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# **Constitution of National ELT Accreditation Scheme Limited**

ABN: 29 003 980 667

*Approved by Members on 23 December 2013.*

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# Constitution of National ELT Accreditation Scheme Limited

**National ELT Accreditation Scheme Limited (the Company)**  
**ABN 29 003 980 667**

## **1. PRELIMINARY**

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### **1.1 Company limited by guarantee**

The Company is limited by guarantee and the liability of Members is limited as provided in these rules.

### **1.2 Company Objects**

- (a) The objects of the Company are to:
- (i) Advance English language teaching and cultural development in the community;
  - (ii) Establish and conduct an autonomous industry-based self-regulatory accreditation system for Centres;
  - (iii) Provide advice to appropriate governmental authorities as to whether Centres are accredited;
  - (iv) Assess compliance of Centres with requirements of accreditation;
  - (v) Suspend or revoke, or advise the suspension or revocation of the accreditation of a Centre;
  - (vi) Advise Centres on matters affecting their accreditation;
  - (vii) Determine the requirements for accreditation of Centres, in conjunction where necessary with appropriate Governmental authorities;
  - (viii) Establish "Accreditation Committees";
  - (ix) Establish such other processes for the accreditation of courses or Centres associated with the teaching of English as are considered necessary from time to time; and
  - (x) Do any other things in connection with education as considered appropriate or necessary.
- (b) The interpretation of any object of the Company stated in rule 1.2(a) must not be restricted by reference to or inference from any other object.
- (c) The Company may only exercise the powers in section 124(1) of the Corporations Act to:
- (i) Carry out the objects in rule 1.2(a); and
  - (ii) Do all things incidental or convenient in relation to the exercise of power under rule 1.2(c)(i).

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### 1.3 Application of income and property

- (a) Subject to rule 22, the Company must apply its income and property solely towards promoting of the Company Objects.
- (b) No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:
  - (i) In return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
  - (ii) Of remuneration to any officer of the Company or other person in return for any services genuinely rendered to the Company;
  - (iii) Of compensation for expenses genuinely incurred on behalf of the Company; or
  - (iv) Of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

### 1.4 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 document.

### 1.5 Definitions

The following definitions apply in this document.

**AC** means the Accreditation Committee established pursuant to rule 7.

**Board** means the Directors acting collectively under this document.

**Business Day** means any day other than:

- (a) a Saturday, Sunday or public holiday, or
- (b) 27, 28, 29, 30 or 31 December,

for the purposes of rule 23.2, in the place to which the notice is sent and in each other case, in Sydney.

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

**Company** means the company named at the beginning of this document whatever its name is for the time being.

**Company Objects** means the objects of the Company set out in rule 1.2.

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

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

**Elected Director** means a Director elected in accordance with rule 3.2(b), or in the case of a casual vacancy, appointed under rule 3.3(b).

**Independent Director** means a person appointed as a Director pursuant to rule 3.2(a) or rule 3.3(a).

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**Member** means a member admitted under rule 2.1 and entered in the Register as a member of the Company.

**NEAS Organisation** means a distinct legal entity operating one or more NEAS accredited centre(s).

**Office** means the Company's Registered Office.

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

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

**Representative** means a person appointed as such under rule 2.5.

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

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

**Secretary** means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with these rules.

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

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth).

## 1.6 Interpretation of this document

Headings and marginal notes are for convenience only, and do not affect interpretation. The following provisions also apply in interpreting this document, except where the context makes it clear that a provision is not intended to apply.

- (a) A reference to:
  - (i) legislation (including subordinate 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.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other gender.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.

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- (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
  - (h) A reference to a power is also a reference to authority or discretion.
  - (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
  - (j) A monetary amount is in Australian dollars.
  - (k) A word (other than a word defined in rule 1.5) which is defined by the Corporations Act has the same meaning in this document where it relates to the same matters as the matters for which it is defined in the Corporations Act.
  - (l) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Corporations Act unless stated otherwise.
  - (m) A reference to any person holding or occupying a particular office or position includes any person who from time to time holds or occupies that office or position or who acts as the holder or occupier of it.

### **1.7 Non Business Days**

If the day on or by which a person must do something under this document is not a Business Day, the person must do it on or by the next Business Day.

