

DATE: September, 2019

**INDIGENOUS EDUCATION FOUNDATION
LIMITED
(ABN 57 168 130 096)**

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 (the **Company**).

1.2 Type of Company

The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

1.3 Objects of the Company

The Company is formed with the principal object of empowering displaced indigenous communities to reconnect with their Culture (the **Principal Object**). In support of this aim, the secondary objects of the Company are:

- 1) to support indigenous communities to maintain their own unique cultural and environmental heritage;
- 2) to support indigenous communities to improve their long-term health and wellbeing;
- 3) to initiate, facilitate and integrate cultural and environmental heritage programs within the day-to-day education by:
 - (a) 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;
 - (b) developing and supporting programs which prevent, or at the very least minimize, the potential risk of indigenous peoples falling into states of impoverishment;
 - (c) providing support for additional programs, both social and environmental, which have similar aims and objectives;
 - (d) providing support or assistance to local and/or other persons willing to provide their services in support of achieving or to give effect to the Principal Objects,
- 4) to establish and maintain a public fund for the specific purpose of directly or indirectly furthering or giving effect to the Principal Objects; and
- 5) to engage in any other activities that the Company deems necessary that directly or indirectly further or give effect to the Principal Objects.

1.4 **Company's powers**

Solely for the purpose of carrying out the Objects, the Company may, but is not limited to:

- 1) raise funds and invite and receive contributions, loans and deposits from any person;
- 2) 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;
- 3) provide funds or other material benefit by way of grant, donation or otherwise to further the Objects;
- 4) 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 Objects. 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;
- 5) 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;
- 6) spend money and do all other things that it considers desirable to promote the Objects;
- 7) promote and operate the Company under names specific to the country of which the Indigenous educational programs are implemented; and
- 8) do all other things that are incidental or conducive to attaining the Objects.

1.5 **Income and property**

- A. The Company must not distribute any income or assets directly or indirectly to its members, except as provided in clause 1.5B.
- B. Subject to approval from the directors the following payments are permitted:
 - 1) for out-of-pocket expenses incurred by a director in performing a duty as director of the Company;
 - 2) for 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;
 - (a) the provisions of the service has the prior approval of the directors; and
 - (b) the amount payable is not more than an amount which commercially would be reasonable payments for the service;
 - 3) to the extent permitted by law and this constitution of premiums on contracts of insurance for indemnification of any director;
 - 4) in good faith to any member for goods or services supplied in the ordinary and usual course of business;
 - 5) 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;

- 6) of reasonable and proper rent for premises let by any member to the Company; and
- 7) 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; and
 - (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 being a resolution passed by at least 75% of the votes cast by members entitled to vote on the resolution.

1.7 **Winding up**

- 1) 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:
 - (a) whose objects as stated in its constitution are charitable at law;
 - (b) 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 1.5; and
 - (c) gifts to which can be deducted under division 30 of the ITAA.
- 2) The identity of the fund, authority or institution referred to in clause 1.71) 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.
- 3) 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 1.71) to that fund, authority or institution must be made in accordance with or subject to those conditions.

2. **MEMBERSHIP**

2.1 **Number of members**

The number of members for which the Company proposes to be registered is unlimited.

2.2 **Membership**

The members of the Company are:

- 1) the Initial Members;
- 2) the directors;

- 3) the President; and
- 4) any other person the directors admit to membership in accordance with this constitution.

in this clause, 'person' means an individual who is not less than 18 years of age at the time of admission or incorporated body.

2.3 **Categories of Members**

- 1) The category of members are:
 - (a) Ordinary Member; and
 - (b) Non-voting Member.
- 2) Additional categories of members, if recommended by the directors, may be created from time to time by the members in general meeting.

2.4 **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.

2.5 **Application for Membership**

- 1) A person who supports the Objects of the Company is eligible to apply to be a Non-voting member of the Company.
- 2) Every applicant for membership of the Company (except the Initial Members and the directors) 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.

in this clause, 'person' means an individual who is not less than 18 years of age at the date of application or incorporated body.

2.6 **Discretion to accept or reject application**

- 1) 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) Other than the Initial Members and the directors, an applicant will become a member when they are entered on the Register.

