Corporate representatives**

A Member that is a body corporate may appoint an individual to act as its representative at meetings of Members as permitted by section 250D of the Corporations Act.

16.5 **Appointment for particular meeting, standing appointment and revocation**

(a) A Member may appoint a proxy, attorney or representative to act at a particular meeting of Members or make a standing appointment and may revoke any appointment.

(b) A proxy, attorney or representative may, but need not, be a Member.

16.6 **Position of proxy or attorney if Member present**

The appointment of a proxy or attorney is not revoked by the Member attending and taking part in the general meeting, but if the Member votes on a resolution, the proxy or attorney is not entitled to vote, and must not vote, as the Member's proxy or attorney on the resolution.

16.7 **Priority of conflicting appointments of attorney or representative**

If more than one attorney or representative appointed by a Member is present at a meeting of Members and the Company has not received notice of revocation of any of the appointments:

(a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and

(b) subject to rule 16.7(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

16.8 **More than one current proxy appointments**

An appointment of proxy by a Member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that Member which would result in there being more than one proxy of that Member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

16.9 **Continuing authority**

An act done at a meeting of Members by a proxy, attorney or representative is valid even if, before the act is done, the appointing Member:

(a) dies or becomes mentally incapacitated;

(b) becomes bankrupt or an insolvent under administration or is wound up; or

(c) revokes the appointment or revokes the authority under which the appointment was made by a third party,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

17. **ENTITLEMENT TO VOTE**

17.1 **Number of votes**

Subject to sections 250BB(1) and 250BC of the Corporations Act:

(a) each Member has one vote on a show of hands or a poll; and

(b) a Member who is present and entitled to vote and is also a proxy, attorney or representative of another Member has one vote on a show of hands.

17.2 **Casting vote of Chair**

(a) The Chair of a meeting of Members does not have a second or casting vote.

(b) If an equal number of votes is cast for and against a resolution at a meeting of Members, the matter is decided in the negative.

17.3 **Voting restrictions**

(a) If:

(i) the Corporations Act requires that some Members are not to vote on a resolution, or that votes cast by some Members be disregarded, in order for the resolution to have an intended effect; and

(ii) the notice of the meeting at which the resolution is proposed states that fact,

those Members have no right to vote on that resolution and the Company must not count any votes purported to be cast by those Members.

(b) If a proxy purports to vote in a way or in circumstances that contravene section 250BB(1) of the Corporations Act, on a show of hands, the vote is invalid and the Company must not count it and on a poll rule, 18.3(c) applies.

17.4 **Decision on right to vote**

(a) A Member or Director may challenge a person's right to vote at a meeting of Members.

(b) A challenge under rule 17.4(a) may only be made at the meeting of Members.

(c) A challenge, or any other doubt as to the validity of a vote, must be decided by the Chair, whose decision is final.

18. **HOW VOTING IS CARRIED OUT**

18.1 **Method of voting**

(a) A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded under rule 18.2 either before or on declaration of the result of the vote on a show of hands.

(b) Unless a poll is demanded, the Chair's declaration of a decision on a show of hands is final.

(c) Where a meeting of Members is being facilitated through the use of technology, the technology used must enable Members to be clearly identified and counted upon the calling for a show of hands.

18.2 **Demand for a poll**

A poll may be demanded on any resolution (except a resolution concerning the election of the Chair of a meeting) by:

(a) at least two Members entitled to vote on the resolution; or

(b) the Chair.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

18.3 **When and how polls must be taken**

If a poll is demanded:

(a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 18.3(c), in the manner that the Chair of the meeting directs;

(b) in all other cases, the poll must be taken at the time and place and, subject to rule 18.3(c), in the manner that the Chair of the meeting directs;

(c) votes which sections 250BB(1) or 250BC of the Corporations Act require to be cast in a given way must be treated as cast in that way;

(d) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and

(e) the result of the poll is the resolution of the meeting at which the poll was demanded.

19. SECRETARY

19.1 Appointment of Secretary

The Board:

(a) must appoint at least one individual who ordinarily resides in Australia; and

(b) may appoint more than one individual,

to be the Secretary, either for a specified term or without specifying a term.

19.2 Terms and conditions of office

(a) A Secretary holds office on the terms (including as to remuneration and entitlements) that the Board decides.

(b) The Board may vary any decision previously made by it in respect of a Secretary.

19.3 Cessation of Secretary's appointment

The person automatically ceases to be a Secretary if the person:

(a) is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a secretary of a company;

(b) becomes disqualified from managing corporations under Part 2D.6 of the Corporations Act and is not given permission or leave to manage the Company under sections 206GAB or 206G of the Corporations Act;

(c) is deceased, or becomes of unsound mind or physically or mentally incapable of performing the functions of that office;

(d) resigns by notice in writing to the Company; or

(e) is removed from office under rule 19.4.

19.4 Removal from office

Subject to any agreement between the Company and the Secretary, the Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

20. MINUTES

20.1 Minutes must be kept

The Board must cause minutes of:

(a) proceedings and resolutions of meetings of the Members;

(b) the names of Directors present at each Board meeting and the names of those present at any Committee meeting;

(c) proceedings and resolutions of Board meetings and any Committee meetings;

(d) resolutions passed by Directors without a meeting; and

(e) disclosures and notices of Directors' interests,

to be kept in accordance with sections 191, 192 and 251A of the Corporations Act.

20.2 Minutes as evidence

A minute recorded and signed in accordance with section 251A of the Corporations Act is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

20.3 Inspection of minute books

The Company must allow Members to inspect, and provide copies of, the minute books for the meetings of Members in accordance with section 251B of the Corporations Act.

21. COMPANY SEALS

21.1 Common seal

The Board:

(a) may decide whether or not the Company has a common seal; and

(b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2) of the Corporations Act.

