

DATE: 2017

**INDIGENOUS EDUCATION FOUNDATION
LIMITED**

(ACN: 168130096)

CONSTITUTION

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INDIGENOUS EDUCATION FOUNDATION LTD

A company limited by guarantee

CONSTITUTION

1. PRELIMINARY

1.1 Company's name

The name of the company is the **Indigenous Education Foundation Limited**.

1.2 Objects of the company

The company is formed with the principal object of supporting indigenous communities in developing countries or within Australia, but initially the indigenous peoples of Indonesia, to maintain their own unique cultural and environmental heritage and, in doing so, improve long-term health and wellbeing. In support of this aim, the secondary objects of the company are:

- (a) to initiate, facilitate and integrate cultural and environmental heritage programs within the day-to-day education by:
 - (i) working with local cultural leaders, in conjunction with other key community stakeholders, to develop community-driven cultural and environmental education programs, as per local tradition;
 - (ii) developing and supporting programs which prevent, or at the very least minimize, the potential risk of indigenous peoples falling into states of impoverishment;
 - (iii) providing support for additional programs, both social and environmental, which have similar aims and objectives;
 - (iv) providing assistance to local and or other persons willing to provide their services in support of achieving the companies objects.
- (b) to establish and maintain a public fund for the specific purpose of supporting the company's principal objects; and
- (c) to engage in any other activities that the company deems necessary to further its principal objects.

1.3 Company's powers

Solely for the purpose of carrying out the company's object, the company may, but is not limited to:

- (a) raise funds and invite and receive contributions, loans and deposits from any person;
- (b) maintain the right to decline or refuse to accept any gift (by will or otherwise), donations, settlement or other disposition of money or property if deemed necessary by the directors committee;

- (c) provide funds or other material benefit by way of grant, donation or otherwise to further the company's object;
- (d) purchase, take on lease or in exchange, hire or otherwise acquire real or personal property, and any rights or privileges that are required for the purpose of, or capable of being conveniently used in connection with, the company's object. However, if the company takes or holds any property which is subject to a trust, the company may only deal with that property in the manner allowed by the law having regard to that trust;
- (e) control, manage, lease, exchange, mortgage, charge, sell, transfer, give up, surrender, dispose of, develop, turn to account or otherwise deal with any real or personal property of any kind or any estate or interest in that property;
- (f) spend money and do all other things that it considers desirable to promote the company's object;
- (g) promote and operate the company under names specific to the country of which the Indigenous educational programs are implemented; and
- (h) do all other things that are incidental or conducive to attaining the company's object.

1.4 Income and property

The company's income and property must be applied solely towards promoting the company's object. No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, fee or otherwise, to any member of the members or directors. However, this clause 1.4 does not prohibit making a payment approved by the directors for:

- (a) out-of-pocket expenses incurred by a director in performing a duty as director of the company; or
- (b) a service rendered to the company by a director in a professional or technical capacity, other than in the capacity as a director of the company, where;
 - 1) the provisions of the service has the prior approval of the directors; and
 - 2) the amount payable is not more than an amount which commercially would be reasonable payments for the service

or prevent payment:

- (c) in good faith to any member for goods or services supplied in the ordinary and usual course of business;
- (d) of interest on money borrowed from a member at a rate not exceeding the lowest rate then being paid by the Westpac bank in Australia on a 30 day term deposit; or

- (e) of reasonable and proper rent for premises let by any member to the company,

or indemnification of, or payment of premiums on contracts of insurance for, any director to the extent permitted by law and constitution.

1.5 Permitted payments

Subject to the preceding paragraph, nothing in this constitution prevents the payment in good faith of remuneration to any officer or employee of the company or to any other persons in return for:

- (a) services actually rendered to the company;
- (b) goods supplied in the ordinary and usual way of business;
- (c) the payment of reasonable interest on money borrowed; or
- (d) reasonable rent for premises leased by the company

1.6 Altering this constitution

This constitution may be modified by a special resolution of a general meeting of the members that is to say by a resolution passed by at least 75% of the votes cast by members entitled to vote on the resolution.

1.7 Winding up

- (a) If, upon winding up or dissolution of the company, any property remains after satisfaction of all its debts and liabilities, this property must only be given or transferred to a fund, authority or institution:
 - 1) whose objects as stated in its constitution are charitable at law;
 - 2) whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as is outlined in clause 1.4; and
 - 3) gifts to which can be deducted under division 30 of the ITAA
- (b) The identity of the fund, authority or institution referred to in clause 1.7(a) must be decided by the members by ordinary resolution at or before the time of winding up or dissolution of the company and, if the members cannot decide, by the Supreme Court of the State.
- (c) Where gifts to a fund, authority or institution are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B are satisfied, a gift or transfer under clause 1.7(a) to that fund, authority or institution must be made in accordance with or subject to those conditions.

2. MEMBERSHIP

2.1 Categories of Members

Subject to rules 2.3 and 2.5, the members of the company are:

- (a) the persons consenting to be the initial members set out below; and
- (b) any other person the directors admit to membership in accordance with this constitution.