2.7 Re-application

- 1) 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 2.55.
- 2) Upon re-application, a member must provide details of any change in their personal details, and any other information reasonably required by the Company.

2.8 Liability of members

The liability of the members is limited to the amount of the guarantee in clause 2.9.

2.9 Guarantee by members

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

- 1) payment of the Company's debts and liabilities contracted before the time he or she ceased to be a member; and
- 2) costs, charges and expenses of winding up.

3. WHEN MEMBERSHIP CEASES

3.1 Death, resignation and other events

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

- 1) dies;
- 2) resigns as a member by giving written notice to the Company;
- 3) 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;
- 4) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
- 5) is expelled under clause 3.12; or
- 6) 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

- 1) 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.
- 2) If the directors intend to propose a resolution under clause 3.21), at least one week before the meeting at which the resolution is to be proposed, they must give the member written notice:
 - (a) stating the date, place and time of the meeting;

- (b) setting out the intended resolution and the grounds on which it is based; and
 - (c) 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.
- 3) 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**

4.1 **Register**

Company must set up and maintain a register of members of the Company which must be kept in accordance with the Act.

4.2 **Information on register**

The register must contain the following information:

- 1) the full name and address (residential and electronic mail address if any) of each member;
- 2) in the case of a corporate member, the full name, address and electronic mail address (if any) of its nominated representative;
- 3) the date on which the entry of the member's name in the register is made;
- 4) the date on which the person ceased being a member;
- 5) the category of membership;
- 6) the last date of payment of the member's annual subscription;
- 7) the name and details of each person who ceased being a member within the last 7 years; and
- 8) such other information as the directors require.

4.3 **Access to register**

The Company must give current members access to the register of members.

4.4 **Use of register**

Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

4.5 Change to member details

Each member and nominated representative must notify the secretary in writing of any change in that person's name, address or electronic mail address within 1 month after the change.

5. GENERAL MEETINGS

5.1 General meetings called by directors

- 1) The directors may call a general meeting.
- 2) If members with at least 5% of the votes that may be cast at a general meeting make a written request to the Company for a general meeting to be held, the directors must:
 - (a) within 21 days of the members' request, give all members notice of a general meeting, and
 - (b) hold the general meeting within 2 months of the members' request.
- 3) The percentage of votes that members have (in clause **Error! Reference source not found.**) is to be worked out as at midnight before the members request the meeting.
- 4) The members who make the request for a general meeting must:
 - (a) state in the request any resolution to be proposed at the meeting;
 - (b) sign the request, and
 - (c) give the request to the Company.
- 5) Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

5.2 General meetings called by members

- 1) If the directors do not call the meeting within 21 days of being requested under clause 5.1(2), 50% or more of the members who made the request may call and arrange to hold a general meeting.
- 2) To call and hold a meeting under clause 5.2(1) the members must:
 - (a) as far as possible, follow the procedures for general meetings set out in this constitution;
 - (b) call the meeting using the list of members on the Company's member register, which the Company must provide to the members making the request at no cost; and
 - (c) hold the general meeting within three months after the request was given to the Company.
- 3) The Company must pay the members who request the general meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

5.3 Annual general meeting

- 1) A general meeting, called the annual general meeting, must be held:

- (a) within 18 months after registration of the Company; and
 - (b) after the first annual general meeting, at least once in every calendar year.
- 2) Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
 - (a) a review of the Company's activities;
 - (b) a review of the Company's finances;
 - (c) any auditor's report;
 - (d) the election of directors; and
 - (e) the appointment and payment of auditors, if any.
 - 3) Before or at the annual general meeting, the directors must give information to the members on the Company's activities and finances during the period since the last annual general meeting.
 - 4) The chairperson of the annual general meeting must give members a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

5.4 **Notice of general meetings**

- 1) Notice of a general meeting must be given to:
 - (a) each member entitled to vote at the meeting;
 - (b) each director; and
 - (c) the auditor (if any).
- 2) Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 3) Subject to clause 5.1(2), notice of a meeting may be provided less than 21 days before the meeting if:
 - (a) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand; or
 - (b) for any other general meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 4) Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
 - (a) remove a director;
 - (b) appoint a director in order to replace a director who was removed; or
 - (c) remove an auditor.
- 5) Notice of a general meeting must include:
 - (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (b) the general nature of the meeting's business;
 - (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution;
 - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - i. the proxy does not need to be a member of the Company

