

Constitution

Australian Business Software Industry Association Limited

A Public Company Limited by Guarantee

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Table of Contents

Table of Contents.....	i
1 Name of the Company.....	1
2 Type of Company	1
3 Replaceable Rules.....	1
4 Definitions and Interpretation.....	1
4.1 Definitions.....	1
4.2 Interpretation	3
5 Objects and Purposes.....	3
5.1 Objects	3
5.2 Income and Property	4
5.3 Remuneration of Directors and members of a Member Committee.....	4
MEMBERSHIP.....	5
6 Admission to Membership.....	5
6.1 Pre-Condition to Membership	5
6.2 Becoming a Member.....	5
7 Classes of Membership	5
7.1 Classes of Membership	5
7.2 Developer Members	5
7.3 Business Members	5
7.4 Individual Members.....	5
8 Eligibility for Membership.....	5
9 Applications for Membership	6
9.1 Applications for Membership.....	6
9.2 Right of Appeal where Membership Application Rejected	7
10 Membership Entitlements Not Transferable.....	8
11 Representative.....	8
12 Entrance Fee and Subscriptions.....	8
13 Cessation of Membership.....	9
14 Disciplining of Members	10
14.1 Disciplining of Members.....	10
14.2 Right of Appeal of Disciplined Member	11
15 Resolution of Disputes Between Members	12
GENERAL MEETINGS.....	13
16 Annual general meetings.....	13
17 Convening of General Meetings.....	13
18 Notice of General Meeting	13
19 Cancellation or Postponement of General Meeting	14

PROCEEDINGS AT GENERAL MEETINGS	14
20 Quorum	14
21 Chairman.....	15
22 Adjournments.....	15
23 Determination of Questions.....	15
24 Polls	16
25 Voting Rights.....	16
26 Disqualification.....	16
27 Objection to Qualification to Vote	16
28 Persons of Unsound Mind and Minors	17
29 Casting Vote	17
30 Right of Non-Members to Attend General Meeting	17
PROXIES.....	17
31 Right to Appoint Proxies	17
32 Appointing a Proxy	18
32.1 Appointing a Proxy.....	18
32.2 Instrument of Proxy.....	18
33 Lodgement of Proxies.....	18
34 Validity of Proxies	19
35 Rights of Proxies and Attorneys	19
APPOINTMENT AND REMOVAL OF DIRECTORS	20
36 Number and Appointment of Directors.....	20
36.1 Number of Directors.....	20
36.2 Composition of Board	20
36.3 Initial Board.....	20
36.4 Elected Directors	21
36.5 Co-Opted Director.....	21
36.6 Term.....	22
36.7 Office Bearers.....	22
37 General Right to Appoint and Remove Directors.....	22
38 Vacation of Office.....	22
39 Casual Vacancy	23
POWERS AND DUTIES OF DIRECTORS.....	23
40 Powers of Directors	23
41 Negotiable Instruments.....	24
42 Conferment of Powers	24
43 Alternate Directors	24

DIRECTORS' DISCLOSURE OF INTEREST	24
44 Contracts	24
PROCEEDINGS OF DIRECTORS.....	25
45 Meetings of Directors.....	25
46 Quorum	25
47 Chairman.....	26
48 Voting.....	26
49 Resolutions by Directors	26
50 Committee of Directors.....	27
51 Validation of Acts of Directors	27
MINUTES.....	27
52 Minutes	27
SECRETARY	28
53 Appointment and Tenure	28
MEMBER COMMITTEES	28
54 Member Committees	28
BY-LAWS	29
55 By-Laws	29
EXECUTION OF DOCUMENTS	29
56 Execution of Documents	29
ACCOUNTS AND INSPECTION OF RECORDS.....	29
57 Accounts and Inspection.....	29
NOTICES.....	29
58 Service of Notices	29
59 Notices of General Meeting	30
WINDING UP.....	31
60 Winding Up	31
INDEMNITY	31
61 Indemnity	31
62 Payment of Indemnity Policy Premium.....	31
63 Indemnity to Continue.....	32
Annexure A Form of Appointment of Proxy	34

1 Name of the Company

The name of the Company is Australian Business Software Industry Association Limited.

2 Type of Company

- (a) The Company is a not-for-profit public company limited by guarantee.
- (b) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
 - (i) payment of debts and liabilities of the Company;
 - (ii) payment of the costs, charges and expenses of winding up; and
 - (iii) any adjustment of the rights of the contributories among Members.
- (c) The amount that each Member or past Member is liable to contribute is limited to \$1.00.

3 Replaceable Rules

This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

4 Definitions and Interpretation

4.1 Definitions

In this Constitution, unless there is something in the subject or context which is inconsistent:

ABN means an Australian Business Number issued by the Australian Taxation Office.

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

Alternate Directors are directors as defined by section 201K of the Act.

Applications Committee means a committee established pursuant to **clause 9.2(a)**.

Board means the board of Directors.

Business Members are those Members referred to in **clause 7.3**.

By-Laws means the by-laws adopted and amended by the Board from time to time in accordance with **clause 55**.

Chairman means the person holding that office under this Constitution and includes any assistant or acting chairman.

Committee means a committee established in accordance with **clause 50**.

Company means Australian Business Software Industry Association Limited.

Constitution means this constitution as amended or supplemented from time to time.

Co-Opted Director means a Director appointed to the Board pursuant to **clause 36.5**.

Developer Members are those Members referred to in **clause 7.2**.

Director means any person holding the position of a director of the Company (and includes a reference to both Elected Directors and Co-Opted Directors) and **Directors** means the directors for the time being of the Company or, as the context permits, such number of them as have authority to act for the Company.

Disciplinary Committee means a committee established pursuant to **clause 14.2**.

Elected Director means a Director elected to the Board pursuant to **clause 36.4**.

Entrance Fee means the entrance fee payable by Members pursuant to **clause 12**.

Financial Voting Member means a Voting Member who has paid his Entrance Fee and annual Subscription within the time limits specified in **clause 13(a)(v)**, namely, at the latest, within thirty (30) days after having been notified by the Company that the Voting Member is in arrears to the Company.

Group means a group of Members for whom the Board has authorised the formation of a Member Committee under **clause 54(a)**.

Individual Members are those Members referred to in **clause 7.4**.

Member means a member of the Company pursuant to **clause 6** and **clause 7** (and **Membership** has the corresponding meaning) and includes Developer Members, Business Members and Individual Members.

Member Committee means a committee established to represent the interests of a Group pursuant to **clause 54(a)**.

Member Present means in connection with a meeting of Members, a Financial Voting Member being present in person or by proxy or attorney or, in the case of an Organisational Member, by a Representative.