2.2 Subscription and fees

The membership subscription (if any), fees, and all details regarding date and manner of payment payable by members to the company shall be as determined by the directors from time to time.

2.3 Application for Membership

Every applicant for membership of the company (except the initial members) must be proposed by one and seconded by another member. The application for membership must be:

- (a) made in writing and signed by the applicant and his or her proposer and seconder;
- (b) in the form prescribed by the directors; and
- (c) accompanied by the appropriate fee, if any.

2.4 Discretion to accept or reject application

At the next meeting of the directors after the receipt of an application for membership, the directors must consider the application and decide whether to admit or reject the admission of the applicant. The directors need not give any reason for rejecting an application. However, if rejected, any fees forwarded with the application shall be returned to the applicant.

2.5 Re-application

- (a) A person who has been but has ceased to be a member and wishes to renew their membership must re-apply for membership in accordance with the procedures set down by the company in clause 2.3.
- (b) Upon re-application, a member must provide details of any change in their personal details, and any other information reasonably required by the Company.

2.6 Liability of members

The liability of the members is limited

2.7 Guarantee by members

Every member undertakes to contribute an amount not exceeding \$5.00 to the property of the company if it is wound up while he or she is a member or within one year after he or she ceases to be a member, for;

- (a) payment of the company's debts and liabilities contracted before the time he or she ceased to be a member;
- (b) the costs, charges and expenses of winding up; and
- (c) the adjustments of the rights of the contributories among themselves.

3. WHEN MEMBERSHIP CEASES

3.1 Death, resignation and other events

A person immediately ceases to be a member if the person:

- (a) dies;
- (b) resigns as a member by giving written notice to the company;
- (c) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health;
- (d) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
- (e) is expelled under clause 3.1; or
- (f) becomes, if the directors so decide in their absolute discretion, an untraceable member because the person has ceased to reside at, attend or otherwise communicate with his or her registered address.

3.2 Expulsion

- (a) The directors may by resolution expel a member from the company if, in their absolute discretion, they decide it is not in the interests of the company for the person to remain a member.
- (b) If the directors intend to propose a resolution under clause 3.2(a), at least one week before the meeting at which the resolution is to be proposed, they must give the member written notice:
 - 1) stating the date, place and time of the meeting;
 - 2) setting out the intended resolution and the grounds on which it is based; and
 - 3) informing the member that he or she may attend the meeting and may give an oral or written explanation or submission before the resolution is put to a vote.

- (c) If a resolution is put to vote, a member is expelled if a minimum of two-thirds of those present votes for the member to be expelled. The vote must be taken by ballot.

3.3 Forfeiture of rights

A member who ceases to be a member, for whatever reason, shall forfeit all rights in and claims upon the company and its property. Any company documents, records or other property in the possession, custody or control of that member must be returned to the company immediately. Any membership fees paid by the discontinued member are not to be refunded.

4. REGISTER OF MEMBERS

The company must set up and maintain a register.

The register must contain the following information:

- (a) the name and address of each member;
- (b) the date on which the entry of the member's name in the register is made;
- (c) the date on which the person ceased being a member;
- (d) the name and details of each person who ceased being a member within the last 7 years; and

5. GENERAL MEETINGS

5.1 Annual general meeting

Annual meetings of members are to be held in accordance with the Act.

5.2 Calling general meetings

- (a) The directors may call and arrange to hold a general meeting whenever they think fit.
- (b) A general meeting may be called and arranged to be held only as provided by this clause 5.2 or as provided by sections 249D, 249E, 249F of the Act or by the court as provided by section 249G of the Act.
- (c) The directors may change the venue for, postpone or cancel a general meeting, unless the meeting is called and arranged to be held by the members or the court under the Act. If a general meeting is called and arranged to be held under section 249D of the Act, the directors may not:
 - 1) postpone it beyond the date by which section 249D requires it to be held; or
 - 2) cancel it without the consent of the requisitioning member.

5.3 Notice of general meetings

- (a) Except where shorter notice is permissible under the Act, at least 21 days notice must be given of a general meeting, exclusive of the day on which the notice is served or deemed to be served and of the day for which the notice is given.
- (b) Notice of a general meeting must be given in any manner authorized by clause 14 to:
- 1) every member entitled to vote, except a member who has not supplied the company with an address in Australia for giving notices;
 - 2) each director; and
 - 3) the auditor
- No other person is entitled to receive notice of general meetings.
- (c) A notice of a general meeting must:
- 1) specify the date, time and place of the meeting;
 - 2) except as provided by the Law, state the general nature of the business to be transacted at the meeting; and
 - 3) if a special resolution is to be proposed at the meeting – set out an intention to propose the special resolution and state the resolution.
- (d) A person may waive notice of a general meeting by written notice to the company
- (e) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this clause 5.3 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
- 1) the non-receipt or failure occurred by accident or error; or
 - 2) before or after the meeting, the person:
 - a) has waived or waives notice of that meeting under clause 5.3(d); or
 - b) has notified or notifies the company of the person's agreement to that act, matter or thing done or resolution by written notice to the company.
- (f) A person's attendance at a general meeting waives any objection that person may have to:
- 1) a failure to give notice, or the giving of a defective notice, of the meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and