## **2. MEMBERSHIP**

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### **2.1 Admission**

- (a) Only NEAS Organisations are eligible to apply for membership and become Members.
- (b) Applications for membership of the Company shall be in writing, signed by an authorised representative of the applicant, in a form approved by the Board in its absolute discretion and delivered to the Company Office. The application must be accompanied by payment of the applicant's first annual subscription.
- (c) At the next meeting of the Board after receipt of an application for membership, the application will be considered by the Board. The Board will:
  - (i) Determine the admission or rejection of the applicant; or
  - (ii) Decide to call on the applicant to supply any evidence of eligibility that they consider reasonably necessary.
- (d) If the Board:
  - (i) Requires further evidence under rule 2.1(c), determination of the application will be deferred until this evidence has been supplied;
  - (ii) Rejects an application for membership, they will not be required to give reasons for rejection.
- (e) As soon as practicable following rejection of an application for membership, the Company 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).



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- (f) As soon as practicable following acceptance of an application for membership, the Company 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.
  - (g) Subject to rule 2.1(h), an applicant for membership becomes a Member:
    - (i) If the applicant's application was accompanied by the first annual subscription, upon the date of acceptance of the application;
    - (ii) Otherwise, when the applicant's first annual subscription is paid.
  - (h) If the first annual subscription of an applicant is not paid within 30 days after the date the applicant is notified of acceptance of their application for membership, the Board may cancel their acceptance of the applicant for membership of the Company.
  - (i) All rights derived from membership of the Company are personal to the Member concerned.
  - (j) No person other than the Member concerned may enjoy any right arising from the Member's membership whether by transfer, transmission or otherwise.

## **2.2 Subscriptions**

- (a) The Board will determine the annual subscription payable by each Member or each category of Member.
- (b) The annual subscription period will commence on 1 July of each year, and the annual subscription will be due in advance within 30 days of this date.
- (c) An applicant for membership whose application has been accepted must pay their first annual subscription (being in respect of the annual subscription period on which they apply for membership) before they can be admitted as a Member.
- (d) If a Member does not pay a subscription within 30 days after it becomes due the Board:
  - (i) Will give the Member notice of that fact; and
  - (ii) If the subscription remains unpaid 21 days from the date of that notice, may declare that Member's membership forfeited.

## **2.3 Ceasing to be a Member**

- (a) A Member's membership of the Company will cease:
  - (i) If the Member gives the Company written notice of resignation, from the date of receipt of that notice at the Company Office;
  - (ii) If a majority of three-quarters of the Directors present and voting at a meeting of the Board by resolution terminate the membership of a member:
    - (A) Whose conduct in their opinion renders it undesirable that that Member continue to be a Member of the Company; and
    - (B) Only after the Member has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed;
  - (iii) If membership is forfeited under rule 2.2(d);

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- (iv) If the Member ceases to be a NEAS Organisation;
  - (v) If:
    - (A) A liquidator is appointed in connection with the winding-up of the Member; or
    - (B) An order is made by a Court for the winding-up or deregistration of the Member.
  - (b) Any Member ceasing to be a Member:
    - (i) Will not be entitled to any refund (or part refund) of a subscription; and
    - (ii) Will remain liable for and will pay to the Company all subscriptions and moneys which were due at the date of ceasing to be a Member.

#### **2.4 Powers of attorney**

- (a) If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the Attorney to the Company for notation.
- (b) 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.
- (c) The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

#### **2.5 Representatives**

- (a) Any corporation or organisation which is a Member may by written notice to the Company:
  - (i) Appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
  - (ii) Remove a Representative.
- (b) A Representative is entitled to:
  - (i) Exercise at a general meeting all the powers which the corporation or organisation which appointed him or her could exercise if it were a natural person;
  - (ii) Subject to rule 3.4(a), stand for election as an office bearer or Director; and
  - (iii) 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.
- (c) 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.
- (d) 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.

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- (e) The appointment of a Representative may set out restrictions on the Representative's powers.

## **2.6 Change of address**

- (a) A Member shall advise the Company of any change in their address.

## **2.7 Limited liability of Members**

- (a) If the Company is wound up each Member must contribute to the assets of the Company up to an amount not exceeding \$20.00 for payment of the debts and liabilities of the Company (in relation to 2.7(b) contracted before the person ceased to be a Member) including the costs of the winding up.
- (b) The obligations under rule 2.7(a) apply to each person who has ceased to be a Member in the preceding year.

## **2.8 Compliance**

Each Member must comply with these rules.

## **3. DIRECTORS**

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### **3.1 Number of Directors**

- (a) The Company must have at least four Directors and not more than eight Directors.