Member's Guarantee Amount means the amount referred to in **clause 2(c)**.

Objects means the objects of the Company as set out in **clause 5.1**.

Office means the registered office for the time being of the Company.

Officer has the same meaning as given to that term in section 9 of the Act.

Organisational Member means a Member of the Company which is a body corporate.

President means the President of the Board and the Company appointed pursuant to **clause 36.7(a)(i)**.

Register means the register of Members to be kept pursuant to the Act.

Replaceable Rules means the replaceable rules applicable to a public company limited by guarantee set out in the Act.

Representative means a person authorised in accordance with section 250D of the Act to act as a representative of an Organisational Member, as described in **clause 11**.

Secretary means the person appointed as the secretary of the Company and includes any assistant or acting secretary.

Software Developer means a developer of business software as more particularly defined and described in a Board policy on Software Developers (which Board policy can be amended by the Board from time to time).

Special Resolution has the meaning given to it by the Act.

Subscription means the subscription fees payable by Members pursuant to **clause 12**.

Vice President means the Vice President of the Board and the Company appointed pursuant to **clause 36.7(a)(ii)**.

Voting Members are those Members who, pursuant to **clause 7**, are entitled to vote at meetings of the Members, which are the Developer Members.

4.2 Interpretation

- (a) In this Constitution, unless there is something in the subject or context which is inconsistent:
- (i) the singular includes the plural and vice versa;
 - (ii) each gender includes the other two genders;
 - (iii) the word “individual” means a natural person;
 - (iv) the word **person** means a natural person and any partnership, association, body or entity whether incorporated or not;
 - (v) the words **writing** and **written** include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
 - (vi) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
 - (vii) a reference to any clause or schedule is to a clause or schedule of this Constitution; and
 - (viii) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- (b) An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.
- (c) Headings do not form part of or affect the construction or interpretation of this Constitution.

5 Objects and Purposes

5.1 Objects

- (a) The Object of the Company is to represent the interests of Software Developers and their clients by:
- (i) lobbying Government;
 - (ii) consulting with Government;
 - (iii) liaising with any other associations or industries;
 - (iv) being an information source for sharing, transfer and management of information for the software industry and the wider community;
 - (v) being an education provider for Members, business and the community;

- (vi) facilitating co-operation within the software industry to encourage the efficient offerability and the adoption of business systems to deliver productivity to the business community; and
 - (vii) doing ancillary to the Objects referred to in **clauses 5.1(a)(i) to 5.1(a)(vi)**.
- (b) The Company can only exercise the powers in section 124(1) of the Act to:
- (i) carry out the Objects of the Company; and
 - (ii) do all things incidental or convenient in relation to the exercise of power under **clause 5.1(b)(i)**.

5.2 Income and Property

- (a) The income and property of the Company will only be applied towards the promotion of the Objects of the Company.
- (b) No income or property of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company. However nothing in this Constitution will prevent payment in good faith to a Member:
 - (i) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
 - (ii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
 - (iii) of reasonable and proper rent for premises leased by any Member to the Company.

5.3 Remuneration of Directors and members of a Member Committee

No payment shall be made to any Director (except any executive Directors in their capacity as an employee of the Company) or member of a Member Committee other than the payment:

- (a) of out of pocket expenses incurred by the Director or member of a Member Committee in the performance of any duty as a Director or member of a Member Committee respectively where the amount payable does not exceed an amount previously approved by the Board;
- (b) for any service rendered to the Company by the Director or member of a Member Committee in a professional or technical capacity, other than in the capacity as Director or member of a Member Committee respectively, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service; and
- (c) in the case of a Co-Opted Director, for any services rendered to the Company by the Co-Opted Director in their capacity as Director where the amount payable does not exceed the amount which has been determined by the Board and is not more than an amount which would be reasonable for a director of a public company limited by guarantee to receive for the services rendered.

MEMBERSHIP

6 Admission to Membership

6.1 Pre-Condition to Membership

A person or body corporate is entitled to apply to become a Member if that person or body corporate agrees to assume the liability to pay the Member's Guarantee Amount and otherwise satisfies the criteria for the relevant class of Membership.

6.2 Becoming a Member

Subject to the Act, a person or body corporate becomes a Member on the registration of that person's or the body corporate's name in the Register.

7 Classes of Membership

7.1 Classes of Membership

There shall be three (3) classes of Membership:

- (a) Developer Members;
- (b) Business Members; and
- (c) Individual Members.

7.2 Developer Members

Developer Members:

- (a) are entities which have an ABN;
- (b) develop business software; and
- (c) may vote at general meetings.

7.3 Business Members

Business Members:

- (a) are entities which have an ABN;
- (b) do not develop business software; and
- (c) may not vote at general meetings.

7.4 Individual Members

Individual Members:

- (a) are individuals who have an interest in the Objects; and
- (b) may not vote at general meetings.

8 Eligibility for Membership

Any person or body corporate is entitled to apply to become a Member if the person or body corporate:

- (a) is, in the Board's opinion, of good character;
- (b) lodges an application form in accordance with **clause 9**; and
- (c) subject to **clause 12(c)**, pays the Entrance Fee in accordance with **clause 12**.

9 Applications for Membership

9.1 Applications for Membership

- (a) Subject to **clause 9.1(b)** and the By-Laws (if applicable), applicants for Membership must complete an application form.
- (b) An application for Membership of the Company must be:
 - (i) made in writing in the form prescribed by the Board from time to time; and
 - (ii) lodged with the Secretary along with any Entrance Fee which is payable.
- (c) As soon as practicable after receiving an application for Membership, the Secretary must refer the application to the Board which is to determine whether to approve or reject the application.
- (d) As soon as practicable after the Board makes that determination the Secretary must:
 - (i) notify the applicant, in writing, that the Board approved or rejected the application (whichever is applicable); and
 - (ii) if the Board approved the application, enter the applicant's name and class of Membership in the Register and, on the name being so entered, the applicant becomes a Member of the Company; or
 - (iii) if the Board rejected the application, comply with the notification requirements in **clause 9.1(e)**.
- (e) If the Board determines under **clause 9.1(c)** to reject an application for Membership, the Secretary must serve the applicant with a notice in writing:
 - (i) setting out the determination of the Board;
 - (ii) stating that the applicant may address the Board at a Board meeting to be held not earlier than fourteen (14) days and not later than sixty (60) days after service of the notice:
 - (A) stating the date, place and time of that meeting; and
 - (B) informing the applicant that the applicant may do either or both of the following:
 - (1) attend and speak at that meeting;
 - (2) submit to the Board at or prior to the date of the meeting, written representations relating to the determination.
- (f) At a meeting of the Board held as referred to in **clause 9.1(e)**, the Board must:
 - (i) give the applicant an opportunity to make oral representations and allow the applicant to use any technology (reasonably available to the Board) that gives the applicant a reasonable opportunity to do so;
 - (ii) give due consideration to any written representations submitted to the Board by the applicant at or prior to the Board meeting; and