- 2) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

6. PROCEEDINGS AT GENERAL MEETINGS

6.1 Quorum at general meetings

- (a) No business may be transacted at a general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum consists of:
 - 1) if the members have fixed a number for the quorum, that number of members; and
 - 2) in any other case, 2 members,
 entitled to vote present at the meeting in person, by proxy, by attorney or as agreed upon by the company.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - 1) where the meeting was convened on the requisition of members, the meeting must be dissolved; or
 - 2) in any other case:
 - a) the meeting stands adjourned to the day, and at the time and place, that the directors decide or, if the directors do not make a decision, to the same day in the next week at the same time and place; and
 - b) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

6.2 Chairperson of general meetings

- (a) The chairperson of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each general meeting.
- (b) If at a general meeting:
 - 1) there is no chairperson of directors;
 - 2) the chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
 - 3) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

the members present must elect as chairperson of the meeting:

- 4) another director who is present and willing to act; or
- 5) if no other director present at the meeting is willing to act; a member who is present and willing to act.

6.3 Conducting and adjourning general meetings

- (a) A question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting, whose decision is final.
- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of the members in person to constitute a quorum constitutes a meeting of the members, provided each member has a reasonable opportunity to participate at the meeting.
- (c) All the provisions in this constitution relating to meetings apply, so far as they can and with any necessary changes, to meetings by telephone or other electronic means.
- (d) A member who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (e) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the members involved was at the place for the duration of the meeting.
- (f) The chairperson of a general meeting may, 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 except the business left unfinished at the meeting from which the adjournment took place.
- (g) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (h) Except as provided by clause 6.3(g), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (i) Where a meeting is adjourned, the directors may change the venue of, or postpone or cancel, the adjourned meeting, unless the meeting was called and arranged to be held by the members or the court under the Act. If a meeting is called and arranged to be held under section 249D of the Act, the directors may not postpone it beyond the date by which section 249D requires it be held and may not cancel it without the consent of the requisitioning member.

6.4 Decisions at general meetings

- (a) Except where by law a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the meeting. Such a decision is for all purposes a decision of the members.
- (b) Where the votes on a proposed resolution are equal, the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless, before the vote is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:
 - 1) the chairperson of the meeting;
 - 2) at least 2 members present and with the right to vote on the resolution; or
 - 3) a member or members present at the meeting and representing at least 10% of the total voting rights of all the members entitled to vote on the resolution on a poll
- (d) A demand for a poll does not prevent a general meeting continuing for the transaction of any business except the question on which a poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chairperson of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular 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 of or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it must be taken in such manner, and either at once or after an interval or adjournment or otherwise, as the chairperson of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (g) A poll demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.
- (h) The demand for a poll may be withdrawn.
- (i) If the company has only one member, the company may pass a resolution by the member recording it and signing the record.

6.5 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote in person or by proxy.
- (b) A proxy may, but need not, be a member of the company.

- (c) A proxy may be appointed for:
- 1) all general meetings;
 - 2) any number of general meetings; or
 - 3) a particular general meeting.
- (d) Unless otherwise provided in the instrument, an instrument appointing a proxy is taken to confer authority:
- 1) to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution;
 - 2) to speak to any proposed resolution on which the proxy may vote;
 - 3) to demand or join in demanding a poll on any resolution on which the proxy may vote;
 - 4) even though the instrument may refer to specific resolutions and may direct the proxy how to vote on those resolutions:
 - a) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - b) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting;
 - c) to act generally at the meeting; and
 - d) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is re-scheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (e) An instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution. Where an instrument contains such a direction, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.
- (f) A proxy may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy and the authority (if any) under which the instrument is signed, or a certified copy of the authority, are received in the places or at the fax numbers, and before the times, specified for that purpose in the notice calling the meeting. In the notice:
- 1) the place may be the company's office or another place and a fax number may be the fax number at the company's office or another fax number; and
 - 2) the time may be before the time for holding the meeting or adjourned meeting.

- (g) The directors may waive all or any of the requirements of clause 6.5(f) and in particular may, on production of any other evidence the directors require to prove the validity of the appointment of a proxy, accept:
- 1) an oral appointment of a proxy;
 - 2) an appointment of a proxy which is not signed or executed in the manner required by clause 6.5(e); or
 - 3) the deposit, tabling or production of a copy (including a copy sent by fax) of an instrument appointing a proxy or other authority under which the instrument is signed.
- (h) A vote given in accordance with the terms of an instrument appointing a proxy is valid despite the revocation of the instrument, or of the authority under which the instrument was executed, if the company has not received written notice of revocation by the time and at one of the places at which the instrument appointing the proxy is required to be received under clause 6.5(f).
- (i) The appointment of a proxy is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution, the proxy is not entitled to vote, and must not vote, as the appointer's proxy on the resolution.

