

# CONSTITUTION



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**CONSTITUTION  
OF**

**TEC NQ LTD  
ACN 117 072 303**

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**A COMPANY LIMITED BY GUARANTEE**  
**CONSTITUTION**  
**OF**  
**TEC NQ LTD**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Replaceable Rules**

The replaceable rules contained in the *Corporations Act* do not apply to this Company to the extent they are inconsistent with these regulations.

**1.2 Definitions**

In these regulations:

- (a) **“AGM”** means annual general meeting;
- (b) **“Board”** means the board of directors of the Company;
- (c) **“Body Corporate”** has the meaning given to that term in the *Corporations Act*;
- (d) **“Chairman”** means the chairman of Directors elected pursuant to these regulations;
- (e) **“Company”** means Tec NQ Ltd;
- (f) **“Corporations Act”** means the *Corporations Act 2001*;
- (g) **“Group Training Organisation”** means a training and employment organisation which is or is required to be registered as such under a Commonwealth, State or Territory law, including under the *Vocational Education, Training and Employment Act 2000* (Qld);
- (h) **“Listed Corporation”** has the meaning given to that term in the *Corporations Act*;
- (i) **“member”** for the purposes of regulations 8.4, 8.4A, 13.4 and 13.4A of this Constitution excludes an individual person holding subscription membership of a trade or industry peak body or association or organisation;
- (j) **“person”** includes unincorporated associations, incorporated associations and corporations;
- (k) **“Registered Address”** means the last address recorded in the Register of Members as the address for a member;
- (l) **“Register of members”** means the register required to be maintained under regulation 8;

- (m) “**Registered Training Organisation**” means a training organisation which is or is required to be registered as such under a Commonwealth, State or Territory law, including under the *Vocational Education, Training and Employment Act 2000* (Qld);
- (n) “**Regulated Amount**” means an amount of \$10,000.00 or such other amount as resolved by the members in general meeting from time to time;
- (o) “**Regulations**” means the Constitution of the Company;
- (p) “**Related Body Corporate**” has the meaning given to that term in the *Corporations Act*;
- (q) “**Relevant Industry**” means an industry:
  - (i) in which there are opportunities for employment for persons skilled in a trade offered at the College; and
  - (ii) any other industry which the Board resolves is a Relevant Industry for the purposes of these regulations;
- (r) “**Restricted Entity**” means a person, other than the Company, which is:
  - (i) a Registered Training Organisation or a person having a materially similar role; or
  - (ii) a Group Training Organisation or a person having a materially similar role; or
  - (iii) a supplier of goods or services to the company of a value in excess of the Regulated Amount in the financial year when the determination of whether the supplier is or is not a Restricted Entity needs to be made;
- (s) “**Seal**” means the common seal of the Company and includes any official seal of the Company;
- (t) “**Secretary**” means any person appointed to perform the duties of a secretary of the Company;
- (u) “**Shareholder**” for the purposes of regulations 8.4, 8.4A, 13.4 and 13.4A of this Constitution excludes a person holding a shareholding (but not a shareholding which is a controlling interest) in a Listed Corporation;
- (v) “**Special Resolution of the Board**” means a resolution passed at a meeting of the Board of which not less than twenty-one (21) days notice of the prepared resolution has been given being a resolution passed by no fewer than seventy five percent (75%) of the Directors present and voting.

### 1.3 Interpretation

Unless the context otherwise requires:

- (a) singular includes plural and vice versa;
- (b) an expression used in a particular Chapter of the *Corporations Act* that is given by that Chapter a special meaning for the purposes of that Chapter has, in any of these regulations that deals with a matter dealt with by that Chapter, the same meaning as in that Chapter;
- (c) headings and the index are to be disregarded in the interpretation of this Constitution;
- (d) expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form;
- (e) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders in council, rules, by-laws and ordinances made under those statutes.

## 2. OBJECTS

The objects for which the Company is established are:

- (a) to fulfil the principal role of a technical college, including:
  - (i) providing quality academic and technical education; and
  - (ii) developing a world class technical college through interaction with industry, government, education and community;
- (b) to ensure provision of skills, training, education and mentoring for young Australians by:
  - (i) promoting pride and excellence in trade skills training for young people;
  - (ii) providing skills and education in a flexible learning environment to build a solid basis for secure and rewarding careers;
  - (iii) adopting a new industry led approach to providing education and training in partnership with local communities and meeting regional and national labour market needs;
  - (iv) establishing an industry led governing body that sets out strategic directions and performance objectives and appoints the college principal;

- (v) providing trade training that is relevant to the industry and that leads to nationally recognised qualifications through school based new apprenticeships and academic and vocational education that is relevant to trade careers and that leads to a Senior Certificate;
  - (vi) encouraging an environment of freedom and reward for effort for the staff of the college through flexible employment arrangements which provide rewards linked to excellent performance;
  - (vii) providing employability and business skills to young people, recognising many successful graduates will operate their own businesses;
  - (viii) developing expertise in a range of industries in a region with the flexibility to meet changing work force and local industry needs; and
  - (ix) encouraging community engagement and good citizenship;
- (c) to carry out any other activities associated with secondary education and trade training.