- (iii) by 75% majority, determine whether to confirm or to revoke the determination.
- (g) The applicant must be notified in writing of the decision of the Board within seven (7) days. If the Board resolves to confirm the rejection, the applicant must also be notified of the right of appeal available under **clause 9.2**.
- (h) A resolution confirmed by the Board under **clause 9.1(f)** does not take effect:
 - (i) until the expiration of the period within which the applicant is entitled to appeal against the resolution where the applicant does not exercise the right of appeal within that period; and
 - (ii) where, within that period, the applicant exercises the right of appeal, unless and until the Applications Committee confirms the resolution pursuant to **clause 9.2**.
- (i) The Secretary will refund to the applicant any Entrance Fee which was paid by the applicant at the appropriate time if the applicant is eventually unsuccessful in its application to become a Member.

9.2 Right of Appeal where Membership Application Rejected

- (a) The Board will establish a committee for the purpose of reviewing rejected applications for Membership (**Applications Committee**). The Applications Committee will comprise of an independent panel of three experts, all chosen by the Board. The experts will be chosen based upon their experience with member based organisations. The Applications Committee may seek advice from any relevant source.
- (b) An applicant may appeal to the Applications Committee against a resolution of the Board, which is confirmed under **clause 9.1(f)(iii)**. Written notice of such an appeal must be lodged with the Secretary within seven (7) days of service of the notice required under **clause 9.1(g)**.
- (c) Within thirty-five (35) days after receipt of a notice of appeal from the applicant pursuant to **clause 9.2(b)**, the Applications Committee must convene a meeting.
- (d) At the Applications Committee meeting convened under **clause 9.2(c)**:
 - (i) the applicant must be given the opportunity to state their case orally or in writing, or both, using any technology (reasonably available to the Board) that gives the applicant a reasonable opportunity to do so; and
 - (ii) the Applications Committee must vote by ballot on the question of whether the resolution will be confirmed.
- (e) The Applications Committee's decision pursuant to **clause 9.2(d)(ii)** is final. The applicant is not entitled to appeal the Applications Committee's decision.
- (f) The applicant the subject of these proceedings is entitled to:
 - (i) subject to **clause 9.2(f)(ii)**, bring a support person to any meeting with the Applications Committee or the Board, which meetings are being held pursuant to this **clause 9**; and
 - (ii) if the support person is legally qualified, the applicant must notify the Applications Committee or the Board (as the case may be) at least five (5) business days before the meeting that the support person attending the meeting will be legally qualified.

- (g) Natural justice will be applied during every Membership process under this **clause 9**, requiring the Board and Applications Committee to act fairly, in good faith and without bias or conflict of interest when making its decision.

10 Membership Entitlements Not Transferable

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

- (a) is not capable of being transferred or transmitted to another person or body corporate; and
- (b) terminates on cessation of the person's or body corporate's Membership.

11 Representative

- (a) This **clause 11** only applies to Members and applicants for Membership which are, or wish to be, Organisational Members.
- (b) Where a Member or an applicant for Membership is not an individual person, it must appoint as its Representative a natural person.
- (c) The name and address of the Representative will be entered in the Register as the representative of the Organisational Member.
- (d) All correspondence and notices from the Company will be served on that Representative and any notice served on a Representative will be deemed to be service on the Organisational Member which is represented by that particular Representative.
- (e) If the appointment of a Representative by the Organisational Member is made by reference to a position held, the appointment must identify the position.
- (f) Despite **clause 10**, an Organisational Member may remove and replace a Representative where the Organisational Member gives written notice to the Board in a form approved by the Board.
- (g) A signature by a Representative of an Organisational Member on behalf of that Organisational Member is taken to be the signature of that Organisational Member for the purposes of this Constitution.
- (h) Any power or right of an Organisational Member as granted by this Constitution can be exercised by the Representative of that particular Organisational Member.
- (i) Organisational Members are represented at meetings of Members by their Representatives, subject to the right of a Representative to appoint a proxy pursuant to **clause 32**.
- (j) The actions of a Representative bind the Organisational Member which is represented by that particular Representative.
- (k) Each Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if a Member himself or herself.

12 Entrance Fee and Subscriptions

- (a) There shall be an Entrance Fee and annual Subscription payable by each Member to the Company.

- (b) Subject to **clause 12(c)**, the amount of the Entrance Fee and annual Subscription shall be payable by Members at such times and in such manner as determined by the Board from time to time.
- (c) The Board may in its discretion:
 - (i) determine that no Entrance Fee or annual Subscription is payable by a Member or Members (in whole or in part) in a given year; and
 - (ii) extend the time for payment of the Entrance Fee or annual Subscription by any Member.
- (d) No part of any Entrance Fee or annual Subscription shall be refunded to a Member who ceases to be a Member in accordance with **clause 13**.

13 Cessation of Membership

- (a) A Member's Membership will cease:
 - (i) on the date that the Secretary receives written notice of resignation from that Member;
 - (ii) where that Member is an individual, upon that Member dying;
 - (iii) upon that Member no longer satisfying the criteria for its respective class of Membership (unless transferred to another class of Membership by the Board);
 - (iv) upon that Member becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
 - (v) subject to **clause 12(c)**, if that Member fails to pay an Entrance Fee or annual Subscription:
 - (A) within thirty (30) days after it falls due; and
 - (B) then fails to rectify this default within thirty (30) days of being notified of the default by the Company;
 - (vi) if the Member is expelled from the Company pursuant to **clause 14**;
 - (vii) if, being an Organisational Member:
 - (A) that Member is dissolved or otherwise ceases to exist;
 - (B) that Member has:
 - (1) a receiver;
 - (2) a receiver and manager;
 - (3) a liquidator;
 - (4) an administrator;
 - (5) an administrator of a deed of company arrangement; or
 - (6) a trustee of other person administering a compromise or arrangement between the Member and someone else;

appointed to it; or

- (viii) if the Company in general meeting resolves by Special Resolution to terminate the Membership of a Member whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company. The Member must be given at least twenty one (21) days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed.
- (b) A Member may at any time, pursuant to **clause 13(a)(i)**, resign as a Member but shall continue to be liable for:
 - (i) any other monies due by the Member to the Company;
 - (ii) any sum for which the Member is liable as a Member of the Company under **clause 2(b)**; and
 - (iii) if applicable, the Member's Guarantee Amount.