7. DIRECTORS

7.1 Appointing and removing directors

- (a) There must be:
- 1) at least 3 directors; and
 - 2) subject to clause 7.1(c), not more than 6 directors.
- (b) The first directors are the persons who have consented to act as proposed directors and who are named as proposed directors in the application for registration of the company.
- (c) The company may by resolution:
- 1) increase or reduce the minimum or maximum number of directors; and
 - 2) appoint or remove a director.
- (d) The directors may appoint any individual as a director, either to fill a casual vacancy or as an addition to the existing directors, but the total number of directors must not at any time exceed the maximum number allowed under this constitution.
- (e) Subject to clause 7.3 and to the terms of any agreement entered into between the company and the relevant director, a director holds office until he or she dies or is removed from office under clause 7.1(c)(2).

- (f) A director may attend and speak at general meetings even if that director is not a member of the company.

7.2 Membership qualification

- (a) A director may, but need not, be a member of the company.
- (b) Neither the auditor of the company nor any partner or employee of the auditor is eligible to act as a director.

7.3 When office of director becomes vacant

In addition to the circumstances prescribed by the Act and clause 7, the office of director becomes vacant if a director:

- (a) dies or becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the laws relating to mental health;
- (b) resigns by written notice to the company;
- (c) becomes bankrupt or insolvent or makes an arrangement or composition with his or her creditors generally;
- (d) is convicted on indictment of an offence and the directors do not within one month after that conviction resolve to confirm the director's appointment or election (as applicable) to the office of director;
- (e) becomes, if the directors so decide in their absolute discretion, an untraceable director because the person has ceased to reside at, attend or otherwise communicate with his or her registered address;
- (f) fails to attend 3 consecutive meetings of the directors without approval of the remaining directors; or
- (g) is removed by a resolution of the members passed at a general meeting convened for the sole purpose of considering that resolution.

7.4 Powers and duties of directors

- (a) The directors are responsible for managing the company's business and may exercise to the exclusion of the company in general meeting all the company's powers which are not required, by the Act or by this constitution, to be exercised by the company in general meeting.
- (b) Without limiting clause 7.4(a), the directors may exercise all the company's powers to:
 - 1) borrow or otherwise raise money
 - 2) charge any property or business of the company;
 - 3) issue debentures or give any other security for a debt, liability or obligation of the company or of any other person; and

- 4) create and maintain a public fund or foundation for the sole benefit of the objects of the company;
- (c) The directors may decide how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed (as applicable) by or on behalf of the company.
- (d) The directors may pay out of the company's funds all expenses of the promotion, formation and registration of the company and the vesting in it of the assets acquired by it.
- (e) The directors may:
 - 1) appoint or employ a person to be an officer, agent or attorney of the company for the purposes, with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for the period and on the conditions they think fit;
 - 2) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
 - 3) subject to any contract between the company and the relevant officer, agent and attorney, remove or dismiss any officer, agent or attorney at any time, with or without cause.
- (f) A power of attorney may contain any provisions for the protection and convenience of the attorney or persons dealing with the attorney that the directors think fit.

7.5 Committees

- (a) The directors may delegate by resolution any of their powers to one or more committees consisting of the number of directors they think fit.
- (b) A person who is not a director may be co-opted by the directors or by the committee to be a member of that committee.
- (c) A committee to which any powers have been delegated must exercise the powers delegated in accordance with any directions given by the directors.
- (d) Subject to clause 7.5(c), the provisions of this constitution that apply to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of directors.

7.6 Delegation to individual directors

- (a) The directors may by resolution delegate any of their powers to one director.
- (b) A director to whom any powers have been delegated must exercise the powers delegated in accordance with any directions given by the directors.

7.7 Proceedings of directors

- (a) The directors may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of the directors to constitute a quorum constitutes a meeting of the directors. All the provisions in this constitution relating to meetings of the directors apply, so far as they can and with any necessary changes, to meeting of the directors by telephone or other electronic means.
- (c) A director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (d) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the directors involved was at that place for the duration of the meeting.

7.8 Convening meetings of directors

- (a) A director may convene a meeting of the directors whenever he or she thinks fit.
- (b) A secretary must, on the requisition of a director, convene a meeting of the directors.

7.9 Notice of meetings of directors

- (a) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving notice:
 - 1) a director, except a director on leave of absence approved by the directors; or
 - 2) an alternate director appointed under clause 7.14 by a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
 - 1) must specify the time and place of the meeting;
 - 2) must indicate the general nature of the business to be transacted at the meeting;
 - 3) may be given immediately before the meeting;
 - 4) may be given in person or by post, telephone, fax or other electronic means; and
 - 5) is taken as given to an alternate director if it is given to the director who appointed that alternate director.