### **3. COMPANY LIMITED BY GUARANTEE**

3.1 The Company is a company limited by guarantee.

3.2 Subject to regulation 3.3, all income and property of the Company must be applied solely towards the promotion of the objects of the Company and no part of it is to be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise, to the members of the Company.

3.3 Nothing in this regulation prevents:

- (a) the payment in good faith of remuneration to any officers or servants of the Company or to any member of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business; or
- (b) the payment of interest at a rate not exceeding the rate for the time being fixed for the purpose of this regulation by the Directors on money borrowed from an members of the Company; or
- (c) reasonable and proper rent for premises demised or let from any member of the Company.

3.4 The liability of members of the Company is limited.

### **4. MEMBERS LIABILITY**

4.1 This regulation applies if the Company is wound up while a member is a member of the Company or within one (1) year after the member ceases to be a member.

- 4.2 Each member of the Company undertakes to contribute an amount to the property of the Company for payment of:
- (a) the debts and liabilities of the Company contracted or incurred before the time at which the member ceased to be a member; and
  - (b) the costs charges and expenses of winding up; and
  - (c) for an adjustment of the rights of contributories among themselves.
- 4.3 The amount of the contribution from each member under this regulation is limited to ten dollars (\$10.00).

## **5. DISTRIBUTION ON WINDING UP**

- 5.1 This clause applies if any property remains upon the winding up or dissolution of the Company after satisfaction of all its debts and liabilities (“Remaining Property”).
- 5.2 Remaining Property must not be paid to or distributed among the members of the Company.
- 5.3
- (a) Remaining Property must be given or transferred to some other company, association and/or institution having objects similar to the objects of the Company and whose constitution prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of this regulation.
  - (b) The company, association and/or institution for the purposes of this regulation is to be chosen by the members of the Company at or before the time of the dissolution of the Company and in default of them doing so by application to the Supreme Court for determination.

## **6. ACCOUNTS**

- 6.1 True accounts must be kept of:
- (a) the sums of money received and expended by the Company and the matter in respect of which such receipt or expenditure takes place; and
  - (b) the property, credits and liabilities of the Company.
- 6.2 Subject to any reasonable restrictions as to the time and manner of inspection that may be imposed by the Directors from time to time the Company’s books of account must be open to the inspection of the members.
- 6.3 Once at least in every year, the accounts of the Company must be examined by one or more properly qualified Auditor or Auditors who must report to the members in accordance with the provisions of the *Corporations Act*.



## **7. NUMBER OF MEMBERS**

- 7.1 The number of members of the Company is unlimited.
- 7.2 The subscribers to the Constitution and such other persons as the Company admits to membership in accordance with its Constitution are members of the Company.

## **8. MEMBERSHIP**

- 8.1 The membership of the Company is divided into two categories:
- (a) Industry Members; and
  - (b) Ordinary Members.
- 8.2 The following are eligible to apply for membership of the Company:
- (a) Ordinary Membership:
    - (i) the person/s named as Ordinary Members in the Form 201 – Application for Registration of the Company; and
    - (ii) any other person who, in the opinion of the Board, has a bona fide interest in furthering the objects of the Company;
  - (b) Industry Membership:
    - (i) the person/s named as Industry Members in the Form 201 – Application for Registration of the Company; and
    - (ii) any other person who, in the opinion of the Board:
      - (A) has a bona fide interest in furthering the objects of the Company; and
      - (B) has a significant involvement in a Relevant Industry.
- 8.3 Applications for membership must:
- (a) be made in writing to the Secretary in the manner in which the Board resolves from time to time that such application be made;
  - (b) specify the category of membership applied for; and
  - (c) in the case of Industry Membership provide details of the Applicant's significant involvement in a Relevant Industry.
- 8.4 A person must not be a member of the Company if that person is a Shareholder, member, director, officer or employee of:-
- (a) any Body Corporate (other than the Company) which is itself a member or director of the Company;