### **3.2 Board Composition**

The Directors must include:

- (a) Up to five persons appointed by the Directors with such qualifications as the Directors determine appropriate from time to time, who are independent of the Company, its Members and the Centres, in that the persons do not have any interest in the Company, a Member or a Centre, whether as a director, shareholder, adviser, sponsor, consultant, employee or otherwise (Independent Directors). One of the Independent Directors will be appointed by the Board as chairperson; and
- (b) Up to three persons elected in accordance with rule 3.4 or, in the case of a casual vacancy, elected under rule 3.3(b) (Elected Directors).

### **3.3 Power to appoint directors**

- (a) The Directors may at any time appoint as a Director a person to fill a casual vacancy amongst the Independent Directors subject to the number of Directors for the time being fixed under rule 3.1 or 3.2(a) not being exceeded.
- (b) If a casual vacancy arises amongst the Elected Directors:
  - (i) The Board shall call for nominations from all Members for the vacancy. Any such nomination must be in writing, signed by two Members and include a brief profile of the nominee;
  - (ii) Following a call for nominations, the Board shall call a postal ballot of Members for the purpose of filling the casual vacancy with a person meeting the eligibility criteria specified in rule 3.4(a), which postal ballot shall be called and held in such a manner as determined by the Board; and

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- (iii) The Members may, by the postal ballot, elect such a person to fill that casual vacancy.
  - (c) Any Director appointed pursuant to rule 3.3(a) shall hold office until the annual general meeting following his or her appointment.

### **3.4 Elected Director**

- (a) 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.
- (b) Subject to rule 3.4(a), a person other than a retiring Elected Director is not eligible for election as an Elected Director at a general meeting unless there is lodged with the Secretary at least 28 days before the relevant meeting:
  - (i) A written nomination for the person's election as an Elected Director signed by 2 members; and
  - (ii) A brief profile of the nominee; and
  - (iii) The person's signed written consent to act as a Director (which may be included on the form of nomination).
- (c) A written notice referring to all Elected Director vacancies and each candidate for election and re-election, must be sent to Members as part of the notice for the general meeting at which an election of an Elected Director will take place.

### **3.5 Retirement and re-election**

- (a) Each Independent Director will retire at the annual general meeting following the third anniversary of his or her appointment or re-appointment and is eligible for re-appointment.
- (b) Each Elected Director will retire at the annual general meeting following the third anniversary of his or her election or re-election and is eligible for re-election.

### **3.6 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 an order made under the Corporations Act) to be a director;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G of the Corporations Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend three consecutive Board meetings (not including meetings of a committee of the Board) without leave of absence from the Board;
- (e) resigns by notice in writing to the Company;
- (f) is removed from office under rule 3.7;; or
- (g) if the Director was appointed under rule 3.2(b) or rule 3.3(b) and that Director no longer meets the eligibility criteria specified in rule 3.4(a).

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### **3.7 Removal from office**

Whether or not a Director's appointment was expressed to be for a specified period, the Company by Ordinary Resolution may remove a Director from office. The power to remove a Director under this rule is in addition to section 203D of the Corporations Act.

### **3.8 Too few Directors**

If the number of Directors is reduced below the minimum required by rule 3.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of Members; and
- (c) in emergencies.

## **4. POWERS OF THE BOARD**

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### **4.1 Powers generally**

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

- (a) has power to manage the business of the Company; and
- (b) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the Members.

### **4.2 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 10; or
- (b) in accordance with a delegation of the power under rule 6.

## **5. EXECUTING NEGOTIABLE INSTRUMENTS**

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The Board must decide the manner (including the use of facsimile signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept, or endorse negotiable instruments only in the manner decided by the Board.

## **6. DELEGATION OF BOARD POWERS**

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### **6.1 Power to delegate**

The Board may delegate any of its powers as permitted by section 198D of the Corporations Act.

### **6.2 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.

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### **6.3 Terms of delegation**

A delegation of powers under rule 6.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

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

### **6.4 Proceedings of committees**

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.

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## **7. ACCREDITATION COMMITTEES**

- (a) The Board shall establish an "Accreditation Committee".
- (b) The Board shall establish rules defining the memberships, powers, responsibilities and conduct of the AC and may vary such rules from time to time.
- (c) The AC is not required to have a Director as a member.

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## **8. DIRECTORS' DUTIES AND INTERESTS**

### **8.1 Compliance with duties under the Corporations Act and general law**

Each Director must comply with his or her duties under the Corporations Act and under the general law.

