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# CONSTITUTION

Adopted 23 June 2005

# Constitution of National ELT Accreditation Scheme Limited

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# Preliminary

## 1. Defined terms & interpretation

1.1 In this Constitution unless the contrary intention appears:

**AC** means the Accreditation Committee established pursuant to clause 41.1.

**Amendment Date** means the date of the amendment to the Constitution that adopted this document as the Constitution.

**Auditor** means the Company's auditor.

**Centre** means an institution offering English language training.

**Company** means National ELT Accreditation Scheme Limited.

**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.

**Council of the ELICOS Association** means the body constituted under the Rules of the ELICOS Association to manage the business and affairs of that Association.

**Director** includes any person occupying the position of director of the Company.

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

**Election Meeting** has the meaning given in clause 26.1.

**ELICOS Association** means the ELICOS Association Limited or any incorporated body superseding such association.

**ELICOS Association Director** means the Director appointed by the Council of the ELICOS Association pursuant to clause 27.2(b) (or clause 25(1)(a) of the Constitution as at immediately before the Amendment Date).

**Elected Director** means a Director elected in accordance with clause 29 or, in the case of a casual vacancy, appointed under clause 31.1, for the purposes of clause 27.2(c).

**Independent Director** means the person appointed as a Director pursuant to clause 27.2(a).

**Member** means a member admitted under clause 4.

**NEAS Organisation** means a company or other legal entity with one or more unique CRICOS provider codes for NEAS accredited centres (this does not include any organisation going through 'Guided Candidacy').

**Office** means the Company's registered office.

**Original Member** has the meaning given in clause 4.1.

**Register** means the register of Members of the Company.

**Registered Address** means the last known address of a Member as noted in the Register.

**Representative** means a person appointed as such under clause 8.

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

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

1.2 In this Constitution, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) words importing natural persons include corporations;
- (c) headings are for ease of reference only and do not affect the construction of this Constitution;
- (d) a reference to the Corporations Act is a reference to the Corporations Act as modified or amended from time to time.
- (e) another grammatical form of a defined word or expression has a corresponding meaning;
- (f) a reference to a clause or paragraph is to a clause or paragraph of this Constitution;
- (g) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (h) a reference to \$ is to Australian currency; and
- (i) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions

1.3 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.

1.4 To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

## Objects

### 2. Objects

2.1 The objects for which the Company is established are:

- (a) to establish and conduct an autonomous industry-based self-regulatory accreditation system for Centres;
- (b) to provide advice to appropriate governmental authorities as to whether Centres are accredited;
- (c) to assess the compliance of Centres with requirements of accreditation;
- (d) to suspend or revoke, or advise on the suspension or revocation of the accreditation of a Centre;
- (e) to advise institutions on matters affecting their accreditation;
- (f) to determine the requirements for accreditation of Centres, in conjunction where necessary with appropriate Governmental authorities;

- (g) to establish 'Accreditation Committees';
- (h) to establish such other processes for the accreditation of courses or institutions associated with the teaching of English to speakers of other languages as are considered necessary from time to time.
- (i) to do any other things in connection with English language education as considered appropriate or necessary.

2.2 The Company may only exercise the powers in section 124(1) of the Corporations Act to:

- (a) carry out the objects in this clause 2; and
- (b) do all things incidental or convenient in relation to the exercise of power under clause 2.2(a).

## Income and Property of Company

### 3. Income and property of Company

3.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 2.

3.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
- (b) of remuneration to any officer or servant of the Company or other person in return for any services genuinely rendered to the Company;
- (c) of compensation for expenses genuinely incurred on behalf of the Company; or
- (d) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

## Membership

### 4. Admission

4.1 The Members of the Company will be:

- (a) the Members as at the Amendment Date (**Original Members**), which Original Members shall continue as Members until 10 organisations are admitted to membership after that date in accordance with this Constitution, whereupon the Original Members shall automatically cease to be Members; and
- (b) any other organisations whom the Directors admit to membership in accordance with this Constitution.