- (b) any Body Corporate in which another director or member of the Company is a Shareholder, member, director, officer or employee; or
  - (c) a Related Body Corporate of a Body Corporate referred to in (a) or (b) above.
- 8.4A A Body Corporate must not be a member of the Company if that Body Corporate is a Shareholder or member of:-
- (a) any Body Corporate (other than the Company) which is itself a member; or
  - (b) any Body Corporate in which another member or Director of the Company is a Shareholder or member, Director, Officer or employee; or
  - (c) a Related Body Corporate of a Body Corporate referred to in (a) or (b) above.
- 8.5 Applications for membership are determined by resolution of the Board.
- 8.6 Despite regulation 8.3, the Board may admit a person as an Industry Member even though they have applied for ordinary membership if the Board is of the opinion that the applicant is entitled to Industry Membership.
- 8.7 Unless otherwise specified in these regulations, a member has the right to attend and vote at meetings of the Company.
- 8.8 (a) A Register of members of the Company must be kept in the office of the Company.
- (b) The Register of members must show:
- (i) the names in full and addresses of all members of the Company; and
  - (ii) the date of admission to and cessation of membership; and
  - (iii) such other information as the Board may from time to time determine.
- (c) Each member must notify the Secretary in writing of any change in that member's address within a period of one (1) month after the change.
- 8.9 A member must pay the annual subscription determined from time to time by the Board.

## **9. CESSATION OF MEMBERSHIP**

- 9.1 Every member of the Company has the right at any time to resign from membership of the Company by giving written notice to the Secretary.
- 9.2 A member ceases to be a member:
- (a) on the passing of a resolution in accordance with regulation 9.3;

- (b) upon the member resigning;
- (c) upon regulation 8.4 or 8.4A commencing to apply to that member; or
- (d) on a liquidation or winding-up of the member except for the purposes of reconstruction or amalgamation.

9.3 Subject to regulation 9.4, the Board may by Special Resolution of the Board terminate the membership of a member if the member:

- (a) has wilfully refused or neglected to comply with the provisions of these regulations; or
- (b) is guilty of any conduct which in the opinion of Board is unbecoming of a member or prejudicial to the interests of the Company; or
- (c) in the opinion of the Board, ceases to have a bona fide interest in furthering the objects of the Company, or, in the case of an Industry Member, ceases to have a significant involvement in a Relevant Industry.

9.4 At least one (1) month before the meeting of the Board at which a resolution under this regulation is considered the member must be given notice:

- (a) of that meeting; and
- (b) of what is alleged against the member; and
- (c) of the intended resolution; and
- (d) that the member will at the meeting and before the voting on any such resolution have an opportunity of giving orally or in writing any explanation or response the member may think fit.

## 10. GENERAL MEETINGS

10.1 Subject to the *Corporations Act* and regulation 10.2, an AGM of the Company must be held at such time and place as may be determined by the Board.

10.2 An AGM must be held in each calendar year not more than fifteen (15) months after the holding of the last preceding AGM.

10.3 All meetings of members pursuant to this Constitution other than the AGM are called general meetings.

10.4 Subject to the provisions of the *Corporations Act* relating to special resolutions, twenty one (21) days' notice at least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which the notice is given) of the date, hour and place of any general meeting and of any business deemed by these regulations to be special business must be given by the Secretary to all members of the Company.

10.5 A copy of the Audited Financial Statement to be presented to the AGM must be forwarded with the notice of an AGM.

10.6 The accidental omission to give notice of a meeting to any member does not invalidate the proceedings at any general meeting.

## 11. PROCEEDINGS AT GENERAL MEETINGS

11.1 All business transacted at a general meeting is special business.

11.2 The business to be conducted at an AGM is:

- (a) to adopt and confirm the minutes of the previous annual general meeting;
- (b) to receive the Directors' Report to members;
- (c) to receive and consider the Audited Financial Statement in accordance with the *Corporations Act*;
- (d) to appoint an Auditor and/or receive the Auditor's Report;
- (e) to elect one or more Directors, or the Chairman, if required by these regulations; and
- (f) to deal with any other business which is deemed to be special business.

11.3 No business is to be transacted at an AGM or any general meeting of the Company unless a quorum of members is present in person or by proxy at the time when the meeting proceeds to business.

11.4 Subject to any other provision of these regulations, twenty per cent (20%) of the members of the Company present in person or by proxy is a quorum for the purposes of these regulations.

11.5 The Chairman may, with the consent of any meeting at which a quorum is present (and must if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

11.6 (a) When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting must be given as in the case of the original meeting.

(b) Subject to regulation 11.6(a), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

11.7 (a) At any general meeting a resolution put to the vote of the meeting is decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:

- (i) by the Chairman; or
- (ii) by at least three (3) members present in person.

- (b) Unless a poll is so demanded a declaration by the Chairman that a resolution has on a show of hands been carried unanimously or by a majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour or against the resolution.
  - (c) The demand for a poll may be withdrawn.
  - (d) Subject to regulation 11.7(e), a poll must be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairman directs, and the result of the poll is the resolution of the meeting at which the poll was demanded.
  - (e) A poll demanded on the election of a Chairman or on a question of adjournment must be taken immediately.
- 11.8 Unless otherwise specified in these regulations, in a 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 takes place or at which the poll is demanded in addition to his or her deliberative vote is entitled to a second or casting vote.
- 11.9 A member entitled to vote at a general meeting of the Company whether on show of hands or a poll has one (1) vote only.
- 11.10 (a) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) Any such objection must be referred to the Chairman of the meeting, whose decision is final.
  - (c) A vote not disallowed pursuant to such an objection is valid for all purposes.