- (c) A director or alternate director may waive notice of a meeting of directors by notifying the company to that effect in person or by post, telephone, fax or other electronic means.
- (d) The non-receipt of notice of a meeting of directors by, or failure to give notice of a meeting of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
- 1) the non-receipt or failure occurred by accident or error; or
 - 2) before or after the meeting, the director or an alternate director appointed by the director:
 - a) has waived or waives notice of that meeting under clause 7.9(c); or
 - b) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally or by post, telephone, fax or other electronic means; or
 - 3) the alternate director or the director who appointed the alternate director attends the meeting.
- (e) The non-receipt of notice of a meeting of directors by, or failure to give notice of a meeting to, an alternate director of a director on leave of absence approved by the directors does not invalidate any act, matter or thing done or resolution passed at the meeting if:
- 1) the non-receipt or failure occurred by accident or error; or
 - 2) before or after the meeting, the alternate director or the director who appointed the alternate director:
 - a) has waived or waives notice of that meeting under clause 7.9(c); or
 - b) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally or by post, telephone, fax or other electronic means; or
 - 3) the alternate director or the director who appointed the alternate director attends the meeting
- (f) Attendance by a person at a meeting of directors waives any objection which that person and:
- 1) if the person is a director, an alternate director appointed by that person; or
 - 2) if the person is an alternate director, the director who appointed that person as alternate director,
- may have to a failure to give notice of the meeting or the failure to specify the general nature of the business to be transacted.

7.10 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) A quorum consists of:
 - 1) if the directors have fixed a number for the quorum, that number of directors; and
 - 2) in any other case, 3 directors,
 present at the meeting of directors.
- (c) If there is a vacancy in the office of a director then, subject to clause 7.10(d), the remaining directors may act.
- (d) If the number of directors in office at any time is not sufficient to constitute a quorum at a meeting of directors, or is less than the minimum number of directors fixed under this constitution, or if the requirements outlined in clause 7.2 concerning the qualifications of directors is not satisfied, the remaining directors must act as soon as possible to:
 - 1) increase the number of directors to a number sufficient to constitute a quorum and to satisfy the minimum number of directors required under this constitution;
 - 2) convene a general meeting of the company for that purpose; or
 - 3) appoint additional directors,
 and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

7.11 Chairperson of directors

- (a) The directors may elect one of the directors as chairperson of directors and may decide the period for which that director is to be the chairperson.
- (b) The chairperson of directors must (if present within 10 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each meeting of directors.
- (c) If at a meeting of directors:
 - 1) there is no chairperson of directors;
 - 2) the chairperson of directors is not present within the 10 minutes after the time appointed for the meeting; or
 - 3) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

the directors present must elect one of the directors as chairperson of the meeting.

7.12 Decisions of directors

- (a) A meeting of directors at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the directors under this constitution.
- (b) Questions arising at a meeting of directors must be decided by a majority of votes cast by the directors present. Such a decision is for all purposes a decision of the directors.
- (c) Where the votes on a proposed resolution are equal, the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.

7.13 Written resolutions

- (a) If:
 - 1) a majority of the directors assent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and
 - 2) the directors who assent to the document would have constituted a quorum at a meeting of directors held to consider that act, matter, thing or resolution,

then that act, matter, thing or resolution is taken as done at or passed by a meeting of the directors.
- (b) For the purposes of clause 7.13(a):
 - 1) the meeting is taken as held:
 - a) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
 - b) if the director assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
 - 2) two or more separate documents in identical terms, each of which is assented to by one or more directors, are taken as constituting one document; and
 - 3) a director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, telephone, fax or other electronic means.
- (c) Where a director signifies assent to a document otherwise than by signing the document, the director must as confirmation sign the document at the next meeting of the directors that director attends, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.

7.14 Alternate directors

- (a) A director may, with the approval of the directors, appoint a person as his or her alternate director for the period the director thinks fit.
- (b) An alternate director may, but need not, be a member or director of the company.
- (c) One person may act as alternate director to more than one director.
- (d) An alternate director may, if the appointer does not attend a meeting of directors, attend and vote in place of and on behalf of the appointer.
- (e) An alternate director is entitled to a separate vote for each director the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.
- (f) In the absence of the appointer, an alternate director may exercise any power that the appointer may exercise. The exercise of such a power by the alternate director is taken to be the exercise of the power by the appointer.
- (g) The office of an alternate director is vacated if and when the appointer vacates office as a director.
- (h) The appointer may terminate the appointment of an alternate director at any time, even though the period of the appointment has not expired.
- (i) An appointment, or the termination of an appointment, of an alternate director must be in writing signed by the director who makes or made the appointment and does not take effect until the company has received written notice of the appointment or termination.
- (j) An alternate director is not to be taken into account in counting the minimum or maximum number of directors allowed under this constitution.
- (k) In deciding whether a quorum is present at a meeting of directors, an alternate director who attends the meeting is to be counted as a director for each director on whose behalf the alternate director is attending the meeting.
- (l) An alternate director, while acting as a director, is:
 - 1) responsible to the company for his or her own acts and defaults; and
 - 2) not to be taken to be the agent of the director by whom he or she was appointed.