14 Disciplining of Members

14.1 Disciplining of Members

- (a) Where the Board is of the opinion that a Member has:
 - (i) persistently refused or neglected to comply with a provision or provisions of this Constitution; or
 - (ii) persistently and wilfully acted in a manner prejudicial to the interests of the Company;the Board may:
 - (iii) expel the Member from the Company; or
 - (iv) suspend the Member from Membership of the Company for a specified period.
- (b) A resolution of the Board pursuant to **clause 14.1** is of no effect unless the Board confirms the resolution in accordance with this **clause 14.1(b)** at a Board meeting held not earlier than fourteen (14) days and not later than twenty eight (28) days after service on the Member of a notice pursuant to **clause 14.1(c)**.
- (c) If the Board resolves under **clause 14.1** to expel or suspend any Member, the Secretary must serve the Member with a notice in writing:
 - (i) setting out the resolution of the Board and the grounds upon which it is based;
 - (ii) stating that the Member may address the Board at a Board meeting to be held not earlier than fourteen (14) days and not later than twenty eight (28) days after service of the notice;
 - (iii) stating the date, place and time of that meeting; and
 - (iv) informing the Member that the Member may do either or both of the following:
 - (A) attend and speak at that meeting;

- (B) submit to the Board at or prior to the date of the meeting, written representations relating to the resolution.
- (d) At a meeting of the Board held as referred to in **clause 14.1(c)**, the Board must:
 - (i) give the Member an opportunity to make oral representations and allow the Member to use any technology (reasonably available to the Board) that gives the Member a reasonable opportunity to do so;
 - (ii) give due consideration to any written representations submitted to the Board by the Member at or prior to the Board meeting; and
 - (iii) by a 75% majority, determine whether to confirm or to revoke the resolution.
- (e) The Member must be notified in writing of the decision of the Board within seven (7) days. If the Board resolves to confirm the expulsion or suspension, the Member must also be notified of the right of appeal available under **clause 14.2**.
- (f) A resolution confirmed by the Board under **clause 14.1(d)** does not take effect:
 - (i) until the expiration of the period within which the Member is entitled to appeal against the resolution where the Member does not exercise the right of appeal within that period; and
 - (ii) where, within that period, the Member exercises the right of appeal, unless and until the Disciplinary Committee confirms the resolution pursuant to **clause 14.2**.

14.2 Right of Appeal of Disciplined Member

- (a) The Board will establish a committee for the purpose of conducting disciplinary proceedings against a Member (**Disciplinary Committee**). The Disciplinary Committee will comprise of an independent panel of three experts, all chosen by the Board. The experts will be chosen based upon the nature of the alleged misconduct by the Member. The Disciplinary Committee may seek advice from any relevant source.
- (b) A Member may appeal to the Disciplinary Committee against a resolution of the Board, which is confirmed under **clause 14.1(d)**. Written notice of such an appeal must be lodged with the Secretary within seven (7) days of service of the notice required under **clause 14.1(e)**.
- (c) Within thirty-five (35) days after receipt of a notice of appeal from the Member pursuant to **clause 14.2(b)**, the Disciplinary Committee must convene a meeting.
- (d) At the Disciplinary Committee meeting convened under **clause 14.2(c)**:
 - (i) the Member must be given the opportunity to state their case orally or in writing, or both using any technology (reasonably available to the Board) that gives the Member a reasonable opportunity to do so; and
 - (ii) the Disciplinary Committee must vote by ballot on the question of whether the resolution will be confirmed.
- (e) The Disciplinary Committee's decision, pursuant to **clause 14.2(d)(ii)** is final. The Member is not entitled to appeal the Disciplinary Committee's decision.
- (f) The Member the subject of these disciplinary procedures is entitled to:

- (i) subject to **clause 14.2(f)(ii)**, bring a support person to any meeting with the Disciplinary Committee or the Board, which meetings are being held pursuant to this **clause 14**; and
 - (ii) if the support person is legally qualified, the Member must notify the Disciplinary Committee or the Board (as the case may be) at least five (5) business days before the meeting that the support person attending the meeting will be legally qualified.
- (g) Natural justice will be applied during every disciplinary process under this **clause 14**, requiring the Board and Disciplinary Committee to act fairly, in good faith and without bias or conflict of interest when making its decision.
- (h) Each Member who is the subject of a matter brought before the Board or the Disciplinary Committee:
- (i) agrees to abide by the decisions of the Board or the Disciplinary Committee (as the case may be); and
 - (ii) acknowledges that it will not be entitled to bring any action or suit against the Company, the Board or the members of the Disciplinary Committee as a consequence of or arising out of any decision or action of the Board or the Disciplinary Committee.
- (i) Each Member acknowledges that no matter or thing done or omitted by the Board or the Disciplinary Committee (including the exercise of its powers as referred to in this **clause 14**) subjects the Board, Disciplinary Committee or Company to any liability. Each Member hereby releases the Company, Board and members of the Disciplinary Committee from any such liability.
- (j) Each Member also agrees that all of the provisions of **clause 14** will continue to apply (at the discretion of the Board) notwithstanding that at any time during the disciplinary process the Member ceases to be a Member for any reason.

15 Resolution of Disputes Between Members

- (a) Disputes between Members (in their capacity as Members), shall be referred to the Board which must take steps to resolve the dispute.
- (b) If a dispute so referred is not resolved to the satisfaction of any party to the dispute within thirty (30) days of it being referred, then that party may refer the dispute to mediation before a mediator appointed by mutual agreement of the parties.
- (c) Failing agreement by the parties to the appointment of a mediator within fourteen (14) days of a party notifying the other party of its intention to refer the dispute to mediation, the appointment of the mediator shall be made by the President of the Australian Mediation Association, or a similar body (agreed upon by the parties or where no agreement is reached, as decided by the Board).
- (d) The costs of the mediator appointed pursuant to **clause 15(b)** or **clause 15(c)** (as the case may be) shall be shared equally between the Members party to the dispute.
- (e) At least seven (7) days before a mediation session established by a mediator appointed pursuant to **clause 15(b)** or **clause 15(c)** (as the case may be) is to commence, the parties to the dispute are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

GENERAL MEETINGS

16 Annual general meetings

- (a) Apart from the first annual general meeting which can be held within eighteen (18) months of the registration of the Company, the Company shall each year, within the period of five (5) months after the expiration of the financial year of the Company, convene an annual general meeting of its Members.
- (b) The annual general meeting of the Company shall, subject to the Act, be convened on such date and at such place and time as the Board thinks fit.
- (c) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting shall be:
 - (i) to confirm the minutes of the last preceding annual general meeting and any general meeting held since that meeting;
 - (ii) to receive from the Board reports on the activities of the Company during the last preceding financial year; and
 - (iii) to elect Elected Directors.
- (d) An annual general meeting shall be specified as such in the notice convening it in accordance with **clause 18**.