## **12. PROXIES & BODY CORPORATE REPRESENTATIVES**

- 12.1 A member may appoint one (1) person to be its proxy to attend and vote on its behalf at general meetings.
- 12.2 An instrument appointing a proxy must be in writing under the hand of the appointor or the appointor's attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised.
- 12.3 An instrument appointing a proxy may specify the manner in which the proxy is to be vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- 12.4 An instrument appointing a proxy shall be in the following form or in a form that is as similar to the following form as the circumstances allow:

**TEC NQ LTD ACN 117 072 303**

**APPOINTMENT OF PROXY**

I/we of \_\_\_\_\_, a member of Tec NQ Ltd, appoint  
 \_\_\_\_\_ (name) of \_\_\_\_\_ (address) or in his or  
 her absence \_\_\_\_\_ (name) of  
 \_\_\_\_\_ (address) as my/our general/special proxy to  
 vote at the Annual General Meeting/General Meeting of Members to be held on  
 \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, or at any adjournment of that meeting (if  
 a special proxy add the words "to vote for" or the words "to vote against" and specify the  
 particular resolutions)

\_\_\_\_\_  
 Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

.....  
 Signature

**Certificate of Witness**

(This certificate is to be completed only if the person giving the Proxy is blind or incapable of writing. The signature of the member must not be witnessed by the person nominated as Proxy).

I, \_\_\_\_\_ (name), of \_\_\_\_\_ (address),  
 certify that the above instrument appointing a Proxy was completed by me in the presence  
 of and at the request of the person appointing the Proxy and read to him or her before  
 she/he signed and marked the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ .

.....  
 Signature of Witness

Description:-

Place of residence: \_\_\_\_\_

\* strike out whichever is not desired. + to be inserted if desired

- 12.5 The appointment of a proxy is not valid unless the following documents are received by the Company, as required by the *Corporations Act*, at least forty-eight (48) hours before the meeting:
- (a) the instrument appointing the proxy;
  - (b) if the instrument is signed by the appointor's attorney, the authority under which the instrument is signed or a certified copy of the authority.
- 12.6 Votes made in accordance with the terms of an instrument of proxy or of a power of attorney are valid notwithstanding the death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power is given, if no notice in writing of the death, unsoundness of mind, revocation or transfer has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.
- 12.7 A body corporate may appoint a representative ("Company Representative") in accordance with the *Corporations Act*.

## **13. DIRECTORS**

### **13.1 Composition of the Board**

- (a) The Board of Directors consists of such of the following Directors' positions as are from time to time filled in accordance with these regulations:
  - (i) Chairman;
  - (ii) Three (3) Industry Directors;
  - (iii) One (1) Ordinary Director;
  - (iv) One (1) Education Sector Director; and
  - (v) such other positions as determined by the Board and appointed in accordance with regulations 14, 15 and 16.
- (b) The Directors may appoint one of their own to also carry out the role of Deputy Chairman. The appointment will be on terms determined by the Board but such terms must not be in contradiction with this Constitution.

### **13.2 Appointment and Rotation of Directors**

- (a) From the 2009 AGM every Director holds office for a term determined in accordance with this regulation.
- (b) Retirement of Directors from their offices takes place as follows:-
  - (i) at the 2010 AGM and every three (3) years thereafter, the following must retire:-

- (A) two (2) Industry Directors;
  - (B) one (1) Ordinary Director; and
  - (C) one (1) Education Sector Director; and
- (ii) at the 2011 AGM, and every three (3) years thereafter, those Directors including the Chairman who are not subject to the order of retirement specified in regulation 13.2(b)(i), must retire.
- (c) Retirement under this regulation takes effect from the end of the AGM.
- (d) (i) At a meeting of the Directors following the 2009 AGM, the Industry Directors, Ordinary Directors and Education Sector Directors must draw lots to determine the order of retirement for the purposes of this regulation.
- (ii) Subject to regulation 13.2(d)(iii), the order of retirement established under this regulation applies to each Directors' position thereafter.
- (iii) If, in the opinion of the majority of Directors comprising of the Board, it is at any time necessary or desirable for any reason to re-establish the order of retirement, then those Directors must again draw lots to re-establish the order of retirement.

### **13.3 Consecutive Terms of Office and Casual Vacancies**

- (a) The first terms of office for Directors are determined under regulation 13.2(b) and 13.2(d). Thereafter, the term of office for each Director's position is three (3) years expiring at the end of the relevant AGM.
- (b) A retiring Director is eligible for re-election or re-appointment but may not serve as a Director for more than two (2) consecutive terms. Service as a Director by way of appointment to fill a casual vacancy is not counted for the purposes of this regulation.
- (c) If the office of a Director becomes vacant before the end of the term of office for that Director's position, the Board may fill the vacancy by appointing a person to the office of that Director. A Director so appointed holds office for the balance of the term of office for that Director's position.