7.15 Validity of acts

An act done by a person acting as a director, a meeting of directors, or a committee of directors attended by a person acting as a director, is not invalidated merely because of:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified to be a director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person, the directors or the committee (as applicable) when the act was done.

8. EXECUTIVE OFFICERS

8.1 Executive director

- (a) The directors may appoint one or more of the directors as executive director.
- (b) An executive director's appointment as executive director automatically terminates if he or she ceases to be a director.

8.2 Secretaries

- (a) The directors must appoint at least one secretary and may appoint additional secretaries.
- (b) The directors may appoint one or more assistant secretaries.

8.3 Provisions that apply to all executive officers

- (a) A reference in this clause 8.3 to an executive officer is a reference to an executive director, secretary or assistant secretary appointed under this clause 8.
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions, that the directors think fit.
- (c) Subject to any contract between the company and the relevant executive officer, an executive officer may be removed or dismissed by the directors at any time, with or without cause.
- (d) The directors may:
 - 1) confer upon an executive officer the powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the directors) they think fit;
 - 2) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
 - 3) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on him or her.
- (e) An executive officer need not be a member to qualify for appointment.
- (f) An act done by a person acting as an executive officer is not invalidated merely because of:

- 1) a defect in the person's appointment as an executive officer; or
 - 2) the person being disqualified to be an executive officer,
- if that circumstance was not known by the person when the act was done.

9. DIRECTOR'S INTERESTS AND DISCLOSURE

9.1 Director's interests

- (a) A director may hold another office or place of profit (except as auditor) in the company or any related body corporate in conjunction with his or her directorship and may be appointed to that office or place on terms as to remuneration, tenure of office and otherwise that the directors think fit.
- (b) A director:
 - 1) may be or become a director or other officer of, or otherwise interested in, any related body corporate or other body corporate promoted by the company or in which the company is interested as a shareholder or otherwise; and
 - 2) is not accountable to the company for any recommendation or other benefits he or she receives as a director or officer of, or from having an interest in, that body corporate.
- (c) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the company in the manner in all respects that they think fit. A director may, if permitted by law, vote in favour of exercising those voting rights even though he or she is, or may be about to be appointed, a director or other officer of that other body corporate and, as such, interested in the exercise of those voting rights.
- (d) A director is not disqualified merely because he or she is a director from contracting with the company in any respects, but not limited to:
 - 1) selling property to, or purchasing property from, the company;
 - 2) lending money to, or borrowing money from, the company with or without interest or security;
 - 3) guaranteeing the repayment of money borrowed by the company for a commission or profit;
 - 4) underwriting or guaranteeing the subscription for securities in the company or in any related body corporate or other body corporate promoted by the company or in which the company is interested as a shareholder or otherwise, for a commission or profit; or
 - 5) being employed by the company or acting in any professional capacity (except as auditor) on behalf of the company.

- (e) A contract made by a director with the company and a contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is not avoided or rendered voidable merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (f) A director contracting with or being interested in any arrangement involving the company is not liable to account to the company for any profit realised by or under that contract or arrangement merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (g) Unless section 195 of the Act permits, a director who has a material personal interest in a matter that is being considered at a director's meeting must not:
 - 1) be present while the matter is being considered at the meeting; or
 - 2) vote on the matter.
- (h) The directors may make regulations requiring the disclosure of interests that a director, and any person considered by the directors as related to or associated with the director, may have in any matter concerning the company or a related body corporate. Any regulations made under this constitution bind all directors.

10. ACCOUNTS AND AUDIT

Where required by Law, the company must appoint a properly qualified auditor whose duties will be regulated in accordance with the Act.

11. INSPECTION OF BOOKS AND CONFIDENTIALITY

- (a) Subject to the Act:
 - 1) the directors may determine whether and to what extent and at what times and places and under what conditions and regulations the books will be open to inspection;
 - 2) a person other than a director has no right to inspect any of the books or documents of the company except as conferred by statute or authorised by the directors or by a resolution of the members.
- (b) Every director and secretary must keep the transactions and affairs of the company and the state of its accounts confidential unless required to disclose them:
 - 1) in the course of duties as an officer of the company
 - 2) by the directors or the company in general meeting; or
 - 3) by law.

- (c) The company may require a director, secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with clause 11(b). A director or secretary must do so if required by the company.

12. AUTHENTICATION OF DOCUMENTS

- (a) The company may have a common seal.
- (b) The common seal may be affixed to a document only by the authority of the directors or of a duly authorized committee of the directors.
- (c) Every document to which the common seal is affixed must be signed by a director and counter signed by the secretary or a second director or some other person appointed generally or in a particular case by the directors for that purpose.
- (d) The company may also execute documents without using the common seal in any way permitted by the Act.
- (e) Cheques, bills of exchange, promissory notes and other negotiable instruments may be signed, accepted, drawn, made or endorsed on behalf of the company in such manner and by such persons (whether directors or officers of the company or not) as the directors determine but not otherwise.