17 Convening of General Meetings

- (a) One third (1/3rd) of Directors rounded up to the nearest integer may, whenever those Directors think fit, convene a general meeting of the Company.
- (b) Members shall be entitled to require a general meeting to be convened in accordance with the provisions of the Act.
- (c) A general meeting of the Company may be convened at two (2) or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting.

18 Notice of General Meeting

- (a) Subject to consent to shorter notice being given in accordance with the Act, at least twenty one (21) days notice of any general meeting must be given specifying:
 - (i) the place, day and hour of the meeting;
 - (ii) the general nature of any business to be transacted at the meeting;
 - (iii) if a Special Resolution is to be proposed, the details of and intention to propose it;
 - (iv) if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
 - (v) any other information required by the Act.
- (b) The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.

19 Cancellation or Postponement of General Meeting

- (a) Subject to the provisions of the Act and this Constitution the Board may cancel a general meeting of the Company:
 - (i) convened by the Board; or
 - (ii) which has been convened by a Member or Members pursuant to the Act upon receipt by the Company of a written notice withdrawing the requisition signed by that Member or those Members.
- (b) The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.
- (c) Where any general meeting is cancelled or postponed or the venue for a general meeting is changed:
 - (i) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
 - (ii) any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

PROCEEDINGS AT GENERAL MEETINGS

20 Quorum

- (a) No business may be transacted at any general meeting unless there is a quorum of Members Present at all times during the meeting.
- (b) Subject to **clause 20(c)(ii)(B)**, whichever is the lesser of:
 - (i) fifteen (15) Members Present and entitled to vote; or
 - (ii) one third (1/3rd) of the Financial Voting Members who are Members Present and entitled to vote;will constitute a quorum for all general meetings.
- (c) If within thirty (30) minutes after the time appointed for holding a general meeting a quorum is not present:
 - (i) the meeting, if convened upon the requisition of Members, shall be dissolved;
 - (ii) in any other case:
 - (A) it will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Board may by notice to the Members appoint; and
 - (B) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting, those Members Present (on the condition that

there are at least two (2) Members Present) shall constitute a quorum.

21 Chairman

- (a) The President will be the Chairman for all general meetings.
- (b) Where a general meeting is held and the President is:
 - (i) unable or unwilling to act as Chairman; or
 - (ii) not present within fifteen (15) minutes after the time appointed for the holding of the meeting,then the following person will be Chairman in lieu of the President in the order of availability set out below:
 - (iii) Vice President;
 - (iv) Secretary;
 - (v) another Director chosen by the Directors by two-thirds (2/3rd) majority, or if their number is not three or a multiple of three, then the nearest number to two-thirds (2/3rd); and
 - (vi) a Financial Voting Member (or its Representative) chosen by a majority of the Members Present.
- (c) The rulings of the Chairman of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

22 Adjournments

- (a) The Chairman of a general meeting at which a quorum is present:
 - (i) may adjourn a meeting with the consent of the meeting; and
 - (ii) must adjourn the meeting if the meeting so directs;to a time and place as determined.
- (b) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (d) It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for thirty (30) days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

23 Determination of Questions

- (a) At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
 - (i) the Chairman of the meeting;
 - (ii) at least two (2) Members Present.

- (b) Before a vote on a resolution is taken, the Chairman must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) A declaration by the Chairman of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company which has been signed by the Chairman of the meeting or the next succeeding meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

24 Polls

- (a) A poll may be demanded:
 - (i) before a vote on a resolution is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (b) If a poll is demanded it must be taken in such manner and at such time and place as the Chairman of the meeting directs subject to **clause 24(e)**.
- (c) The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- (e) A poll demanded on the election of a Chairman or any question of adjournment of the meeting must be taken immediately.
- (f) The demand for a poll may be withdrawn.

25 Voting Rights

A Financial Voting Member has one (1) vote, both on a show of hands and a poll.

26 Disqualification

No person other than:

- (a) a Financial Voting Member;
- (b) a proxy of a:
 - (i) Financial Voting Member; or
 - (ii) Representative of a Financial Voting Member; and
- (c) a Representative of a Financial Voting Member;

shall be entitled to a vote at a general meeting.

27 Objection to Qualification to Vote

Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the Chairman whose decision shall be final and conclusive and a vote allowed by the Chairman shall be valid for all purposes.

28 Persons of Unsound Mind and Minors

- (a) A Financial Voting Member:
- (i) of unsound mind; or
 - (ii) whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
 - (iii) who is a minor;
- may vote whether on a show of hands or on a poll by that Financial Voting Member's committee or by such other person as properly has the management or guardianship of that Financial Voting Member's estate or by the public trustee (as the case may be) and the committee or other person or trustee may vote by proxy or representative.
- (b) Any person having the right of management or guardianship of the person or estate in respect of a Financial Voting Member as referred to in **clause 28(a)** must not exercise any of the rights conferred under that clause unless and until the person has provided to the Board satisfactory evidence of the appointment of the person accordingly.

29 Casting Vote

In the case of an equality of votes whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote.

30 Right of Non-Members to Attend General Meeting

- (a) The Chairman of a general meeting may invite any person who is not a Member to attend and address a meeting.
- (b) Any auditor of the Company shall be entitled to attend and address a general meeting.

PROXIES

31 Right to Appoint Proxies

- (a) A:
- (i) Financial Voting Member; and
 - (ii) Representative of a Financial Voting Member;
- who is entitled to attend and vote at a general meeting of the Company may appoint a person as the Member's or Representative's proxy to attend and vote for the Member or Representative (as the case may be) at the meeting.
- (b) If a Financial Voting Member or its Representative appoints a proxy, the proxy is entitled to vote on a show of hands and on a poll.

32 Appointing a Proxy

32.1 Appointing a Proxy

The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing or, if the appointor is a corporation, signed by an authorised officer or attorney of the corporation.

32.2 Instrument of Proxy

- (a) The instrument of proxy is valid if it contains the information required by the Act which at the date of this Constitution is the following information:
 - (i) the name and address of the Financial Voting Member (and Representative, if applicable);
 - (ii) the name of the Company;
 - (iii) the proxy's name or the name of the office of the proxy; and
 - (iv) the meetings at which the instrument of proxy may be used.
- (b) An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- (c) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 32.2(a)**.
- (d) An instrument of proxy may be revoked at any time by notice in writing to the Company.