### **13.4 Membership of Directors**

- (a) This regulation is subject to regulation 13.4A.
- (b) A Director (including the Chairman) must not be a member of the Company and must not be a Shareholder, member, Director, Officer or employee of:-
- (i) any Body Corporate which is itself a member or director of the Company; or
  - (ii) any Body Corporate in which another director or member of the Company is a Shareholder, member, director, officer or employee; or



- (iii) a Related Body Corporate of a Body Corporate referred to in (i) or (ii) above.
- (c) An employee of the Company cannot be a Director.

#### **13.4A Company Members**

- (a) A person may be a Director of the Company if that person is a Shareholder, member, Director, Officer or employee of a member of the Company ("that Company Member") provided no other Director of the Company is also a Shareholder, member, Director, Officer or employee of that Company Member or of a Related Body Corporate of that Company Member.
- (b) A Director of the Company who is a Shareholder, member, Director, Officer or employee of a Company Member in accordance with regulation 13.4A(a) above, is not appointed, and must not in the performance of his or her duties as a Director of the Company act, as nominee or representative of that Company Member, and in performing his or her duties as Director of the Company must act in the best interests of the Company and its members as a whole.
- (c) To avoid doubt, notwithstanding the exception allowed in regulation 13.4A(a), the Board must reflect the mix of trades and industries offered by the Company and should include a mix of persons with experience and expertise in financial and operational management and in relevant education and training delivery.

#### **14. ALL DIRECTORS INCLUDING THE CHAIRMAN – INVITATION FOR APPOINTMENT**

##### 14.1 This regulation:

- (a) applies to the appointment or election of any Director's office after their term of office comes to an end; but
- (b) does not affect the appointment of persons as Directors to fill casual vacancies under regulation 13.3.

##### 14.2 The Board must invite applications for appointment as a Director. The invitation:

- (a) must be published in a newspaper circulating in the Townsville region;
- (b) must specify the Directorship for which applicants are sought;
- (c) must include notice that:
  - (i) the Director Selection Criteria to be taken into account when selecting the successful Applicant; and
  - (ii) a copy of the Company's Constitution,

can be obtained from the Secretary upon request;

- (d) must be advertised in accordance with regulation 14.2(a) no later than two (2) months prior to the holding of the Company's AGM;
  - (e) must require applications to be made in writing;
  - (f) must include a closing date for applications not later than six (6) weeks prior to the holding of the Company's AGM; and
  - (g) must be in a form approved by the Board.
- 14.3 The Board may from time to time determine that additional advertising, notification or publication of invitations for appointment be carried out.
- 14.4 The Secretary must, if requested, supply such reasonable information about the Company, including the information and documents in regulation 14.2(c) as may be reasonably requested by intending Applicants.
- 14.5 The Director Selection Criteria are such selection criteria as the Board from time to time determines by Special Resolution of the Board. Until and unless determined to the contrary, those criteria are as follows:
- (a) the Applicant's ability to demonstrate that they have a broad understanding of each of the following:
    - (i) the role and responsibility of a school; and
    - (ii) industry and education issues in North Queensland;
  - (b) the Applicant's ability to demonstrate that they have skills and/or experience in one or more of the following areas:
    - (i) Corporate Governance;
    - (ii) Corporate Strategic Planning;
    - (iii) Financial Management and Accounting for Corporations;
    - (iv) Corporate Risk Management; and
    - (v) Community service and/or provision; and
  - (c) for the Education Sector Director, the Applicant's ability to demonstrate that they have relevant qualifications and experience in the education industry; and
  - (d) for the Chairman, the Applicant's ability to demonstrate that they have relevant leadership experience and are likely to have the support and confidence of the Board.
- 14.6 An invitation for appointment as a Director may require an Applicant to declare any potential conflicts of interest, or other interests or connections which might give rise to a perception that, if the Applicant was appointed as a director, the independence of the Company when making financial decisions may be compromised.

14.7 In addition to addressing the Director Selection Criteria, Applicants must:

- (a) acknowledge that, even though they are applying for appointment to the position as the Chairman, an Ordinary Director, Education Sector Director or Industry Director, they owe their Director's duties and responsibilities to the Company and all members; and
- (b) agree to sign a consent to become a Director if their application is successful.

## **15. NOMINATION COMMITTEE**

15.1 (a) The Board must appoint one to three individuals to comprise a nomination committee for the purpose of assessing the applications for appointment in accordance with regulation 14 no later than one (1) month prior to the holding of the Company's AGM ("the Nomination Committee").

(b) The Board must arrange for all applications to be assessed in accordance with this regulation.

