



Corporations Act 2001

A Company Limited by Guarantee

**THE CONSTITUTION**

**of**

**ASIAN AID ORGANISATION LIMITED**

**ACN: 002 286 419**

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*Corporations Act 2001*  
*A Company Limited by Guarantee*

**CONSTITUTION**

of

**ASIAN AID ORGANISATION LIMITED**

**ACN: 002 286 419**

**1. NAME**

**1.1 Name of Company**

The name of the Company is **Asian Aid Organisation Limited**.

**2. INTERPRETATION**

**2.1 Replaceable Rules Inapplicable**

- (a) The clauses of this Constitution displace each provision of a section or sub-section of the Corporations Act that applies (or would apply but for this clause) to the Company.
- (b) Subject to paragraph (a) of this clause, the provisions of the Corporations Act which operate as replaceable rules do not apply to the Company except those which operate as mandatory rules for public companies limited by guarantee under the Corporations Act or unless repeated in this Constitution or specifically made applicable to the Company by a provision of this Constitution.

**2.2 Definitions**

In this Constitution:

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

“**ACNC Legislation**” means *the Australian Charities and Not-for-profits Commission Act 2012 (Cth)* and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012 (Cth)*;

“**Affiliate**” means a company, corporation, association, society, institution or organisation that is a separate legal entity to the Company and which works in co-operation with the Company to carry out and implement one or more of the following activities:

- (a) operating, managing and conducting or overseeing the management and operation or conduct of projects, programs and institutions in one or more of the Recipient Countries in order to assist the Company to achieve one or more of the Objects;
- (b) providing assistance in identifying or recommending various institutions, projects and programs located in or conducted in one or more of the Recipient Countries whose activities are designed to achieve one or more of the Objects of the Company;

- (c) raising funds in countries other than Australia for the purpose of using them in a co-ordinated fashion with the Company to achieve one or more of the Objects of the Company;
- (d) co-ordinating, overseeing or providing assistance in overseeing the application of funds in respect to any of the institutions, programs and projects referred to in paragraphs (a) or (b) of this definition;

**“ASIC”** means the Australian Securities and Investments Commission

**“Board”** or **“Board of Directors”** means the directors of the Company holding office pursuant to this Constitution;

**“Board Meeting”** means a meeting of the Board of Directors;

**“Business Day”** means a day which is not a Saturday, Sunday or bank or public holiday in New South Wales;

**“Company”** means Asian Aid Organisation Limited;

**“Chair”** means the person who chairs or presides over a General Meeting or the Director who chairs or presides over a meeting of the Board of Directors (as the context requires);

**“Chairperson”** means the Director, if any, who is appointed by the Board as the Chairperson pursuant to clause 12.2 of this Constitution;

**“Charity”** means a charity registered under the ACNC Legislation;

**“Code”** means the ACFID Code of Conduct administered by the Australian Council for International Development or such other code for Australian aid and development agencies as may replace the ACFID Code of Conduct or any such replacement code from time to time;

**“Committee”** means a Committee of Directors or a Committee of Directors and other persons appointed to such Committee by the Board formed under clause 14.7;

**“Confidential Information”** means information (whether or not in material form) given to or gained by a Director before, during or after that person’s term of directorship that relates to:

- (a) the Company; or
- (b) customers, clients or suppliers of the Company;

and includes, but is not limited to:

- (c) trade secrets;
- (d) information relating to the business affairs, accounts work, marketing plans, sales plans, prospects, price information, supplier lists, research, management, financing, business strategies, products, inventions, designs or processes;
- (e) computer data bases and computer software; and
- (f) data surveys, customer or client lists, specifications, drawings, records, reports and statements;

**“Constitution”** means this constitution of the Company as amended from time to time;

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

**“Deductible Gift Recipient”** means an entity to which tax deductible gifts may be made pursuant to the Tax Act;

**“Deputy Chairperson”** means the Director, if any, who is appointed by the Board as the Deputy Chairperson pursuant to clause 12.2 of this Constitution;