4.2 Following the Amendment Date, only NEAS Organisations are eligible to apply for membership and become Members.

4.3 Applications for membership of the Company shall be in writing, signed by an authorised representative of the applicant, in a form approved by the Directors in their absolute

discretion, and delivered to the Secretary. The application may be accompanied by payment of the applicant's first annual subscription.

- 4.4 At the next meeting of Directors after the receipt of an application for membership, the application will be considered by the Directors. The Directors will:
- (a) determine the admission or rejection of the applicant; or
  - (b) decide to call on the applicant to supply any evidence of eligibility that they consider reasonably necessary.
- 4.5 If the Directors:
- (a) require further evidence under clause 4.4, determination of the application will be deferred until this evidence has been supplied;
  - (b) reject an application for membership, they will not be required to give reasons for the rejection.
- 4.6 As soon as practicable following rejection of an application for membership, the Secretary will send the applicant written notice of the rejection (together with a refund of any payment received by the Company in respect of the applicant's first annual subscription).
- 4.7 As soon as practicable following acceptance of an application for membership, the Secretary will send the applicant written notice of the acceptance and, if the application was not accompanied by the applicant's first annual subscription, request payment of the applicant's first annual subscription.
- 4.8 Subject to clause 4.9, an applicant for membership becomes a Member:
- (a) if the applicant's application was accompanied by the first annual subscription, upon the date of acceptance of the application;
  - (b) otherwise, when the applicant's first annual subscription is paid.
- 4.9 If the 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 Directors may cancel their acceptance of the applicant for membership of the Company.
- 4.10 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.
- 4.11 The Directors must hold a meeting no earlier than one month and no later than two months after the Amendment Date to consider all applications for membership received since that date.

## 5. Subscriptions

- 5.1 The Directors will determine the annual subscription payable by each Member or each category of Member.
- 5.2 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.
- 5.3 An applicant for membership whose application has been accepted must pay their first annual subscription (being in respect of the annual subscription period in which they apply for membership) before they can be admitted as a Member.

- 5.4 If a Member does not pay a subscription within 30 days after it becomes due the Directors:
- (a) will give the Member notice of that fact; and
  - (b) if the subscription remains unpaid 21 days from the date of that notice, may declare that Member's membership forfeited.
- 5.5 For the avoidance of doubt, Original Members are not required to pay any annual subscriptions.

## 6. Ceasing to be a Member

- 6.1 A Member's membership of the Company will cease:
- (a) if the Member is an Original Member and 10 other persons are admitted to membership in accordance with this Constitution after the Amendment Date;
  - (b) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
  - (c) if a majority of three-quarters of the Directors present and voting at a meeting of Directors by resolution terminate the membership of a Member:
    - (i) whose conduct in their opinion renders it undesirable that that Member continue to be a Member of the Company; and
    - (ii) 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;
  - (d) if membership is forfeited under clause 5.4;
  - (e) if the Member ceases to be a NEAS Organisation;
  - (f) if:
    - (i) a liquidator is appointed in connection with the winding-up of the Member; or
    - (ii) an order is made by a Court for the winding-up or deregistration of the Member.
- 6.2 Any Member ceasing to be a Member:
- (a) will not be entitled to any refund (or part refund) of a subscription; and
  - (b) 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.

## 7. Powers of attorney

- 7.1 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.
- 7.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.

7.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

## 8. Representatives

8.1 Any corporation or organisation which is a Member may by written notice to the Secretary:

- (a) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
- (b) remove a Representative.

8.2 A Representative is entitled to:

- (a) exercise at a general meeting all the powers which the corporation or organisation which appointed him or her could exercise if it were a natural person;
- (b) subject to clause 30.1, stand for election as an office bearer or Director; and
- (c) be counted towards a quorum on the basis that the Member corporation or organisation is to be considered personally present at a general meeting by its Representative.

8.3 A certificate executed in accordance with section 127 of the Corporations Act is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.

8.4 The chairperson of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by and to the satisfaction of the chairperson of the general meeting.