(c) Assessment is not required if there is only one Applicant for a Director's position. That Applicant will be the only nomination submitted to the members for an election to fill the Director's office.

15.2 The Nomination Committee must rank the Applicants and only the three highest ranked Applicants for each Director's position will be the nominations submitted to the members for an election to fill the Director's office.

15.3 The person/s comprising the Nomination Committee:-

- (a) must not be an Applicant or an employee or current Director of the Company;
- (b) must declare any conflicts of interest;
- (c) must be supplied with a copy of these regulations by the Secretary;
- (d) must be engaged by the Board on the basis that they will:-
  - (i) assess Applicants according only to the Director Selection Criteria;
  - (ii) supply, in writing, a report which includes an overall ranking of Applicants; and
  - (iii) supply their ranking report in time to enable the application of these regulations.

## **16. MEMBER ELECTION PROCESS**

16.1 This regulation applies to elect a Director from the nominations submitted by the Nomination Committee in accordance with regulation 15.

- 16.2 The nominations submitted by the Nomination Committee must not be more than three for each Director's office and such nominations will be put to the members for an election in accordance with this regulation.
- 16.3 Only Ordinary and Industry Members present at the AGM in person or by proxy are entitled to vote in an election for a Director.
- 16.4 Voting is by way of secret ballot.
- 16.5 Members entitled to vote may cast one vote for the candidate of their choice.
- 16.6 Every candidate may appoint one scrutineer to oversee the counting of votes.
- 16.7 The candidate with the most votes is elected to fill the Director's office for which the election is held, and takes office with effect from the end of the AGM.
- 16.8 In the event of votes being tied the election is immediately held again, and, if the vote is again tied the successful candidate is chosen by the Chairman from the candidates with tied votes by drawing lots.
- 16.9 In the event that the Nomination Committee does not submit any nominations for a Director's position in accordance with regulation 15, then nominations may be called for from the floor of the AGM.

## **17. THE CHAIRMAN OF DIRECTORS**

The Chairman cannot be a Restricted Entity or an employee, director, or shareholder of, or consultant to, a Restricted Entity.

## **18. CESSATION OF OFFICE AS DIRECTOR**

- 18.1 For the purposes of this regulation:

**"Triggering Event"** means the occurrence of any event or circumstance relating to a director, which:

- (a) under any legislation applying to the Company ("Relevant Legislation"), or
- (b) under any funding agreement to which the Company is a party ("Funding Agreement"),

gives rise to either:

- (c) a breach of the Relevant Legislation (but for this regulation); or
- (d) a breach of the Funding Agreement (but for this regulation); or
- (e) a requirement for the Company to act to remove that director; or
- (f) some sanction against the Company if the Company does not act to remove that director.

18.2 The office of a Director automatically and immediately becomes vacant:

- (a) if a Triggering Event occurs in respect of the Director; or
- (b) if the Director:
  - (i) becomes bankrupt or makes any arrangement or composition with his creditors generally;
  - (ii) becomes prohibited from being a director of a company by reason of any order made under the *Corporations Act*;
  - (iii) ceases to be a director by operation of any provision of the *Corporations Act*;
  - (iv) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under any law relating to mental health;
  - (v) resigns his or her office by notice in writing to the Company; or
  - (vi) becomes an employee of the Company;
- (c) if the Director is also a member and the Director's membership is terminated under regulation 9.3;
- (d) if regulation 13.4 applies to the Director;
- (e) for the Director who is the Chairman, if that Director becomes a Restricted Entity, or an employee, director, or shareholder of, or consultant to, a Restricted Entity.

## 19. POWER AND DUTIES OF THE DIRECTORS

- 19.1 (a) Subject to the *Corporations Act* and to any other provisions of these regulations the business and general affairs of the Company is under the management of the Directors who may pay all expenses incurred in promoting the Company and may exercise all such powers of the Company as are not by the *Corporations Act* or by these regulations required to be exercised by the Company in general meeting.
- (b) The Directors may prepare adopt and amend regulations for the efficient operation and management of the business of the Company provided that any regulation of the Company prepared, adopted or amended by the Directors may be disallowed by the Company in general meeting.
- (c) Without limiting the generality of the provisions of regulation 19.1(a), the Board may exercise all the powers of the Company to borrow or raise money to mortgage, charge, lease, licence or sell any property or business of the Company, or any part thereof. and to issue debentures and other securities whether outright or as security for any debt, liability, or obligation of the Company or of any other person.