- ii. the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
 - iii. the proxy form must be delivered to the Company at least 48 hours before the meeting; and
- 6) If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

5.5 Quorum at general meetings

- 1) For a general meeting to be held, at least 4 members entitled to vote (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 2) No business may be conducted at a general meeting if a quorum is not present.
- 3) If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified – the same day in the next week
 - (b) if the time is not specified – the same time, and
 - (c) if the place is not specified – the same place.
- 4) If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

5.6 Auditor's right to attend meetings

- 1) The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 2) The Company must give the auditor (if any) any communications relating to the general meeting that a member of the Company is entitled to receive.

5.7 Representatives of members

- 1) An incorporated member may appoint as a representative:
 - (a) one individual to represent the member at meetings and to sign circular resolutions under clause 6.3; and
 - (b) the same individual or another individual for the purpose of being appointed or elected as a director.
- 2) The appointment of a representative by a member must:
 - (a) be in writing;
 - (b) include the name of the representative;
 - (c) be signed on behalf of the member; and
 - (d) be given to the Company or, for representation at a meeting, be given to the chairperson before the meeting starts.

- 3) A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 4) The appointment may be standing (ongoing).

5.8 Using technology to hold meetings

- 1) The Company may hold a general meeting at two or more venues using any technology that gives the members a reasonable opportunity to participate, including to hear and be heard.
- 2) Anyone using this technology is taken to be present in person at the meeting.

5.9 Chairperson for general meetings

- 1) The elected chairperson is entitled to chair general meetings.
- 2) The members present and entitled to vote at a general meeting may choose a director or member to be the chairperson for that meeting if:
 - (a) there is no elected chairperson, or
 - (b) the elected chairperson is not present within 30 minutes after the starting time set for the meeting, or
 - (c) the elected chairperson is present but says they do not wish to act as chairperson of the meeting.

5.10 Role of the chairperson

- 1) The chairperson is responsible for the conduct of the general meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 2) The chairperson does not have a casting vote.

5.11 Adjournment of meetings

- 1) If a quorum is present, a general meeting must be adjourned if a majority of members present direct the chairperson to adjourn it.
- 2) Only unfinished business may be dealt with at a meeting resumed after an adjournment.

6. MEMBERS' RESOLUTION AND STATEMENTS

6.1 Members' resolution and statements

- 1) Members with at least 5% of the votes that may be cast on a resolution may give:
 - (a) written notice to the Company of a resolution they propose to move at a general meeting (members' resolution), and/or
 - (b) a written request to the company that the company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (members' statement).
- 2) A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 3) A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.

- 4) Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 5) The percentage of votes that members have (as described in clause 6.1(1)) is to be worked out as at midnight before the request or notice is given to the Company.
- 6) If the Company has been given notice of a members' resolution under clause (a), the resolution must be considered at the next general meeting held more than two months after the notice is given.
- 7) This clause does not limit any other right that a member has to propose a resolution at a general meeting.

6.2 **Company must give notice of proposed resolution or distribute a members' statement**

- 1) If the company has been given a notice or request under clause 6.1:
 - (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the Company's cost; or
 - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a general meeting, the members may pass a resolution that the Company will pay these expenses.
- 2) The company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
 - (a) it is more than 1000 words long;
 - (b) the directors consider it may be defamatory;
 - (c) clause 6.2(1)(b) applies, and the members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members; or
 - (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the members.

6.3 **Circular resolution of members**

- 1) Subject to clause 6.3(2), the directors may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution).
- 2) The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members and set out the wording of the resolution.
- 3) Circular resolutions cannot be used:
 - (a) for a resolution to remove an auditor, appoint a director or remove a director;
 - (b) for passing a special resolution; or
 - (c) where the Act or this constitution requires a meeting to be held.