8.5 The appointment of a Representative may set out restrictions on the Representative's powers.

## 9. Change of address

A Member shall advise the Secretary of any change in their address.

## General Meetings

### 10. Annual General Meeting

10.1 The Company shall hold an annual general meeting at least once in each calendar year and within 5 months after the end of its financial year or otherwise in accordance with the requirements of the Corporations Act.

### 11. Calling general meeting

11.1 Any Director may, at any time, call a general meeting.

11.2 A Member may:

- (a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Act; and

- (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

## 12. Notice of general meeting

- 12.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 12.2 A notice calling a general meeting:
  - (a) must 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; and
  - (b) must state the general nature of the business to be transacted at the meeting; and
  - (c) must specify a place and facsimile number and may specify an electronic address or other electronic means for the purposes of proxy appointment or proxy appointment authorities.
- 12.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
  - (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
  - (b) the election of directors; or
  - (c) the appointment and fixing of the remuneration of the Auditor.
- 12.4
  - (a) The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 11.2).
  - (b) The Directors must give notice of the postponement or cancellation to all persons referred to in clause 51.1 entitled to receive notices from the Company.
- 12.5 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) 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.

## Proceedings at General Meetings

### 13. Member

In clauses 14, 15, 17 and 20, **Member** includes a Member present in person or by proxy, attorney or Representative.

### 14. Quorum

- 14.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 14.2 A quorum of Members is 60% of Members eligible to vote.
- 14.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:

- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
- (b) in any other case:
  - (i) 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 Directors; and
  - (ii) 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.

## 15. Chairperson

15.1 The chairperson of Directors' meetings will be the chairperson at every meeting of Members.

15.2 If:

- (a) there is no chairperson; or
- (b) the chairperson is not present within 15 minutes after the time appointed for holding the general meeting; or
- (c) the chairperson is unwilling to act as chairperson of the general meeting, the Directors present may elect a chairperson of the general meeting of the Members.

15.3 If no election is made under clause 15.2, then:

- (a) the Members may elect one of the Directors present as chairperson; or
- (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.

15.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

## 16. Adjournment

16.1 The chairperson of a general meeting at which a quorum is present:

- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
- (b) must adjourn the general meeting if the meeting directs him or her to do so.

16.2 An adjourned general meeting may take place at a different venue to the initial general meeting.

16.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.

16.4 Notice of an adjourned general meeting must only be given in accordance with clause 12.1 if a general meeting has been adjourned for more than 21 days.

## 17. Decision on questions

17.1 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.

- 17.2 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.
- 17.3 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
  - (b) 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.
- 17.4 The demand for a poll may be withdrawn.
- 17.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

## 18. Taking a poll

- 18.1 A poll will be taken when and in the manner that the chairperson directs.
- 18.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 18.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 18.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 18.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 18.6 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.

## 19. Casting vote of chairperson

The chairperson does not have a casting vote in addition to any votes the chairperson has as a Member, proxy or attorney.

## Votes of Members

### 20. Attendance and entitlement to vote

- 20.1 Subject to clause 20.2, a Member may attend, speak and vote at any general meeting.
- 20.2 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.
- 20.3 A Member entitled to vote has one vote on a show of hands and on a poll.

### 21. Objections

- 21.1 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.
- 21.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.

21.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

## 22. Votes by proxy

22.1 A proxy must be:

- (a) a Member; or
- (b) the Chair

22.2 A proxy may demand or join in demanding a poll.

22.3 A proxy or attorney may vote on a poll or a show of hands.

22.4 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.

## 23. Document appointing proxy

23.1 An appointment of a proxy is valid if it is signed, or otherwise authenticated in accordance with the Corporations Act, by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Directors 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.

23.2 A proxy's appointment is valid at an adjourned general meeting.

23.3 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.

23.4 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:

- (a) to vote on:
  - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
  - (ii) 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

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

23.5 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the proxy is invalid.