33 Lodgement of Proxies

- (a) An instrument appointing:
 - (i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
 - (ii) an attorney to exercise a Financial Voting Member's voting rights at a general meeting or a certified copy of that power of attorney,must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than twenty four (24) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote. In default, the instrument of proxy or the power of attorney will not be treated as valid.
- (b) For the purposes of this **clause 33** it will be sufficient that any document required to be lodged by a Member or Representative be received in legible form by facsimile at the place at which the document is required to be delivered by the Member or Representative and the document shall be regarded as received at the time the facsimile was received at that place.
- (c) For the purposes of this **clause 33** it will be sufficient that any document required to be lodged by a Member or Representative be received in legible form by email or similar electronic transmission if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded

as received at the time of the receipt of the email or similar electronic transmission by the Company.

34 Validity of Proxies

- (a) A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
- (i) the death or unsoundness of mind of the Financial Voting Member or Representative;
 - (ii) the bankruptcy or liquidation of the Financial Voting Member or Representative;
 - (iii) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,
- if the Company has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least forty eight (48) hours (or such shorter period as the Board may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.
- (b) A proxy who is not entitled to vote on a resolution as a Financial Voting Member or Representative, may vote as a proxy for another Financial Voting Member or Representative who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

35 Rights of Proxies and Attorneys

- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (b) Unless a Financial Voting Member or Representative by the instrument of proxy directs the proxy to vote in a certain manner, the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.
- (c) A proxy will not be revoked by the appointor attending and taking part in any general meeting, but if the appointor votes on a resolution either on a show of hands or on a poll, the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.
- (d) The Chairman of a general meeting may require any person acting as a proxy to establish to the satisfaction of the Chairman that he is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his identity he may be excluded from voting either upon a show of hands or upon a poll.

APPOINTMENT AND REMOVAL OF DIRECTORS

36 Number and Appointment of Directors

36.1 Number of Directors

- (a) The Board of Directors shall consist of not less than five (5) and not more than nine (9) persons.
- (b) The Board may by resolution vary the number of Directors holding office from that referred to in **clause 36.1(a)**.

36.2 Composition of Board

- (a) Subject to **clause 36.3**, the Board shall be comprised of:
 - (i) at least five (5) and no more than seven (7) Elected Directors; and
 - (ii) up to two (2) Co-opted Directors;provided that the total number of Directors does not exceed the maximum fixed by **clause 36.1**.
- (b) Subject to **clause 38(b)**, an Elected Director must be a Voting Member or a Representative of a Voting Member at all times that he or she is holding office as a Director.
- (c) To the extent possible, the Board shall consist of individuals who have had significant experience, and direct contact, with the various interests of the Company.

36.3 Initial Board

- (a) The Directors to hold office from the date that the Company is registered until the conclusion of the first annual general meeting of the Company held after the Company is registered, shall be:
 - (i) Geoffrey Schaller;
 - (ii) Karen Lay-Brew;
 - (iii) Nicholas Robin Perrott;
 - (iv) David Campbell Field;
 - (v) Jeevan Tokhi; and
 - (vi) Kevin Lindsay Johnson.
- (b) The initial Directors shall nominate from amongst their number who shall hold each office (as set out in **clause 36.7(a)**).
- (c) At the first annual general meeting held after the Company is registered, three (3) of the Directors on the initial Board shall resign from the Board, but may be eligible for election for three further terms of two (2) years each.
- (d) At the second annual general meeting held after the Company is registered, those Directors on the initial Board who did not resign pursuant to **clause 36.3(c)** shall resign, but may be eligible for election for two further terms of two (2) years each.

- (e) At the first Board meeting held after the Company is registered, the Board shall determine who will resign in accordance with **clause 36.3(c)**, and who shall resign in accordance with **clause 36.3(d)**.

36.4 Elected Directors

- (a) Prior to each annual general meeting of the Company the Secretary will call for nominations from the Financial Voting Members for candidates for election as Elected Directors for any vacant positions on the Board.
- (b) Each Financial Voting Member is entitled to nominate a candidate for election as an Elected Director.
- (c) Nomination of candidates for election as an Elected Director must be:
 - (i) made in writing in the form prescribed by the Board from time to time;
 - (ii) made by a Financial Voting Member and seconded by another Financial Voting Member;
 - (iii) accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination); and
 - (iv) delivered to the Secretary at least twenty eight (28) days before the date fixed for the holding of the annual general meeting at which the election is to take place.
- (d) Candidates for election as Elected Directors shall always be identified by reference to their name as well as the name of the Financial Voting Member(s) who nominated them.
- (e) Voting for the election of candidates as Elected Directors is to be held at the annual general meeting of the Company.
- (f) If insufficient nominations are received to fill all vacancies of Elected Directors on the Board, the candidates nominated shall be deemed to be elected (effective from the conclusion of the annual general meeting) and further nominations for the vacant positions shall be received at the annual general meeting.
- (g) If insufficient further nominations are received at the annual general meeting, any vacant positions of Elected Directors remaining on the Board shall be deemed to be casual vacancies.
- (h) If the number of nominations received is equal to the number of vacancies of Elected Directors to be filled, the persons nominated shall be deemed to be elected (effective from the conclusion of the annual general meeting).
- (i) If the number of nominations received for Elected Directors exceeds the number of vacancies to be filled, a ballot shall be held at the annual general meeting. The Board shall determine, in its discretion, how the ballot shall be conducted.

36.5 Co-Opted Director

- (a) The Board can appoint Co-Opted Directors to the Board.
- (b) A Co-Opted Director shall be a person who will bring skills and experience to the Board to enable the Board to advance the Objects.
- (c) A Co-Opted Director may be, but need not be, a Member or a Representative of a Member.

36.6 Term

- (a) Subject to **clauses 36.3(c) and 36.3(d)**:
- (i) a Director shall hold office for a term of two (2) years, but shall be eligible for reappointment or re-election for two (2) further terms of two (2) years each in accordance with this Constitution; and
 - (ii) Directors shall not hold office for more than six (6) consecutive years.
- (b) Once a Director has served the maximum term of six (6) consecutive years, the Director is only eligible for reappointment or re-election to the Board:
- (i) after a period of at least one (1) year has expired since the expiry of the Director's previous term on the Board; or
 - (ii) where there is a casual vacancy in the office of a Director that cannot otherwise be filled.