- 4) A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 6.51) or clause 6.51).
- 5) Members may sign:
 - (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, if the wording is the same in each copy.
- 6) The company may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

6.4 **Voting at general meetings**

- 1) Each member has one vote.
- 2) A member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting.
- 3) If a challenge is made under clause 6.3(1), the chairperson must decide whether or not the person may vote. The chairperson's decision is final.
- 4) Voting must be conducted and decided by:
 - (a) a show of hands;
 - (b) a vote in writing; or
 - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 5) Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 6) On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 7) The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.
- 8) A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
 - (a) at least five members present;
 - (b) members present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
 - (c) the chairperson.
- 9) A vote in writing must be taken when and how the chairperson directs, unless clause 6.4(10) applies.
- 10) vote in writing must be held immediately if it is demanded under clause 6.4(8):
 - (a) for the election of a chairperson under clause 5.9(2); or
 - (b) to decide whether to adjourn the meeting.
- 11) A demand for a vote in writing may be withdrawn.

6.5 Appointment of proxy

- 1) A member may appoint a proxy to attend and vote at a general meeting on their behalf.
- 2) A proxy may, but need not, be a member of the Company.
- 3) A proxy appointment may be standing (ongoing).
- 4) A proxy may be appointed for:
 - (a) all general meetings;
 - (b) any number of general meetings; or
 - (c) a particular general meeting.
- 5) An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
 - (a) the member's name and address;
 - (b) the Company's name;
 - (c) the proxy's name or the name of the office held by the proxy; and
 - (d) the meeting(s) at which the appointment may be used.
- 6) Unless otherwise provided in the instrument, an instrument appointing a proxy is taken to confer authority:
 - (a) to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution;
 - (b) to speak to any proposed resolution on which the proxy may vote;
 - (c) to demand or join in demanding a poll on any resolution on which the proxy may vote;
 - (d) even though the instrument may refer to specific resolutions and may direct the proxy how to vote on those resolutions:
 - i. 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;
 - ii. to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting;
 - iii. to act generally at the meeting; and
 - iv. 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.
- 7) 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.
- 8) 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, and before the times, specified for that purpose in the notice calling the meeting. In the notice:

- (a) the place may be the Company's office or another place or the Company's electronic mail; and
 - (b) the time may be before the time for holding the meeting or adjourned meeting.
- 9) The directors may waive all or any of the requirements of clause 6.5(8) and in particular may, on production of any other evidence the directors require to prove the validity of the appointment of a proxy, accept:
- (a) an oral appointment of a proxy;
 - (b) an appointment of a proxy which is not signed or executed in the manner required by clause 6.5(7); or
 - (c) 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.
- 10) 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(8).
- 11) 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. DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES

7.1 Dispute resolution

- 1) The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
 - (a) one or more members;
 - (b) one or more directors; or
 - (c) the Company.
- 2) A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 7.2 until the disciplinary procedure is completed.
- 3) Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 4) If those involved in the dispute do not resolve it under clause 7.1, they must within 10 days:
 - (a) tell the directors about the dispute in writing;
 - (b) agree or request that a mediator be appointed; and
 - (c) attempt in good faith to settle the dispute by mediation.
- 5) The mediator must:
 - (a) be chosen by agreement of those involved, or
 - (b) where those involved do not agree:

- i. for disputes between members, a person chosen by the directors; or
 - ii. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the Company has its registered office.
- 6) A mediator chosen by the directors under clause 7.1(5)(b)(i):
 - (a) may be a member or former member of the Company;
 - (b) must not have a personal interest in the dispute; and
 - (c) must not be biased towards or against anyone involved in the dispute.
- 7) When conducting the mediation, the mediator must:
 - (a) allow those involved a reasonable chance to be heard;
 - (b) allow those involved a reasonable chance to review any written statements;
 - (c) ensure that those involved are given natural justice; and
 - (d) not make a decision on the dispute.