## 24. Lodgment of proxy

24.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:

- (a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or

- (b) the taking of a poll on which the appointee proposes to vote.
- 24.2 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed or authenticated:
- (a) when the document is received at:
    - (i) the Office;
    - (ii) a facsimile number at the Office; or
    - (iii) a place, facsimile number or electronic address specified for the purpose in the notice of meeting; or
  - (b) if a notice of meeting specifies other electronic means by which a Member may give an appointment, when the document given by those means is received by the Company in accordance with the Corporations Act.

## 25. 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 revoked the proxy or power unless any written notification of the revocation was received by the Company before the relevant general meeting or adjourned general meeting.

# Appointment and Removal of Directors

## 26. Transitional arrangements

- 26.1 The Directors of the Company must call a general meeting in accordance with this Constitution and the Corporations Act to be held within four months after the Amendment Date for the purpose of electing two Directors for the purposes of clause 27.2(c) below (**Election Meeting**).
- 26.2 Notwithstanding the amendment of the Constitution on the Amendment Date, the provisions of:
- (a) clauses 25(1) and 27 of the Constitution as at the date immediately before the Amendment Date shall continue to apply until immediately before the Election Meeting; and
  - (b) clauses 27 and 31 below shall not apply until the commencement of the Election Meeting provided that:
    - (i) the requirement in clause 27.2(c) to have two Elected Directors shall not apply until such Directors are elected at the Election Meeting;
    - (ii) the requirement in clause 27.2(a) to have an Independent Director shall not apply until such a Director is appointed at the meeting of Directors referred to in paragraph 26.6 below); and
    - (iii) the requirement in clause 27.1 to have a minimum of four directors shall not apply until an Independent Director is appointed at the meeting of Directors referred to in paragraph 26.6 below).
- 26.3 The Directors of the Company immediately after the Amendment Date shall continue as Directors until the conclusion of the Election Meeting, at which they shall all retire (other

than the ELICOS Association Director who may continue as a Director until the next annual general meeting after the Election Meeting).

- 26.4 At the Election Meeting the Company by ordinary resolution shall elect two persons (who have been nominated in accordance with clause 30) for the purposes of clause 27.2(c).
- 26.5 For the avoidance of doubt, clauses 28 and 29 below shall not apply in respect of the Election Meeting.
- 26.6 Immediately after the conclusion of the Election Meeting, the Directors must hold a meeting to:
- (a) consider, and if appropriate, approve as a Director, any person nominated to be a director under clause 27.3(b) and any person nominated to be a director under 27.3(c). Upon any such approval the nominated person shall immediately become a Director and be entitled to vote at that Directors' meeting on all subsequent resolutions; and
  - (b) appoint with immediate effect an Independent Director for the purposes of clause 27.2(a).

## 27. Composition and number of Directors

27.1 There shall be a minimum of four and a maximum of seven Directors.

27.2 The Directors must include:

- (a) a person appointed by the Directors with such qualifications as the Directors determine appropriate from time to time, who is independent of the Company, its Members and the Centres, in that the person does not have any interest in the Company, a Member or a Centre, whether as a director, shareholder, adviser, sponsor, consultant, employee or otherwise. This Independent Director shall act as chairperson of directors' meetings;
- (b) a person appointed by the Council of the ELICOS Association; and
- (c) two other persons elected in accordance with clause 29 or, in the case of a casual vacancy, elected under clause 31.1.

27.3 In addition to the persons listed in clause 27.2, the Directors may include

- (a) a person appointed by the Directors having skills and experience that the Directors consider appropriate;
- (b) a person nominated to be a Director by the Commonwealth Department of Education Science and Training and approved by the Directors (and the Directors must include such a person if the person has been so nominated and is approved by the other Directors);
- (c) a person jointly nominated by the collective State and Territory Departments of Education and approved by the Directors (and the Directors must include such a person if the person has been so nominated and is approved by the other Directors).