36.7 Office Bearers

- (a) The Board shall, at the first meeting of the Board held after the first annual general meeting held after the Company is registered, and thereafter at the first meeting of the Board held after an annual general meeting of the Company where an office bearer has retired, appoint from amongst the Directors sitting on the Board at the time of the Board meeting:
- (i) a President;
 - (ii) a Vice President; and
 - (iii) such additional office bearer positions as the Board deems necessary from time to time.
- (b) Subject to those office bearers who are on the initial Board, the office bearers shall hold office for a term of one (1) year but shall be eligible for reappointment for five (5) further terms of one (1) year each. Office bearers shall not hold office:
- (i) for more than six (6) consecutive years; or
 - (ii) beyond their retirement or removal from the Board as a Director.

37 General Right to Appoint and Remove Directors

The Board may act despite any vacancy in their body but if the number falls below the minimum fixed in accordance with **clause 36.1** the Board may act:

- (a) for the purpose of:
- (i) increasing the number of Directors to the minimum; or
 - (ii) convening a general meeting; or
- (b) in emergencies;
- but for no other purpose.

38 Vacation of Office

- (a) Any Director may retire from office on giving written notice to the Company at the Office of his or her intention to retire, and the resignation shall take effect at the

time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).

- (b) In the event that an Elected Director ceases to be a Voting Member, or a Representative of a Voting Member, that person shall continue to be a Director until the following annual general meeting.
- (c) The office of a Director shall become vacant if the Director:
 - (i) dies;
 - (ii) becomes bankrupt or makes any arrangement or composition with creditors generally;
 - (iii) becomes prohibited from being a director of a company by reason of any order made under the Act;
 - (iv) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
 - (v) being an Elected Director, ceases to be a Voting Member or a Representative of a Voting Member (the position becoming vacant in accordance with **clause 38(b)**);
 - (vi) is removed from office by the Company in general meeting;
 - (vii) resigns by notice in writing to the Company; or
 - (viii) is absent without permission of the Board from two (2) consecutive meetings of the Board.

39 Casual Vacancy

- (a) If the President vacates his or her office, the Vice President shall replace the President until the first meeting of the Board following the next annual general meeting.
- (b) If there is a casual vacancy in the office of Vice President, it may be filled by any Director appointed by the Board for the remainder of the term of the vacating Vice President.
- (c) If an Elected Director vacates his or her office before the end of his or her term, the Board may appoint a Financial Voting Member (or a Representative of a Financial Voting Member) to replace that vacating Elected Director until the following annual general meeting.
- (d) If a Co-opted Director vacates his or her office before the end of his or her term, the Board may appoint a new Co-opted Director for a full new term as permitted by **clause 36.5**.

POWERS AND DUTIES OF DIRECTORS

40 Powers of Directors

The control, management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not by the Act or by this Constitution required to be exercised in any other manner.

41 Negotiable Instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by two (2) persons authorised by the Board in writing. The Board may authorise:

- (a) a Director(s);
- (b) the Secretary;
- (c) the chief executive officer of the Company; or
- (d) another Company staff member,

to sign such instruments.

42 Conferment of Powers

- (a) The Board may from time to time confer upon any Director for the time being or any other person as they may select such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.
- (b) Powers conferred under this **clause 42** may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

43 Alternate Directors

Directors are not permitted to appoint Alternate Directors.

DIRECTORS' DISCLOSURE OF INTEREST

44 Contracts

- (a) The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions which apply to such contracts or arrangements.
- (b) A Director must disclose an interest in accordance with the Act and the Secretary must record all declarations in the minutes of the relevant meeting.
- (c) A Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board subject to compliance with section 195 and related provisions of the Act, may still, with the consent of the majority of the Board:
 - (i) vote on the matter;
 - (ii) 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;
 - (iii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and

- (iv) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- (d) The Company shall not make any payment for services rendered by a Director in a professional or technical capacity, except where the provision of such services and the amount payable have prior approval of the Board and where the amount does not exceed an amount that is commercially reasonable for those services.
- (e) A Director's failure to make disclosure under this **clause 44** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
- (f) A general notice given to the Board by a Director that the Director is an officer, a member of, or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

PROCEEDINGS OF DIRECTORS

45 Meetings of Directors

- (a) The Board shall meet together at least four (4) times per year for the despatch of business and shall adjourn and otherwise regulate its meetings and proceedings as it thinks.
- (b) A Director may at any time, and the Secretary upon the request of a Director shall, convene a meeting of the Board by giving at least twenty four (24) hours notice of the meeting to all Directors, provided that the Director or Secretary has used its best endeavours to ensure that the notice was properly served and received.
- (c) Although notice of a meeting of the Board need not be in writing, the Secretary will attempt to put notice in writing whenever time permits.
- (d) Subject to **clause 45(e)**, a Board meeting may be convened or held using any technology consented to by a majority of Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (e) The particular technology used to convene or hold a Board meeting, pursuant to **clause 45(d)**, must be available and accessible to all Directors who wish to attend the Board meeting.
- (f) All resolutions of the Directors passed at a meeting of Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors.

46 Quorum

- (a) The quorum necessary for the transaction of the Board's business is 51% (rounded up to the nearest integer) of Directors.

- (b) A quorum must be present at all times during the meeting.
- (c) A Director who is disqualified from voting on a matter pursuant to **clause 44** shall be counted in the quorum despite that disqualification.

47 Chairman

- (a) The President shall, if present, preside as Chairman of every meeting of the Board.
- (b) If a meeting of Board is held and the President is:
 - (i) unable or unwilling to act as Chairman; or
 - (ii) not present within fifteen (15) minutes after the time appointed for the holding of the meeting,then the Vice President will be Chairman in lieu of the President. If the Vice President is:
 - (iii) unable or unwilling to act as Chairman; or
 - (iv) not present within fifteen (15) minutes after the time appointed for the holding of the meeting,the other Directors present may choose another Director as Chairman of the meeting by two-thirds ($2/3^{\text{rd}}$) majority, or if their number is not three or a multiple of three, then the nearest number to two-thirds ($2/3^{\text{rd}}$).

48 Voting

- (a) A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- (b) Each Director shall have one (1) vote.
- (c) In case of an equality of votes at a meeting of the Board, the Chairman will have a casting vote in addition to a deliberative vote.

49 Resolutions by Directors

- (a) The Board may pass a resolution without a Board meeting being held if a majority of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document.
- (b) A facsimile transmission which is received by the Company and which purports to have been signed by a Director shall for the purposes of this **clause 49** be taken to be in writing and signed by that Director at the time of the receipt of the facsimile transmission by the Company in legible form.
- (c) An email or similar electronic transmission which is received by the Company and which purports to have been sent by a Director shall for the purposes of this **clause 49** be taken to be in writing and signed by that Director at the time of the receipt of the email or similar electronic transmission by the Company.