7.2 Disciplining members

- 1) In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the Company if the directors consider that:
 - (a) the member has breached this constitution; or
 - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the Company.
- 2) At least 14 days before the directors' meeting at which a resolution under clause 7.2(1) will be considered, the secretary must notify the member in writing:
 - (a) that the directors are considering a resolution to warn, suspend or expel the member;
 - (b) that this resolution will be considered at a directors' meeting and the date of that meeting;
 - (c) what the member is said to have done or not done;
 - (d) the nature of the resolution that has been proposed; and
 - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 3) Before the directors pass any resolution under clause 7.2(1), the member must be given a chance to explain or defend themselves by:
 - (a) sending the directors a written explanation before that directors' meeting; and/or
 - (b) speaking at the meeting.
- 4) After considering any explanation under clause 7.2(3), the directors may:
 - (a) take no further action;
 - (b) warn the member;

- (c) suspend the member's rights as a member for a period of no more than 12 months;
 - (d) expel the member;
 - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause); or
 - (f) require the matter to be determined at a general meeting.
- 5) The directors cannot fine a member.
 - 6) The secretary must give written notice to the member of the decision under clause 7.2(4) as soon as possible.
 - 7) Disciplinary procedures must be completed as soon as reasonably practical.
 - 8) There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

8. DIRECTORS

8.1 Initial directors

The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the Company.

8.2 Number of directors

- 1) There must be:
 - (a) at least 3 directors; and
 - (b) subject to clause **Error! Reference source not found.**, not more than 8 directors.
- 2) The Company may by resolution:
 - (a) increase or reduce the minimum or maximum number of directors; and
 - (b) appoint or remove a director.

8.3 Appointment and removal of directors

- 1) Apart from the initial directors and directors appointed under clause 8.1(1), the members may elect a director by a resolution passed in a general meeting.
- 2) Each of the directors must be appointed by a separate resolution, unless:
 - (a) the members present have first passed a resolution that the appointments may be voted on together, and
 - (b) no votes were cast against that resolution.
- 3) A person is eligible for election as a director of the Company if they:
 - (a) are a member of the Company, or a representative of a member of the Company;

- (b) are nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a director at a general meeting and has been a director since that meeting);
 - (c) give the Company their signed consent to act as a director of the Company;
 - (d) are not ineligible to be a director under the Act or the ACNC Act; and
 - (e) are not the auditor of the Company or any partner or employee of the auditor.
- 4) So long as the total number of directors do not exceed the maximum allowed under this constitution, the directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- (a) is a member of the Company, or a representative of a member of the Company;
 - (b) gives the Company their signed consent to act as a director of the Company; and
 - (c) is not eligible to be a director under the Act or the ACNC Act.
- 5) If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.
- 6) Subject to clause 8.44 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 **Error! Reference source not found..**
- 7) A director may attend and speak at general meetings even if that director is not a member of the Company.

8.4 **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:

- 1) 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;
- 2) resigns by written notice to the Company;
- 3) becomes bankrupt or insolvent or makes an arrangement or composition with his or her creditors generally;
- 4) 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;
- 5) 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;
- 6) fails to attend 3 consecutive meetings of the directors without approval of the remaining directors; or
- 7) is removed by a resolution of the members passed at a general meeting convened for the sole purpose of considering that resolution.

8.5 Powers and duties of directors

- 1) 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.
- 2) Without limiting clause 8.51), the directors may exercise all the Company's powers to:
 - (a) borrow or otherwise raise money;
 - (b) charge any property or business of the Company;
 - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
 - (d) create and maintain a public fund or foundation for the sole benefit of the objects of the Company.
- 3) 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.
- 4) 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.
- 5) The directors may:
 - (a) 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;
 - (b) 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
 - (c) 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.
- 6) 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.

8.6 Committees

- 1) The directors may delegate by resolution any of their powers to one or more committees consisting of the number of directors they think fit.
- 2) 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.
- 3) A committee to which any powers have been delegated must exercise the powers delegated in accordance with any directions given by the directors.

- 4) Subject to clause 8.63), 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.

8.7 Delegation to individual directors

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

8.8 Proceedings of directors

- 1) The directors may meet together and adjourn and otherwise regulate their meetings as they think fit.
- 2) 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.
- 3) A director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- 4) 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.