### **8.2 Director can hold other offices and other matters**

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.

### **8.3 Disclosure of interests**

Each Director must comply with the general law in respect of disclosure of conflicts of interest and with section 191 of the Corporations Act in respect of disclosure of material personal interests.

### **8.4 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.

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- (b) If a Director may be present and vote in pursuant to:
    - (i) a resolution passed in accordance with section 195(2) of the Corporations Act;
    - (ii) a declaration or order made by ASIC under section 196 of the Corporations Act, entitling them to do so; or
    - (iii) section 195(4) of the Corporations Act,then:
    - (iv) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in which that Director has an interest;
    - (v) the Company may proceed with any transaction that relates to the material personal interest;
    - (vi) the Director may retain benefits under the transaction even though the Director has the material personal interest; and
    - (vii) the Company cannot avoid the transaction merely because of the existence of the material personal interest.
  - (c) If the material personal interest is required to be disclosed under section 191 of the Corporations Act then rule 8.4(b)(vi) and rule 10.4(b)(vii) apply only if that material personal interest is disclosed before the transaction is entered into.
  - (d) If a Director is prohibited by section 195 of the Corporations Act from being present and voting then he or she may not be counted in a quorum for a Board meeting whilst the relevant matter is being considered or voted upon.

## **8.5 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 material personal interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

## **8.6 Obligation of secrecy**

- (a) Subject to rule 8.6(b), 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 duties as an officer of the Company;
  - (ii) by the Board or the Company in general meeting; or
  - (iii) by law.
- (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.

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## **9. OFFICERS' INDEMNITY AND INSURANCE**

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### **9.1 Indemnity**

Subject to and so far as permitted by the Corporations Act, the *Competition and Consumer Act 2010* and any other applicable law:

- (a) the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company and its wholly owned subsidiaries and may indemnify its auditor against a Liability incurred as such an officer or auditor to a person (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

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.

### **9.2 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.

### **9.3 Former officers**

The indemnity in favour of officers under rule 9.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

### **9.4 Officer agreement**

Subject to the Corporations Act, the *Competition and Consumer Act 2010* and any other applicable law, the Company may, without limiting a person's rights under this rule 9, enter into an agreement with a person who is or has been an officer of the Company or any of the Company's wholly owned subsidiaries, to give effect to the rights of the person under this rule 9 on any terms and conditions that the Board thinks fit.

### **9.5 Directors**

In this rule 9, a reference to an officer includes a director.

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## **10. BOARD MEETINGS**

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### **10.1 Convening Board meetings**

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

### **10.2 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 who is in Australia; and
  - (b) may give that notice orally (including by telephone) or in writing,

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

### **10.3 Use of technology**

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D of the Corporations Act. 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 chairman of the meeting is located.

### **10.4 Chairing Board meetings**

The Board may elect an Independent Director to chair its meetings and decide the period for which that Director holds that office. If there is no chairman of Directors or the chairman 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 another of the Independent Directors present to chair the meeting.

### **10.5 Quorum**

- (a) At any meeting of the Board, a majority of the total number of Directors for the time being constitutes a quorum.
- (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 section 248D of the Corporations Act, the Board must resolve the basis on which Directors are treated as present.

### **10.6 Majority decisions**

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. In the case of an equality of votes, the chairman of a Board meeting has a casting vote in addition to his or her deliberative vote.

### **10.7 Procedural rules**

The Board may adjourn and, subject to this document, otherwise regulate its meetings as it decides.

### **10.8 Written resolution**

If all the Directors entitled to receive notice of a Board or Committee 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 Board or Committee resolution in those terms is passed at the time when the last Director signs.

### **10.9 Additional provisions concerning written resolutions**

For the purpose of rule 10.8:

- (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.

#### **10.10 Valid proceedings**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee or the AC 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.

### **11. MEETINGS OF MEMBERS**

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#### **11.1 Annual general meeting**

The Company must hold an annual general meeting as required by section 250N of the Corporations Act.

#### **11.2 Calling meetings of Members**

A meeting of Members:

- (a) may be convened at any time by the Board or a Director; and
- (b) must be convened by the Board when required by section 249D or 250N or by order made under section 249G of the Corporations Act.

#### **11.3 Notice of meeting**

Subject to rule 11.4, at least 21 days' written notice of a meeting of Members must be given individually to:

- (a) each Member (whether or not the Member is entitled to vote at the meeting);
- (b) each Director; and
- (c) to the auditor.