50 Committee of Directors

- (a) The Board may form and delegate any of its powers to a Committee consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation.
- (b) A Committee must in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- (c) The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- (d) A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act and this Constitution to be made entered and signed. A copy of such Committee minutes shall be tabled at the next Board meeting.

51 Validation of Acts of Directors

All acts done:

- (a) at any meeting of the Board; or
- (b) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

MINUTES

52 Minutes

- (a) The Board must cause minutes to be kept in accordance with the Act for the purposes of recording:
 - (i) the names of the Directors present at each meeting of the Board and of Directors present at each meeting of a Committee;
 - (ii) all orders, resolutions and proceedings of general meetings and of meetings of the Board and of Committees;
 - (iii) such matters as are required by the Act to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of his or her interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.
- (b) Such minutes shall be signed by the Chairman of the meeting, or the Chairman of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took

place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

SECRETARY

53 Appointment and Tenure

- (a) There must be at least one Secretary appointed by the Board for a term and on conditions determined by the Board.
- (b) The Board may remove any Secretary so appointed.
- (c) The Secretary may be, but need not be, a Member.

MEMBER COMMITTEES

54 Member Committees

- (a) The Board may in its discretion authorise the formation of a group of Members (**Group**):
 - (i) who have a common interest; or
 - (ii) who carry on a certain type of business; or
 - (iii) for any other reason as may be determined by the Board from time to time.
- (b) Any Group formed pursuant to **clause 54(a)** shall elect a Member Committee in the manner prescribed by the Board from time to time.
- (c) Any Member Committee shall:
 - (i) conduct its affairs and programmes in accordance with this Constitution, and such other directions and limitations declared by the Board from time to time; and
 - (ii) hold an annual general meeting no earlier than three (3) months prior to the Company's annual general meeting and no later than one (1) month prior to the Company's annual general meeting.
- (d) Member Committees shall have such powers and duties as may be determined by the Board from time to time.
- (e) The meetings and proceedings of any Member Committee will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- (f) The Board shall have the power to create and amend By-Laws for and:
 - (i) define the powers and responsibilities of; and
 - (ii) exercise control over;any Group or Member Committee.

BY-LAWS

55 By-Laws

- (a) The Board may from time to time to make such By-Laws as are in its opinion necessary and desirable for the proper control, administration and management of the Company's affairs, operations, finances, interests, effects and property, and to amend and repeal those By-Laws from time to time.
- (b) A By-Law must be subject to this Constitution and must not be inconsistent with any provision contained in this Constitution.
- (c) When in force, a By-Law is binding on all Members and has the same effect as this Constitution.
- (d) The Board will adopt such measures as it deems appropriate to bring to the notice of Members all By-Laws, amendments and repeals.

EXECUTION OF DOCUMENTS

56 Execution of Documents

- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Act, the Company may execute any agreement, deed or other document by:
 - (i) two (2) Directors signing the same; or
 - (ii) one (1) Director and one (1) Secretary signing the same.
- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

ACCOUNTS AND INSPECTION OF RECORDS

57 Accounts and Inspection

The Board shall:

- (a) cause proper financial records to be kept and must, where required by the Act, distribute copies of the financial reports of the Company and a Director's report in accordance with the requirements of the Act; and
- (b) from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of Members.

NOTICES

58 Service of Notices

- (a) A notice may be given by the Company to any Member by:
 - (i) serving it on the Member personally;

- (ii) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Company for the giving of notices;
 - (iii) facsimile to the facsimile number supplied by the Member to the Company for the giving of notices; or
 - (iv) sending it to the electronic address supplied by the Member to the Company for the giving of notices.
- (b) Any Member who has not left at or sent to the Office his place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.
- (c) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.
- (d) Where a notice is sent by facsimile or other electronic means, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the business day after it is sent.
- (e) A notice may be given by the Company to the persons entitled to a share in consequence of the death, lunacy or bankruptcy of a Member by:
 - (i) service on the Member personally;
 - (ii) sending it by post addressed to the person by name or by the title of the representative of the deceased or lunatic or the assignee of the bankrupt or by any like description at the address, if any, supplied for the purpose by the person claiming to be entitled;
 - (iii) by giving the notice in any manner in which the same might have been given if the death, lunacy or bankruptcy had not occurred.
- (f) Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Company to that effect shall be conclusive evidence of service.

59 Notices of General Meeting

Subject to **clause 58(b)**, notice of every general meeting must be given in any manner authorised by this Constitution to:

- (a) every Member; and
- (b) the auditor (if any) for the time being of the Company.

WINDING UP

60 Winding Up

- (a) 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 institution(s) or corporation(s) which has:
- (i) objects which are similar to the Objects;
 - (ii) a constitution which requires its income and property to be applied in promoting its objects; and
 - (iii) a constitution which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Company by **clause 5.2(b)**.
- (b) The identity of the corporation(s) or institution(s) referred to in **clause 60(a)** is to be determined by the Members in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court (in the State of incorporation of the Company) for determination.

INDEMNITY

61 Indemnity

To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this clause unless:

- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
- (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Act.

62 Payment of Indemnity Policy Premium

- (a) To the extent permitted by law the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:
- (i) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or

- (ii) a contravention of sections 182 or 183 of the Act.
- (b) The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- (c) Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions then the Company shall not be required to indemnify the Officer under **clause 61** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

63 Indemnity to Continue

The indemnity granted by the Company contained in **clauses 61** and **62** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.

We the several persons whose signatures appear hereunder hereby agree to the foregoing constitution:

EXECUTED by Ozedi Holdings Pty Limited)
A.C.N. 167 142 672 in accordance with section)
127(1) of the Corporations Act 2001

.....
Signature of Director

.....
Signature of Director

.....
David Campbell Field

.....
Ann Maureen White

Annexure A Form of Appointment of Proxy

AUSTRALIAN BUSINESS SOFTWARE INDUSTRY ASSOCIATION LIMITED
(incorporated under the *Corporations Act 2001*)

PROXY FORM

1. Your details
(Please print your name and address)

Name of Member/Representative: _____
ACN/ABN: _____
Address: _____
City: _____ State: _____ Postcode: _____
Telephone: _____

2. Appoints

Name: _____
(Please print name of proxy)

or failing the person so named, or if no person is named, the **Chairman of the Meeting** to vote in accordance with the following directions or, if no directions have been given, as the proxy or the Chairman sees fit at the (Annual) General Meeting of Australian Business Software Industry Association Limited to be held on *[insert date]* commencing at *[insert time]* and at any adjournment thereof.

3. Directions

4. Signature

5. Date