## 28. Retirement of Directors

- 28.1 The Independent Director shall retire from office at the second annual general meeting following his or her appointment but shall be eligible for re-appointment.
- 28.2 The ELICOS Association Director shall retire from office at each annual general meeting but shall be eligible for re-appointment.
- 28.3 At the annual general meeting of the Company held in 2005, one Elected Director shall retire, that Director to be agreed among the Directors, or failing agreement, determined by a majority of the Directors. The Elected Director who did not retire at the 2005 annual general meeting shall have his or her term extended by one year and retire at the 2006 annual general meeting.
- 28.4 Directors holding the Elected Director position filled in 2005 shall thereafter retire in years ending with an odd number. Directors holding the Elected Director position filled in 2006 shall thereafter retire in years ending with an even number.
- 28.5 Any retiring Elected Director shall be eligible for re-election.
- 28.6 Any Director nominated pursuant to clause 27.3(b) or clause 27.3(c) shall retire from office at the next annual general meeting after his or her nomination but shall be eligible for re-nomination.
- 28.7 Any Director appointed pursuant to clause 27.3(a) shall retire from office at the next annual general meeting after his or her appointment but shall be eligible for re-appointment.

## 29. Filling office vacated at an annual general meeting

- 29.1 When an Elected Director retires at an annual general meeting, the Company shall by ordinary resolution elect a person to fill the vacated office.
- 29.2 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, the resolution for the re-election of the Director is put and lost.

## 30. Nomination of an Elected Director

- 30.1 Only a person who is a director, employee or officeholder of a Member or engaged in the administration or management of a Member shall be eligible to be nominated for election, and be elected, as an Elected Director.
- 30.2 Subject to clause 30.1, a person other than a retiring Director is not eligible for election as a Director at a general meeting unless there is lodged with the Secretary at least 28 days before the relevant meeting:
- (a) a written nomination for the person's election as a Director signed by 2 Members;
  - (b) a brief profile of the nominee; and
  - (c) the person's signed written consent to act as a Director (which may be included on the form of nomination).
- 30.3 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.

## 31. Casual Vacancies

- 31.1 The Directors may at any time appoint as a Director a person with the necessary qualifications to fill a casual vacancy amongst the Directors, other than a casual vacancy arising in the office of the ELICOS Association Director, the Elected Directors or in the office of any Director nominated pursuant to clause 27.3(b) or clause 27.3(c):
- 31.2 If a casual vacancy arises amongst the Elected Directors:
- (a) the Directors shall call a postal ballot of Members for the purpose of filling the casual vacancy with a person meeting the eligibility criteria in clause 30.1, which postal ballot shall be called and held in such manner as determined by the Directors; and
  - (b) the Members may, by the postal ballot, elect such a person to fill that casual vacancy.
- 31.3 Any Director appointed pursuant to clause 31.1 or clause 31.2 shall hold office until the annual general meeting at which the Director whose office has become vacant would have retired had he/she served his/her full term in accordance with this Constitution.
- 31.4 In the event that the ELICOS Association Director ceases to hold office prior to the next annual general meeting, such vacancy shall be filled by a person nominated by the Council of the ELICOS Association and such Director shall hold office until the next annual general meeting.
- 31.5 In the event that a Director nominated pursuant to clause 27.3(b) or clause 27.3(c) ceases to hold office prior to the next annual general meeting, such vacancy may be filled by a person nominated by the relevant Government department(s) and such Director shall hold office until the next annual general meeting.

## 32. Removal of Directors

- 32.1 The Company may by resolution passed in general meeting:
- (a) remove any Director (other than the ELICOS Association Director or a director nominated pursuant to clauses 27.3(b) or 27.3(c)) before the end of the Director's period of office; and
  - (b) appoint another person in the Director's place.
- 32.2 A person appointed under clause 32.1(b) will hold office for the period for which the Director replaced would have held office if the Director had not been removed.
- 32.3 (a) 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 Directors specifically called for that purpose may suspend that Director.
- (b) Within 14 days of the suspension, the Directors must call a general meeting, at which the Members may either confirm the suspension and remove the Director from office in accordance with clause 32.1(a) or annul the suspension and reinstate the Director.