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

#### **11.4 Short notice**

Subject to sections 249H(3) and (4):

- (a) if the Company has elected to convene a meeting of Members as the annual general meeting, 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.

#### **11.5 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 at least 3 Business Days written notice given individually to each person entitled to be given notice of the meeting.

#### **11.6 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.

#### **11.7 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.

#### **11.8 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.

### **12. PROCEEDINGS AT MEETINGS OF MEMBERS**

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#### **12.1 Member present at meeting**

If a Member has appointed a proxy or attorney or Representative to act at a meeting of Members, that Member is taken to be present at a meeting at which the proxy or attorney or Representative is present.

#### **12.2 Quorum**

At any meeting of the Members, six (6) Members for the time being, present in person, by proxy, Attorney or Representative, constitutes a quorum. Each individual present may only be counted once toward a quorum. If a Member has appointed more than one proxy only one of them may be counted towards a quorum.

#### **12.3 Quorum not present**

If a quorum is not present within 30 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.

#### **12.4 Chairing meetings of Members**

- (a) If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of Members. If:

- 
- (i) there is no Director who the Board has appointed to chair Board meetings for the time being; or
  - (ii) the Director appointed to chair Board meetings is not present at the time for which a meeting of Members is called or is not willing to chair the meeting,

the Directors may elect a chairperson to chair the meeting.

(b) If no election is made under rule 12.4(a), then:

- (i) The Members present may elect one of the Directors present to chair the meeting; or
- (ii) If no Director is present or willing to take the chair, the Members may elect one of the Members to chair the meeting.

### **12.5 Attendance at general meetings**

- (a) Subject to rule 12.5(b), every Member has the right to attend, vote and speak at all meetings of Members.
- (b) 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.
- (c) Every Director has the right to attend and speak at all meetings of Members.
- (d) The auditor has the right to attend any meeting of Members and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

### **12.6 Adjournment**

Subject to rule 11.6, the chairman 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.

### **12.7 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.

## **13. PROXIES AND ATTORNEYS**

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### **13.1 Appointment of proxies**

A Member may appoint a proxy to attend and act for the Member at a meeting of Members. A proxy must be a Member or the Chair. An appointment of proxy must be made by written notice to the Company:

- (a) that complies with section 250A(1) of the Corporations Act; or
- (b) in any other form and mode that is, and is signed or otherwise authenticated by the Member in a manner, satisfactory to the Board.

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### **13.2 Member's attorney**

A Member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of Members. The power of attorney must be signed in the presence of at least one witness.

### **13.3 Deposit of proxy appointment forms, powers of attorney and proxy appointment authorities**

An appointment of a proxy or an attorney is not effective for a particular meeting of 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) 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.

### **13.4 Appointment for particular meeting, standing appointment and revocation**

A Member may appoint a proxy, Representative or attorney to act at a particular meeting of Members or make a standing appointment and may revoke any appointment. A proxy must be a Member or the chairman of the meeting. An attorney or Representative may, but need not, be a Member.

### **13.5 Position of proxy or attorney if Member present**

The appointment of a proxy, Representative 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, Representative or attorney is not entitled to vote, and must not vote, as the Member's proxy, Representative or attorney on the resolution.

### **13.6 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 13.6(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.

### **13.7 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.

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### **13.8 Continuing authority**

An act done at a meeting of Members by a proxy or attorney 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.

## **14. ENTITLEMENT TO VOTE**

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### **14.1 Number of votes**

Subject to section 250A(4) 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, Representative or attorney of another Member has one vote on a show of hands.

### **14.2 No casting vote of chairman**

- (a) The chairman of a meeting of Members does not have a casting vote.
- (b) If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

### **14.3 Voting restrictions**

If:

- (a) 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
- (b) 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. If a proxy purports to vote in a way or in circumstances that contravene section 250A(4), on a show of hands the vote is invalid and the Company must not count it and the poll rule 15.3(c) applies.

### **14.4 Decision on right to vote**

A Member or Director may challenge a person's right to vote at a meeting of Members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairman, whose decision is final.

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## **15. HOW VOTING IS CARRIED OUT**

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### **15.1 Method of voting**

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 15.2 either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the chairman's declaration of a decision on a show of hands is final.

### **15.2 Demand for a poll**

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

- (a) at least three Members entitled to vote on the resolution; or
- (b) the chairman.

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

### **15.3 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 15.3(c), in the manner that the chairman of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 15.3(c), in the manner that the chairman of the meeting directs;
- (c) votes which section 250A(4) requires 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.