21.2 Use of seals

(a) The common seal and duplicate seal (if any) may only be used with the authority of the Board.

(b) The Board must not authorise the use of a seal that does not comply with section 123 of the Corporations Act.

21.3 Fixing seals to documents

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

(a) by two Directors;

(b) by one Director and one Secretary; or

(c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

22. FINANCIAL REPORTS, AUDIT AND REGISTERS

22.1 Company must keep financial records

The Board must cause the Company to keep written financial records that:

(a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and

(b) would enable true and fair financial statements to be prepared and, if required by Part 2M.3 of the Corporations Act, audited,

and must allow a Director and, where the financial statements are required by Part 2M.3 of the Corporations Act to be audited or reviewed, the auditor to inspect those records at all reasonable times.

22.2 Financial reporting

If required by Part 2M.3 of the Corporations Act, the Board must cause the Company to prepare a:

(a) financial report; and

(b) directors' report,

that comply with that part and must report to Members in accordance with section 316A of the Corporations Act.

22.3 Audit or review

If required by Part 2M.3 of the Corporations Act, the Board must cause the Company's financial report for each financial year to be audited or reviewed, and obtain an auditor's report.

22.4 Inspection of financial records and books

Subject to rule 20.3 and section 247A of the Corporations Act, a Member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by ordinary resolution.

22.5 Register of Members

(a) The Company must establish and maintain the Register.

(b) In accordance with section 169 of the Corporations Act, the Register must contain the following information:

(i) the name and address of each Member;

(ii) the date on which the entry of the Member's name in the Register is made;

(iii) the name and details of each person who stopped being a Member within the last seven years;

(iv) the date on which the person stopped being a Member; and

(v) an index of Members' names if the Company has more than 50 Members and the Register itself is not kept in a form that operates effectively as an index.

23. NOTICES

23.1 Notices by Company

A notice is properly given by the Company to a Member if it is:

(a) in writing and signed on behalf of the Company (by original or printed signature);

(b) addressed to the Member to whom it is to be given; and

(c) either:

(i) delivered personally;

(ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that Member's address;

(iii) sent by fax to the fax number (if any) nominated by that Member; or

(iv) sent by electronic message to the electronic address (if any) nominated by that Member.

23.2 Overseas Members

A Member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

23.3 When notice is given

(a) A notice to a Member by the Company is regarded as given and received:

(i) if it is delivered personally:

(A) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or

(B) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;

(ii) if it is sent by fax or electronic message or given under section 249J(3)(cb) of the Corporations Act:

(A) by 5.00 pm (local time in the place from which it is sent or given) on a Business Day – on that day; or

(B) after 5.00 pm (local time in the place from which it is sent or given) on a Business Day, or on a day that is not a Business Day – on the next Business Day; and

(iii) if it is sent by mail:

(A) within Australia - one Business Day after posting; or

(B) to a place outside Australia - three Business Days after posting.

(b) A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

23.4 **Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither:

(a) the day on which the notice is given; nor

(b) the day on which the action is to be taken,

may be counted in determining whether the required period has passed.

23.5 **Notices to "lost" Members**

(a) If:

(i) on two or more consecutive occasions a notice (served on a Member in accordance with this rule 23) is returned unclaimed or with an indication that the Member is not known at the address to which it was sent; or

(ii) the Board believes on other reasonable grounds that a Member is not at the address shown in the Register or notified to the Company under rule 23.2,

the Company may give effective notice to that Member by exhibiting the notice at the Company's registered office for at least 48 hours.

(b) This rule 23.5 ceases to apply if the Member gives the Company notice of a new address.

24. WINDING UP

24.1 **Winding up**

The Company may, by Special Resolution, resolve to voluntarily wind up.

24.2 **No distribution of surplus assets to Members**

In the event of the winding up of the Company, any surplus property remaining after satisfaction of all the Company's debts and liabilities must not be paid to, or distributed amongst, the Members.

24.3 **Distribution of surplus assets**

(a) Any surplus property remaining after satisfaction of all the Company's debts and liabilities must be paid or transferred to:

(i) another Industry Cluster Organisation; or

(ii) if no other Industry Cluster Organisation exists or is operational at the time of winding up, to an entity in Australia, the constituent documents of which:

(A) require the entity to pursue objects similar to those of the Company and to apply its income solely towards promoting those objects; and

(B) prohibit the entity from making distributions to its members, including by way of the distribution of surplus assets on winding up.

(b) The entity selected for the purposes of rule 24.3(a) is to be determined by the Board or, if no such determination is made, by the liquidator of the Company.

25. AMENDING CONSTITUTION

25.1 Amendment procedure

(a) The Company may, by Special Resolution, resolve to amend this Constitution.

(b) All previous acts and appointments legal and valid under this Constitution, prior to the amendment or repeal of this Constitution or under the former Constitution (subject to any later rules), will remain legal and valid.

26. TRANSITIONAL ARRANGEMENTS

26.1 General Provision

This Constitution must be read and construed in such manner that:

(a) every Director, the Chair and the Chief Executive Officer in office immediately before the Transition Time continues in office subject to and shall be regarded as appointed under this Constitution;

(b) no time or term served by an Initial Director before the Transition Time is counted for the purpose of rules 4.7(c) to (e) or 4.8;

(c) any register maintained by the Company immediately before the Transition Time shall be regarded as maintained subject to and in conformity with this Constitution;

(d) any seal adopted by the Company before the Transition Time shall be regarded as a seal which the Company has under an authority conferred by this Constitution; and

(e) unless a contrary intention appears, all persons, things and circumstances appointed or created by or under the constitution of the Company in force before the Transition Time shall continue to have the same status, operation and effect after the Transition Time.