## 33. Vacation of Office

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

- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
- (c) resigns by notice in writing to the Company; or
- (d) is removed by a resolution of the Company;
- (e) is absent from 3 consecutive Directors' meetings without leave of absence from the Directors and the Directors resolve that the Director's office be vacated;
- (f) 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;
- (g) dies;
- (h) becomes bankrupt or suspends payment or compounds with his or her creditors;
- (i) is convicted of an indictable offence;
- (j) if the Director was appointed by the Council of the ELICOS Association pursuant to clause 27.2(b) and the Council of the ELICOS Association revokes that appointment by notice in writing to the Company; or
- (k) if the Director was nominated pursuant to clause 27.3(b) or clause 27.3(c) and the relevant Government department(s) revokes that nomination by notice in writing to the Company.

## Powers and Duties of Directors

### 34. Powers and duties of Directors

- 34.1 The business of the Company is managed by the Directors 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.
- 34.2 Without limiting the generality of clause 34.1, the Directors may exercise all the powers of the Company to:
- (a) borrow money;
  - (b) charge any property or business of the Company;
  - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
  - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

# Proceedings of Directors

## 35. Directors' meetings

- 35.1 (a) A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- (b) A Directors' meeting must be called on at least 48 hours notice of a meeting to each Director (unless all Directors consent to a shorter period of notice).
- 35.2 It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- 35.3 (a) Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- (b) The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- (c) Subject to clause 37, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 35.4 Clause 35.3 applies to meetings of Directors' committees as if all committee members were Directors.
- 35.5 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 35.6 A quorum is 60% of Directors.
- 35.7 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may call a general meeting of Members to deal with the matter.
- 35.8 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.
- 35.9 The chief executive officer of the Company, if not a Director, shall be entitled to receive notice of, and attend, but not vote at, meetings of Directors.

## 36. Decision on questions

- 36.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 37, each Director has one vote.
- 36.2 In the case of an equality of votes, the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.

## 37. Directors' interests

- 37.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

- 37.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 37.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 37.4 A Director or a body or entity in which a Director has a direct or indirect interest may:
- (a) enter into any agreement or arrangement with the Company;
  - (b) hold any office or place of profit other than as auditor in the Company; and
  - (c) 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.
- 37.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
- (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter,
- unless permitted by the Corporations Act to do so, in which case the Director may:
- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
  - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
  - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 37.6 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, 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.
- 37.7 The nature of a Director's interest must be disclosed by him or her at the Directors' Meeting at which the arrangement, contract or dealing is determined by the Directors, if his or her interest then exists, or, in any other case, at the Directors Meeting next following the acquisition of his or her interest.

## 38. Remaining Directors

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

## 39. Chairperson

- 39.1 The Independent Director shall act as chairperson of Directors' meetings.
- 39.2 If the Independent Director is not present at any Directors' meeting within 15 minutes after the time appointed for the meeting to begin or is unwilling or unable to act as chairperson of the meeting, the Directors present must elect a Director to be chairperson of the meeting.

## 40. Delegation

- 40.1 (a) The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a committee or committees.
- (b) The Directors may at any time revoke any delegation of power to a committee.
- 40.2 Subject to clause 41.3, at least one member of each committee must be a Director.
- 40.3 A committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 40.4 A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- 40.5 Meetings of any committee of Directors 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 member was a Director.

## 41. Accreditation Committees

- 41.1 The Directors shall establish an 'Accreditation Committee'.
- 41.2 The Directors shall establish rules defining the memberships, powers, responsibilities and conduct of the AC and may vary such rules from time to time.
- 41.3 The AC is not required to have a Director as a member.

## 42. Written resolutions

- 42.1 The Directors may pass a resolution without a Director's meeting being held if all 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. The resolution is passed when the last Director signs.
- 42.2 For the purposes of clause 42.1, 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.
- 42.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 42.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause 42.
- 42.5 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

## 43. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director, or member of a Directors' committee or the AC; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors, the Directors' committee or the AC before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## 44. Minutes and Registers

44.1 The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
- (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
- (c) all resolutions passed by Directors in accordance with clause 42;
- (d) all appointments of officers;
- (e) all orders made by the Directors and Directors' committees; and
- (f) all disclosures of interests made under clause 37.