8.9 Convening meetings of directors

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

8.10 Notice of meetings of directors

- 1) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving notice:
 - (a) a director, except a director on leave of absence approved by the directors; or
 - (b) an alternate director appointed under clause 8.16 by a director on leave of absence approved by the directors.
- 2) A notice of a meeting of directors:
 - (a) must specify the time and place of the meeting;
 - (b) must indicate the general nature of the business to be transacted at the meeting;
 - (c) may be given immediately before the meeting;
 - (d) may be given in person or by post, telephone, fax or other electronic means; and

- (e) is taken as given to an alternate director if it is given to the director who appointed that alternate director.
- 3) 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.
 - 4) 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:
 - (a) the non-receipt or failure occurred by accident or error; or
 - (b) before or after the meeting, the director or an alternate director appointed by the director:
 - i. has waived or waives notice of that meeting under clause 8.103); or
 - ii. 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
 - (c) the alternate director or the director who appointed the alternate director attends the meeting.
 - 5) 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:
 - (a) the non-receipt or failure occurred by accident or error; or
 - (b) before or after the meeting, the alternate director or the director who appointed the alternate director:
 - i. has waived or waives notice of that meeting under clause 8.103); or
 - ii. 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
 - (c) the alternate director or the director who appointed the alternate director attends the meeting.
 - 6) Attendance by a person at a meeting of directors waives any objection which that person and:
 - (a) if the person is a director, an alternate director appointed by that person; or
 - (b) 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.

8.11 Quorum at meetings of directors

- 1) 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.

- 2) A quorum consists of:
 - (a) if the directors have fixed a number for the quorum, that number of directors; and
 - (b) in any other case, 3 directors, present at the meeting of directors.
- 3) If there is a vacancy in the office of a director then, subject to clause 8.114), the remaining directors may act.
- 4) 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 **Error! Reference source not found.** concerning the qualifications of directors is not satisfied, the remaining directors must act as soon as possible to:
 - (a) 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;
 - (b) convene a general meeting of the Company for that purpose; or
 - (c) 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.

8.12 **President**

- 1) The directors may elect one of the directors or any other person president and may decide the period for which that person is to be the president.
- 2) The person appointed should have:
 - (a) the confidence of the Members to act as the Head of the Company and to work closely with the directors in developing and driving the strategic intent of the Company;
 - (b) appropriate gravitas, credibility and relevance within the area of the Company's core activity to assist in enhancing the Company's profile among appropriate audiences.

8.13 **Chairperson of directors**

- 1) 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.
- 2) 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.
- 3) If at a meeting of directors:
 - (a) there is no chairperson of directors;
 - (b) the chairperson of directors is not present within the 10 minutes after the time appointed for the meeting; or
 - (c) 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.

8.14 **Decisions of directors**

- 1) 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.
- 2) 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.
- 3) 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.

8.15 **Written resolutions**

- 1) If:
 - (a) 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
 - (b) 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.
- 2) For the purposes of clause 8.151):
 - (a) the meeting is taken as held:
 - i. 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
 - ii. 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;
 - (b) 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
 - (c) 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.
- 3) 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.

8.16 **Alternate directors**

- 1) 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.

- 2) An alternate director may, but need not, be a member or director of the Company.
- 3) One person may act as alternate director to more than one director.
- 4) 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.
- 5) 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.
- 6) 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.
- 7) The office of an alternate director is vacated if and when the appointer vacates office as a director.
- 8) The appointer may terminate the appointment of an alternate director at any time, even though the period of the appointment has not expired.
- 9) 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.
- 10) An alternate director is not to be taken into account in counting the minimum or maximum number of directors allowed under this constitution.
- 11) 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.
- 12) An alternate director, while acting as a director, is:
 - (a) responsible to the Company for his or her own acts and defaults; and
 - (b) not to be taken to be the agent of the director by whom he or she was appointed.

8.17 **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:

- 1) a defect in the appointment of the person as a director;
- 2) the person being disqualified to be a director or having vacated office; or
- 3) 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.

9. **EXECUTIVE OFFICERS**

9.1 **Chief Executive Officer**

- 1) The directors may appoint one of their own or anyone else as chief executive officer.

- 2) Where a director is also appointed as chief executive officer, the appointment automatically terminates if he or she ceases to be a director.

9.2 Secretaries

- 1) The directors must appoint at least one secretary and may appoint additional secretaries.
- 2) The directors may appoint one or more assistant secretaries.