- 19.2 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two Directors or in such other manner as the Board from time to time determines.
- 19.3 Despite regulation 19.1 and 19.2, the Company may in general meeting set financial limits in relation to the exercise of all or any of the powers of the Directors set out in those regulations in which case the Directors must not exercise the powers in a manner which exceeds those financial limits without the prior approval of the Company in general meeting.
- 19.4 For the purposes of these regulations the rate of interest payable in respect of money lent by members to the Company must not exceed the rate paid for the time being by the Company's bankers in respect of term deposits of the amount lent for the term lent.
- 19.5 (a) The Directors may by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes with such powers and authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Board), for such period and subject to such conditions as the Directors think fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.
- 19.6 (a) The Board must cause minutes to be made:
- (i) of all appointments of officers and servants; and
  - (ii) of names of members of the Board present at all meetings of the Company and of the Board; and
  - (iii) of all proceedings at all meetings of the Company and of the Board.
- (b) Such minutes must be signed by the Chairman of the meeting at which the proceedings were held or by the Chairman of the next succeeding meeting.

## **20. PROCEEDINGS OF THE DIRECTORS**

- 20.1 (a) The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit provided that at least two (2) meetings of Directors are held per year.
- (b) A Director may at any time convene a meeting of Directors by ten (10) days notice to each other Director. The notice must give details of the matters proposed to be raised and the time and place of the meeting.

- (c) The Secretary must on the requisition of a Director convene a meeting of Directors by ten (10) days notice to each Director. The notice must give details of the matters proposed to be raised and the time and place of the meeting.
  - (d) Any notice of a meeting of Directors may be given in writing or by facsimile, telex, telegram or cable or by telephone or any other means of communication.
- 20.2 (a) Subject to these regulations, questions arising at any meeting of the Board shall be decided by a majority of votes of Directors present and voting and any such decision shall for all purposes be deemed a decision of the board.
- (b) Each Director will have equal voting rights. In the case of an equality of votes, the Chairman of the meeting does not have a casting vote in addition to his or her deliberative vote and the motion shall be lost.
- 20.3 The quorum necessary for the transaction of the business of the Board is fifty per cent (50%) of the Directors comprising the Board from time to time.
- 20.4 Where a meeting of the Board is held and the Chairman is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unable or unwilling to act the Directors present may elect one of their number to be chairman of the meeting.
- 20.5 The Board may act notwithstanding any vacancy on the Board but if and so long as their number is reduced below the minimum number fixed by these regulations, the continuing Director or Directors may act for the purpose of increasing the number of Directors to that number or of convening a general meeting of the Company.
- 20.6 (a) This regulation applies if it is discovered that there was some defect in the appointment of any Director, or person acting as a Director, or in the minimum number fixed by these regulations to comprise the Board, or that the Directors or any of them were disqualified.
- (b) All acts done by any meeting of the Board or a sub-committee of the Board or by any person acting as a Director is as valid as if every such Board was duly comprised of the minimum number or such person had been duly appointed and was qualified to be a Director.
- 20.7 (a) If all Directors have signed a document containing a statement that they are in favour of a resolution of the Board in terms set out in the document, a resolution in those terms is deemed to have been passed at a meeting of the Directors held on the day on which the document was signed and at the time at which the document was last signed by a Director or if the Directors signed the document on different days on the day on which and at the time at which the document was last signed by a Director.

- (b) For the purposes of this regulation two (2) or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

## **21. TELECONFERENCE MEETING OF DIRECTORS**

- 21.1 Subject to the conditions in regulation 21.3, the contemporaneous linking together by telephone, radio or other form of instantaneous audio and visual communication of a number of Directors constituting not less than the quorum required for the purpose of these regulations is deemed to constitute a meeting of the Directors and all the provisions of these regulations as to the meetings of the Directors apply to such meeting.
- 21.2 This regulation applies whether or not one or more of the Directors is outside the Commonwealth of Australia so long as the conditions set out in regulation 21.3 are met.
- 21.3 The conditions referred to in regulation 21.1 and 21.2 are:
  - (a) that all the Directors for the time being entitled to receive notice of a meeting of the Directors (including any alternate Director for any Director for the time being unable to act as Director) are given notice (in accordance with these regulations) of the meeting to be conducted by telephone, radio or other form of instantaneous audio or audio and visual communication;
  - (b) that each of the Directors taking part in the meeting is linked by telephone, radio or other form of instantaneous audio or visual communication and is throughout the meeting able to hear each of the other Directors so taking part;
  - (c) that at the commencement of the meeting each Director acknowledges his or her presence to all the other Directors taking part;
  - (d) that if the Secretary is not part of the meeting one of the Directors so present takes minutes of the meeting.
- 21.4 A Director may not cease to take part in a meeting conducted pursuant to this regulation by disconnecting his or her telephone, radio or other form of communication unless he or she has previously obtained the express consent of the Chairman of the meeting.
- 21.5 A Director is conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone, radio or other form of instantaneous audio or audio and visual communication unless he or she has previously obtained the express consent of the Chairman of the meeting to cease taking part in the meeting.



- 21.6 A minute of the proceedings of a meeting held by telephone, radio or instantaneous audio or audio and visual communication is sufficient evidence of such proceedings and of the observance of all necessary formalities if certified on as correct minute by the Chairman of the meeting or by the Secretary if present at the meeting.