44.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.

44.3 The Company must keep all registers required by this Constitution and the Corporations Act.

## Agents

### 45. Appointment of attorneys and agents

45.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:

- (a) for the purposes;
- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
- (c) for the period; and
- (d) subject to the conditions,  
determined by the Directors.

45.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:

- (a) any member of any local board established under this Constitution;
- (b) any company;

- (c) the members, directors, nominees or managers of any company or firm; or
  - (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 45.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 45.4 The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Company.
- 45.5 An attorney or agent appointed under this clause 45 may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

## Secretary

### 46. Secretary

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

## Seals

### 47. Common Seal

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

### 48. Duplicate Seal

- 48.1 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';
  - (b) must not be used except with the authority of the Directors.

# Inspection of Records

## 49. Inspection of records

- 49.1 Except as otherwise required by the Corporations Act, the Directors 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.
- 49.2 Except as otherwise required by the Corporations Act, 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 Directors.

## Notices

### 50. Service of notices

- 50.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
- (a) by serving it on the person; or
  - (b) by 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 or sending it by other electronic means notified by the person;
  - (c) where it is a notice of meeting, by giving it in accordance with section 249J(3) of the Corporations Act.
- 50.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
  - (b) on the day after the day on which it was posted.
- 50.3 Subject to the Corporations Act, a notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
  - (b) on the day after its despatch.
- 50.4 A notice of meeting given to a Member under section 249J(3)(cb) of the Corporations Act is taken to be given on the business day after the day on which the Member is notified that the notice of meeting is available.
- 50.5 If a Member has no Registered Address a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Office.
- 50.6 A Member whose Registered Address is not in Australia may specify in writing an address in Australia to be taken to be the Member's Registered Address within the meaning of this clause.

- 50.7 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 50.8 Subject to the Corporations Act, the signature to a written notice given by the Company may be written or printed.
- 50.9 All notices sent by post outside Australia must be sent by prepaid airmail post.

## 51. Persons entitled to notice

- 51.1 Notice of every general meeting must be given to:
- (a) every Member;
  - (b) every Director; and
  - (c) any Auditor.
- 51.2 No other person is entitled to receive notice of a general meeting.

## Audit and Accounts

### 52. Audit and accounts

- 52.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.
- 52.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.
- 52.3 If required by the Corporations Act, the Directors must cause the Company to report to Members for each financial year in accordance with the requirements of the Corporations Act.
- 52.4 The financial year of the Company shall commence on 1 July and end on 30 June each year or such other period as the Directors may determine in accordance with the Corporations Act.

## Winding Up

### 53. Winding up

- 53.1 If the Company is wound up:
- (a) each Member; and
  - (b) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the Company for the:
    - (c) payment of debts and liabilities of the Company (in relation to clause 53.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
    - (d) adjustment of the rights of the contributories amongst themselves,such amount as may be required, not exceeding \$20.00.

- 53.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another organisation with similar purposes which is not carried on for the profit or gain of its individual members and which is prohibited from making any distribution to its members at least to the extent imposed on the Company under clause 3, such organisation to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of New South Wales for determination.

## Indemnity

### 54. Indemnity

- 54.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against any liability (other than for legal costs) incurred by that person as such 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).
- 54.2 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against reasonable legal costs incurred in defending an action for a liability incurred by that person as such 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).
- 54.3 The amount of any indemnity payable under clauses 54.1 or 54.2 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.
- 54.4 For the purposes of this clause 54, **officer** means:
- (a) a Director; or
  - (b) a Secretary.

### 55. Execution of documents

The Company may execute a document in any of the following ways:

- (a) in accordance with section 127(1) of the Corporations Act;
- (b) if the Company has a Seal, in accordance with section 127(2) of the Corporations Act and clauses 47 and 48; or
- (c) in any other way approved by the Directors and permitted by law.