9.3 Provisions that apply to all executive officers

- 1) A reference in this clause 9.3 to an executive officer is a reference to a chief executive officer, secretary or assistant secretary appointed under this clause 9.
- 2) The appointment of an executive officer may be for the period, at the remuneration and on the conditions, that the directors think fit.
- 3) 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.
- 4) The directors may:
 - (a) 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;
 - (b) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
 - (c) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on him or her.
- 5) An executive officer need not be a member to qualify for appointment.
- 6) An act done by a person acting as an executive officer is not invalidated merely because of:
 - (a) a defect in the person's appointment as an executive officer; or
 - (b) the person being disqualified to be an executive officer, if that circumstance was not known by the person when the act was done.

10. DIRECTOR'S INTERESTS AND DISCLOSURE

10.1 Director's interests

- 1) 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.
- 2) A director 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.
- 3) 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.

- 4) 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:
 - (a) selling property to, or purchasing property from, the Company;
 - (b) lending money to, or borrowing money from, the Company with or without interest or security;
 - (c) guaranteeing the repayment of money borrowed by the Company for a commission or profit;
 - (d) 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
 - (e) being employed by the Company or acting in any professional capacity (except as auditor) on behalf of the Company.
- 5) 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.
- 6) 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:
 - (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter.
- 7) 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.

11. 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.

12. INSPECTION OF BOOKS AND CONFIDENTIALITY

- 1) Subject to the Act:
 - (a) 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;
 - (b) 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.
- 2) 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:
 - (a) in the course of duties as an officer of the Company;
 - (b) by the directors or the Company in general meeting; or

- (c) by law.
- 3) 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 12.2). A director or secretary must do so if required by the Company.

13. **AUTHENTICATION OF DOCUMENTS**

- 1) The Company may have a common seal.
- 2) 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.
- 3) 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.
- 4) The Company may also execute documents without using the common seal in any way permitted by the Act.
- 5) 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.

14. **INDEMNITY AND INSURANCE**

14.1 **Persons to whom clauses 14.2 and 14.4 apply**

Clauses 14.2 and 14.4 apply to:

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

14.2 **Indemnity**

Subject to clause 14.3, the Company must:

- 1) indemnify; and
- 2) if requested by a person to whom this clause 14.2 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 14.2 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:
 - (a) 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
 - (b) in connection with an application, in relation to those proceedings, in which the court grants relief to the person under the Act.

14.3 **Extent of indemnity**

The indemnity in clause 14.2:

- 1) is a continuing obligation and is enforceable by a person to whom clause 14.2 applies even though that person has ceased to be an officer of the Company or of a related body corporate; and
- 2) operates only to the extent that the loss or liability is not covered by insurance; and
- 3) operates only to the extent permitted by law.

14.4 **Insurance**

The Company may, to the extent permitted by law:

- 1) purchase and maintain insurance; or
- 2) pay or agree to pay a premium for insurance,

for any person to whom this clause 14.4 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.

14.5 **Other rights unaffected**

Nothing in clause 14.2 or 14.4:

- 1) 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
- 2) limits the capacity of the Company to indemnify or provide insurance for any person to whom those clauses do not apply.

15. **NOTICES**

15.1 **How notices may be given**

The Company may give a notice to a member by:

- 1) delivering it to the member personally;
- 2) 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
- 3) posting it by prepaid post to the member's registered address.

15.2 **When notice is taken as given**

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

- 1) if delivered, at the time of delivery;
- 2) 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;
- 3) if sent electronically, on the next business day; or

- 4) if posted, on the second business day after it was posted.

15.3 **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.

16. **PUBLIC FUND**

16.1 **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:

- 1) must not receive any other money or property into its account; and
- 2) must comply with the ITAA.

16.2 **Requirements of the public fund**

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

- 1) the Company changes its principal object;
- 2) the Company changes its name or the name of the public fund;
- 3) there is any change to the membership of the management committee of the public fund; or
- 4) the Company or the public fund suffers any financial difficulties.

16.3 **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.