## **22. SUB-COMMITTEES AND ADVISORY PANELS**

- 22.1 The Board may from time to time appoint any sub-committee or advisory panel for any purpose (not being for the purpose of a duty imposed on the Board as the Directors of the Company by the *Corporations Act* or the general law).
- 22.2 Each sub-committee or panel appointed in accordance with these regulations must have at least one (1) Director as a member of that sub-committee or panel.
- 22.3 Unless specifically authorised otherwise by a resolution of the Board, the authority of any sub-committee or advisory panel is limited to the making of recommendations to the Board.
- 22.4 A sub-committee or advisory panel may meet and conduct its proceeding in such manner as its members see fit.
- 22.5 The Board may, by resolution, disband a sub-committee or advisory panel at any time.

## **23. SECRETARY**

The Secretary must be appointed by the Directors in accordance with the *Corporations Act* for such term and upon such conditions as they think fit, and any secretary so appointed may be removed by them.

## **24. AMENDING THIS CONSTITUTION**

This Constitution may only be amended in accordance with:-

- (a) the *Corporations Act*; and
- (b) any Commonwealth Funding Agreement to which the Company is a party. If the Commonwealth Funding Agreement requires the prior written approval of any person to any amendment to this Constitution, then the amendment does not take effect until such approval has been obtained.

## **25. EXECUTION WITH OR WITHOUT COMMON SEAL**

### **25.1 Execution without Common Seal**

The Company may execute a document without using the common seal if the document is signed by:

- (a) two (2) Directors of the Company; or
- (b) a Director and the Secretary of the Company.

## 25.2 Execution with Common Seal

- (a) If the Company has a common seal, the Company may execute a document if the seal is affixed to the document and the affixing of the seal is witnessed by:
  - (i) two (2) Directors of the Company; or
  - (ii) a Director and the Secretary of the Company.
- (b) The Directors must provide for the safe custody of the common seal.

## 26. ACCOUNTS

26.1 The Board must:

- (a) cause proper accounting and other records to be kept; and
- (b) distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) accompanied by a copy of the Auditor's report thereon as required by the *Corporations Act*; and
- (c) cause to be made out and laid before each AGM a balance sheet and profit and loss account made up to a date not more than five (5) months before the date of the meeting.

26.2 The Board must from time to time determine in accordance with these regulations at what times and places and under what conditions or directions the accounting and other records of the Company is open to the inspection of members.

## 27. AUDIT

A properly qualified Auditor or Auditors must be appointed and his or their duties regulated in accordance with the *Corporations Act*.

## 28. NOTICES

- 28.1 (a) A notice may be given by the Company to any member either by serving on the member personally or by sending it by post to the member at his or her Registered Address.
  - (b) Where a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting on the day after the date of its posting and in any other case at the time at which the letter would be delivered in the ordinary course of post.
- 28.2 (a) Notice of every general meeting must be given in any manner authorised by these regulations or the *Corporations Act* to:

- (i) every member except those members who have not supplied to the Company an address for the giving of notices to them;
  - (ii) the Auditor or Auditors for the time being of the Company.
- (b) No other person is entitled to receive notices of general meetings.

## **29. INDEMNITY AND INSURANCE OF OFFICERS**

### **29.1 Definitions**

For the purposes of this regulation:

**"Prohibited Liability"** means a liability, or a liability for legal costs, in respect of which a company is not lawfully permitted to indemnify a person.

### **29.2 Indemnity against liabilities**

- (a) Subject to regulation 29.4 the Company indemnifies every person who is or has been an officer of the Company against all liabilities of every kind incurred as an officer of the Company.
- (b) This regulation does not apply to a liability for legal costs.

### **29.3 Indemnity for Legal Costs**

As a separate indemnity, but also subject to regulation 29.4, the Company indemnifies every person who is or has been an officer of the Company against all legal costs incurred as an officer of the Company.

### **29.4 Prohibited Liabilities**

The indemnity in regulations 29.2 and 29.3 does not apply to the extent that the liability or legal costs amount to a Prohibited Liability.

### **29.5 Power to Insure**

- (a) The Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an officer of the company or of a subsidiary of the Company against a liability incurred by that person.
- (b) Regulation 29.5(a) does not apply to a contract of insurance against a liability in respect of which a company is not lawfully permitted to pay a premium.

### **29.6 Optional Employee Indemnity**

No indemnity is given by the Company pursuant to regulations 29.2 or 29.3 to any person who is or has been engaged in the full time employment of the Company against any liability incurred by that person in that person's capacity as a full time employee of the Company in any case where the Board determines that such indemnity should not be given.

I, \_\_\_\_\_, Company Secretary declare that this is a true and accurate record of the Company's Constitution as at the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

.....  
Company Secretary