13. INDEMNITY AND INSURANCE

13.1 Persons to whom clauses 13.2 and 13.4 apply

Clauses 13.2 and 13.4 apply to:

- (a) each person who is or has been a director, alternate director or executive officer of the company; and
- (b) any other officers or former officers of the company or of its related bodies corporate that the directors decide in each case.

13.2 Indemnity

The company must:

- (a) indemnify; and
- (b) if requested by a person to whom this clause 13.2 applies, enter into a deed indemnifying on a full indemnity basis and to the full extent permitted by law,

each person to whom this clause 13.2 applies for all losses of liabilities incurred by the person as an officer of the company or of a related body corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

- (c) in defending proceedings, whether civil or criminal, in which judgement is given in favour of the person or in which the person is acquitted; or
- (d) in connection with an application, in relation to those proceedings, in which the court grants relief to the person under the Act.

13.3 Extent of indemnity

The indemnity in clause 13.2:

- (a) is a continuing obligation and is enforceable by a person to whom clause 13.2 applies even though that person has ceased to be an officer of the company or of a related body corporate; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

13.4 Insurance

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this clause 13.4 applies against any liability incurred by the person as an officer of the company or of a related body corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

13.5 Other rights unaffected

Nothing in clause 13.2 or 13.4:

- (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any loss or liability referred to in those clauses; or
- (b) limits the capacity of the company to indemnify or provide insurance for any person to whom those clauses do not apply.

14. NOTICES

14.1 How notices may be given

The company may give a notice to a member by:

- (a) delivering it to the member personally;
- (b) sending it to the member's fax number or electronic address (if the member has nominated one to the company for receipt of notices); or
- (c) posting it by prepaid post to the member's registered address.

14.2 When taken as given

A notice is taken as given by the company and received by the member:

- (a) if delivered, at the time of delivery;
- (b) if faxed, when the company receives a confirmation report that all pages of the fax have been transmitted to the member's fax number, but if transmission or receipt is after 5.00pm, it is taken as received on the next business day;
- (c) if sent electronically, on the next business day; or
- (d) if posted, on the second business day after it was posted.

14.3 When a member has no registered address

If one or more members do not have a registered address in Australia, a notice addressed to the member or members and advertised in a daily national newspaper is taken to be duly given to the member or members at midday on the day on which the advertisement appears.

15. PUBLIC FUND

15.1 Establishment of the public fund

The company must establish and maintain a public fund, called the Indigenous Education Foundation Fund, for the specific purpose of supporting the principal object of the company. The public fund is established to receive all gifts of money or property for the company's principal object and any money received because of such gifts must be credited to this bank account. The public fund:

- (a) must not receive any other money or property into its account; and
- (b) must comply with subdivision 30-E of the ITAA.

15.2 Requirements of the public fund

The company must inform the relevant regulators as soon as possible if:

- (a) the company changes its principal object;
- (b) the company changes its name or the name of the public fund;
- (c) there is any change to the membership of the management committee of the public fund; or
- (d) the company or the public fund suffers any financial difficulties.

15.3 Ministerial rules

The company agrees to comply with any rules that the Minister and/or the Treasurer may make to ensure that gifts made to the public fund are only used for its principal object.

15.4 Conduit policy

The company must not act as a mere conduit of the gifts of money or property to other organisations, bodies or persons.

15.5 Winding-up

- (a) If upon winding up or dissolution of the public fund there remains, after satisfaction of all its debt and liabilities, any property whatsoever, this property must only be given or transferred to a fund, authority or institution:
- 1) whose objects as stated in its constitution are charitable at law;
 - 2) whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as is outlined in clause 1.4; and
 - 3) gifts to which can be deducted under division 30 of the ITAA.
- (b) The identity of the fund, authority or institution referred to in clause 15.5(a) must be decided by the members by ordinary resolution at or before the time of winding up or dissolution of the company and, if the members cannot decide, by the Supreme Court of the State.
- (c) Where gifts to a fund, authority or institution are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B are satisfied, a gift or transfer under clause 15.5(a) to that fund, authority or institution must be made in accordance with or subject to those conditions.

15.6 Distribution of surplus assets (whole DGR endorsement)

- (a) Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets (including 'gift funds' defined in clause 15.6) that remain after the company is wound up must be distributed to one or more charities:
- 1) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 1.2
 - 2) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company, and
 - 3) that is or are deductible gift recipients within the meaning of the Income Tax Assessment Act 1997 (Cth).
- (b) The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the company may apply to the Supreme Court to make this decision.
- (c) If the company's deductible gift recipient endorsement is revoked (whether or not the company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of section (a) 1), 2), and 3), as decided by the directors.

(d) For the purpose of this clause:

1) 'gift funds' means:

(a) gifts of money or property for the principle purpose of the company;

(b) contributions made in relation to a fund-raising event held for the principle purpose of the company; and

(c) money received by the company because of such gifts and contributions

2) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the Income Tax Assessment Act 1997 (Cth).