16.4 **Conduit policy**

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

16.5 **Winding-up**

- 1) 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:
 - (a) whose objects as stated in its constitution are charitable at law;

- (b) 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 1.5; and
 - (c) gifts to which can be deducted under the ITAA.
- 2) The identity of the fund, authority or institution referred to in clause 16.51) 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.
 - 3) 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 16.51) to that fund, authority or institution must be made in accordance with or subject to those conditions.

16.6 **Distribution of surplus assets (whole DGR endorsement)**

- 1) Subject to the Act and any other applicable Act, and any court order, any surplus assets (including 'gift funds' defined in clause 16.6) that remain after the Company is wound up must be distributed to one or more charities:
 - (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 1.3;
 - (b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company; and
 - (c) that is or are deductible gift recipients within the meaning of the ITAA.
- 2) 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.
- 3) 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.
- 4) For the purpose of this clause:
 - (a) '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
 - (b) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the ITAA.

16.7 **Statistical information**

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

- 1) 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
- 2) audited financial statements for the Company and the public fund (which must be provided with the annual statistical return information).

16.8 **Operation of the public fund**

The public fund must comply with the following rules:

- 1) the objective of the public fund is to support the principal object of the Company;
- 2) members of the public must be invited to make gifts of money or property to the public fund for the company's principal object;
- 3) 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;
- 4) 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;
- 5) 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;
- 6) the public fund must be operated on a not-for profit basis; and
- 7) 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 17.

17. **PUBLIC FUND'S COMMITTEE OF MANAGEMENT**

17.1 **Appointment of committee of management**

The directors must appoint (which appointment can be revoked by notice in writing by the directors at any time) a committee of management to administer the public fund. The committee of management may be made up, either partially or entirely, of:

- 1) some or all of the directors;
- 2) members or officers of the Company; or
- 3) any other persons as appointed by the directors.

17.2 **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.

17.3 **Cessation of committee member's appointment**

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

- 1) dies;
- 2) resigns as a member by giving written notice to the Company;

- 3) 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;
- 4) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
- 5) has his/her appointment revoked by the directors; or
- 6) 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.

18. DEFINITIONS AND INTERPRETATION

18.1 Definitions

The following definitions apply in this document:

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

“**ACNC**” means the Australian Charities and Not-for-profits Commission.

“**ACNC Act**” means the *Australian Charities and Not-for-profits Commission Act 2012* (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.

“**Culture**” includes but is not limited to land and resource use; language; beliefs, mythology and spirituality; song and story; food; ceremony; economic prosperity.

“**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.

“**Initial Member**” means the persons who consent to be members on the registration 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 person entered in the Register as a member of the Company and includes an Ordinary Member and a Non-voting Member.

“**Objects**” means the Company’s objects specified in clause 1.3.

“**Ordinary Member**” means the Initial Members and the directors.

“**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.

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

“**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.

“**State**” means Victoria.

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

18.2 Interpretation

In this constitution unless the context requires otherwise:

- 1) references to notices include formal notices of meeting and all documents and other communications from the Company to its members;
- 2) 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;
- 3) a reference to a member present at a general meeting is reference to a member present in person or by proxy, attorney or representative;
- 4) a reference to writing and written includes printing, lithography, and other ways of representing or reproducing words in a visible form;
- 5) a word or expression defined in the Act has the same meaning unless it is defined differently;
- 6) the singular (including defined terms) includes the plural and the plural includes the singular;
- 7) a word which suggests one gender includes the other genders;
- 8) 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;
- 9) the word “agreement” includes an undertaking or other binding arrangement or understanding, whether or not in writing;
- 10) a power to do something includes a power, exercisable in the like circumstances, to revoke or undo it; and
- 11) a reference to a power is also a reference to authority or discretion.

18.3 Headings

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

19. APPLICATION OF THE ACT

19.1 Reading this constitution with the Corporations Act

- 1) The replaceable rules set out in the Corporations Act do not apply to the Company.

- 2) While the Company is a registered charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.
- 3) If the Company is not a registered charity (even if it remains a charity), the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.
- 4) A word or expression that is defined in the Corporations Act or used in that Act and covering the same subject, has the same meaning as in this constitution.

19.2. **Interpretation**

In this constitution:

- 1) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- 2) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).