## **16. SECRETARY**

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### **16.1 Appointment of Secretary**

The Board:

- (a) must appoint at least one individual; and
- (b) may appoint more than one individual,

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

### **16.2 Terms and conditions of office**

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

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### **16.3 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 and is not given permission or leave to manage the Company under section 206F or 206G of the Corporations Act;
- (c) dies;
- (d) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (e) resigns by notice in writing to the Company; or
- (f) is removed from office under rule 16.4.

### **16.4 Removal from office**

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

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## **17. MINUTES**

### **17.1 Minutes must be kept**

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's Members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 6 or rule 7);
- (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.

### **17.2 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.

### **17.3 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.



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## **18. COMPANY SEALS**

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### **18.1 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.

### **18.2 Use of seals**

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123 of the Corporations Act.

### **18.3 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.

## **19. FINANCIAL REPORTS AND AUDIT**

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### **19.1 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 audited,
- and must allow a Director and the auditor to inspect those records at all reasonable times.

### **19.2 Financial reporting**

The Board must cause the Company to prepare a financial report and a directors' report that comply with Part 2M.3 and must report to Members in accordance with section 314 no later than the deadline set by section 315 of the Corporations Act.

### **19.3 Audit**

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor are regulated by Division 3 of Part 2M.3, Divisions 1 to 6 of Part 2M.4 and sections 1280, 1289, 1299B and 1299C of the Corporations Act.

### **19.4 Conclusive reports**

Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within three months after the relevant general meeting. If the Company receives notice of an error within that period, it must

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immediately given written notification of it to the Members and correct the report and the report as corrected is then conclusive.

### **19.5 Inspection of financial records and books**

Subject to rule 17.3 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.

## **20. REGISTER OF MEMBERS**

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The Company must set up and maintain a register of Members.

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

- (a) the name and address of each Member;
- (b) the date on which the entry of the Member's name in the Register is made;
- (c) the name and details of each person who stopped being a Member within the last seven years;
- (d) the date on which the person stopped being a Member; and
- (e) 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.

## **21. ASSETS OF THE COMPANY**

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### **21.1 General restriction on use of assets**

The Company must only apply its assets (including its cash from capital and income) in a manner consistent with the Company Objects and the Company must not directly or indirectly:

- (a) pay or transfer any of its assets by way of dividend, bonus or otherwise to any of its Members and may not lend money to any of its Members; or
- (b) (subject to rule 9 and rule 21.2) pay fees or other remuneration to a Member or Director (whether in cash or in kind).

### **21.2 Payments to Members and Directors with Board approval**

- (a) With the approval of the Board, the Company may pay to a Member or Director:
  - (i) reasonable remuneration where that person is not an employee of the Company and the terms of his or her appointment as a Director have been approved by the Board;
  - (ii) reasonable remuneration for any service rendered by that person to the Company other than as an employee;
  - (iii) reasonable remuneration for goods supplied by that person to the Company in the ordinary course of business;
  - (iv) interest on money lent by that person to the Company at a rate not exceeding the maximum rate approved by the Board from time to time; and

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- (v) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director or otherwise for the benefit of the Company.
  - (b) (i) The aggregate amount of fees payable to the Directors in any financial year must be approved by the Members.
  - (ii) The aggregate amount of fees payable to Directors in a financial year:
    - (A) may only be paid to those Directors who are not employees of the Company; and
    - (B) must be allocated between those Directors as determined by the Board.

## **22. DISTRIBUTION OF ASSETS ON A WINDING UP**

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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 rule 1.3, 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.

## **23. NOTICES**

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### **23.1 Notices by Company**

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

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person 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 person's address; or
  - (iii) sent by fax to the fax number (if any) nominated by that person; or
  - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

### **23.2 When notice is given**

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally:
  - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
  - (ii) 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;

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- (b) if it is sent by fax or electronic message:
    - (i) by 5.00 pm (local time in the place from which it is sent or given) on a Business Day – on that day; or
    - (ii) 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
  - (c) if it is sent by mail:
    - (i) within Australia - one Business Day after posting; or
    - (ii) to a place outside Australia - three Business Days after posting.

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

### **23.3 Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

### **23.4 Notices to "lost" Members**

If:

- (a) on two or more consecutive occasions a notice served on a Member in accordance with this rule is returned unclaimed or with an indication that the Member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a Member is not at the address shown in the Register.

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

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