15.7 Statistical information

Within four months of the end of each financial year, the company must have available:

- (a) an annual statistical return, including information on the expenditure of public fund money, the management of public fund assets and any other information required by law; and
- (b) audited financial statements for the company and the public fund (which must be provided with the annual statistical return information).

15.8 Operation of the public fund

The public fund must comply with the following rules:

- (a) the objective of the public fund is to support the principal object of the company;
- (b) members of the public must be invited to make gifts of money or property to the public fund for the company's principal object;
- (c) money from interest on donations, income derived from donated property and money from the realisation of such property, must be deposited into the public fund;
- (d) receipts must be issued in the name of the public fund and proper accounting records and procedures are to be kept and used for the public fund;
- (e) a separate bank account must be opened to deposit money donated to the public fund, including interest accruing thereon, and gifts to it must be kept separate from other funds of the company;
- (f) the public fund must be operated on a not-for profit basis; and
- (g) a committee of management of no fewer than three people must administer the public fund. The committee of management is appointed by the company in accordance with clause 16.

16. PUBLIC FUND'S COMMITTEE OF MANAGEMENT

16.1 Appointment of committee of management

The directors must appoint a committee of management to administer the public fund. The committee of management may be made up, either partially or entirely, of:

- (a) some or all of the directors;
- (b) members or officers of the company; or
- (c) any other persons as appointed by the directors.

16.2 Number of committee members

The committee of management must have at least three committee members and, unless otherwise decided by the directors, not more than six committee members.

16.3 Cessation of committee member's appointment

A person automatically ceases to be a committee member if the person:

- (a) dies;
- (b) resigns as a member by giving written notice to the company;
- (c) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health;
- (d) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
- (e) is expelled under clause 16.4; or
- (f) becomes, if the directors so decide in their absolute discretion, an untraceable member because the person has ceased to reside at, attend or otherwise communicate with his or her registered address.

17. DEFINITIONS AND INTERPRETATION

17.1 Definitions

The following definitions apply in this document:

“**Act**” means the *Corporations Act 2001* (Cth);

“**auditor**” means the auditor of the company;

“**board**” means the directors acting collectively under this document;

“**business day**” means a day on which the major trading banks are open for business in Melbourne, except a Saturday, Sunday or public holiday;

“**company**” means Indigenous Education Foundation Ltd;

“**company’s office**” means the company’s registered office;

“**developing countries**” means countries declared by the minister for foreign affairs to be a developing country;

“**director**” means a person who is, for the time being, a director of the company;

“**Indigenous**” means a person who has originated from that particular region or country;

“**ITAA**” means the *Income Tax Assessment Act 1997* (Cth);

“**Law**” means the Corporations Law;

“**local**” means a person who is from and/or has lived in that particular region for a reasonable amount of time;

“**member**” means a member of the company;

“**ordinary resolution**” means a resolution passed at a meeting of members by a majority of the members present and voting at the meeting;

“**public fund**” means the Indigenous Education Foundation Fund;

“**register**” means the register of members kept as required by the Act;

“**secretary**” means, during the term of that appointment, a person appointed as a secretary of the company in accordance with this document;

“**special resolution**” has the same meaning as in the Act; and

“**State**” means Victoria.

“**Treasurer**” means the Australian Commonwealth Treasurer.

17.2 Interpretation

In this constitution unless the context requires otherwise:

- (a) references to notices include formal notices of meeting and all documents and other communications from the company to its members;
- (b) a reference to any legislation includes any amendment to that legislation, any consolidation or replacement of that legislation and any subordinate legislation made under it;
- (c) a reference to a member present at a general meeting is reference to a member present in person or by proxy, attorney or representative;
- (d) a reference to writing and written includes printing, lithography, and other ways of representing or reproducing words in a visible form;

- (e) a word or expression defined in the Act has the same meaning unless it is defined differently;
- (f) the singular (including defined terms) includes the plural and the plural includes the singular;
- (g) a word which suggests one gender includes the other genders;
- (h) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (i) the word “agreement” includes an undertaking or other binding arrangement or understanding, whether or not in writing;
- (j) a power to do something includes a power, exercisable in the like circumstances, to revoke or undo it; and
- (k) a reference to a power is also a reference to authority or discretion.

17.3 Headings

Headings are used for convenience only and do not affect the interpretation of this constitution.

18. APPLICATION OF THE ACT

18.1 What parts of the Act apply

- (a) An expression used in a clause of this constitution that deals with the matter dealt with by a provision of the Act has the same meaning as in that provision; and
- (b) subject to clause 20.1(a), an expression in a clause that has a defined meaning for the purposes of the Act has the same meaning as in the Act.

18.2 Replaceable rules displaced

- (a) The provisions of this constitution displace each provision of a section or subsection of the Act that applies (or would apply but for this clause) to the company.
- (b) The replaceable rules do not apply to the company except those which operate as mandatory rules for public companies under the Act.
- (c) In the event of any inconsistency between these rules as set out in this document and the rules required to be adopted by charities under the ITAA, the rules required by the ITAA shall prevail.