**“DGR Gifts”** means:

(a) gifts of money or property for the Principal Purpose received during any time that the Company is endorsed as a Deductible Gift Recipient;

(b) contributions described in item 7 or 8 of the table in section 30 15 of the Tax Act in relation to a fundraising event (as defined by section 995 1 of the Tax Act) held for that purpose during any time that the Company is endorsed as a Deductible Gift Recipient; and

(c) money received by the Company because of such gifts or contributions during any time that the Company is endorsed as a Deductible Gift Recipient;

**“Director”** means any person occupying the position of a director of the Company;

**“Electronic Communication”** includes telephone, television, fax, email, videoconference or any other audio, visual or data device which permits instantaneous communication;

**“Financial Year”** means, unless the Corporations Act or ACNC Legislation require otherwise, each period commencing on 1 April of any given calendar year and ending on 31 March inclusive of the next calendar year;

**“General Meeting”** means a meeting of the Company’s Members held as required by this Constitution;

**“Gift”** means a gift to the Company pursuant to the provisions of Subdivision 30-A of the Tax Act and which is either a gift of cash or a gift of an asset made or transferred or given to the Company;

**“Gift Fund”** means the gift fund that will continue to be maintained as provided in clause 22 and known at the date of the adoption of this Constitution as the “Asian Aid Org Ltd Developing Countries Aid Fund”;

**“Life Members”** means persons that are, or who are admitted as, Life Members of the Company under clause 4.8 and **“Life Member”** means any of them;

**“Members”** Ordinary Members and Life Members and **“Member”** means-an Ordinary Member or a Life Member;

**“Members”** means persons that are, or who are admitted as, members of the Company under clause 4.1 and **“Member”** means any of them;

**“Member Related Entities”** means any companies or other entities in which Members or Directors hold any share capital or in which they have a direct or indirect economic interest, other than an entity in which its shares or other interests in its capital are listed on an Australian Stock Exchange;

“**Objects**” means the objects for which the Company is established set out in clause 3.2;

“**Office**” means the registered office from time to time of the Company;

“**Office Bearers**” has the meaning assigned in clause 12.1;

“**Ordinary Members**” means persons that are, or who are admitted as Ordinary Members of the Company under clause 4.1 and “**Ordinary Member**” means any of them;

“**Recipient Countries**” means countries located in the South East Asian region that are designated from time to time by the Minister of Foreign Affairs in the Commonwealth of Australia as developing countries;

“**Register**” means the register of Members under the Corporations Act;

“**Seal**” means the common seal (if any) of the Company;

“**Secretary**” means any person appointed to perform all or any of the duties of a secretary of the Company or any person appointed to act temporarily as such;

“**Special Resolution**” means a resolution passed at a General Meeting:

(a) of which notice specifying the intention to propose the resolution as a Special Resolution has been given pursuant to this Constitution and the Corporations Act; and

(b) by not less than 75% of the votes cast.

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

## 2.3 Corporations Act and Construction

(a) Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.

(b) Any reference to the Corporations Act includes a reference to any statute or Act that substantially replaces the Corporations Act and any reference to a provision of the Corporations Act includes a reference to that provisions as amended or replaced from time to time.

## 3. PURPOSE, OBJECTS AND POWERS

### 3.1 Purpose of Company

The Company is established solely for carrying out the Objects.

### 3.2 Objects

The Objects of the Company are:

(a) to be, and to continue as, a Charity;

(b) to provide for the relief of any person or persons in necessitous circumstances, the provision of clothing and food and similar aid to the poor, the relief of distress, the



care of orphans and needy children, the care of the aged and destitute, to provide assistance in medical facilities, in schools and in education, to provide training in agriculture and in trades and industries, to provide work opportunities, to assist in housing and the provision of suitable water supplies for agriculture, sewerage, drinking, cooking and so on, and without limiting the scope of the objects to provide especially for persons in underprivileged and developing countries and to do all such lawful things as are incidental to or conducive to the attainment of the above objects or any of them;

- (c) to apply and oversee the application of money and other property for the alleviation of poverty and the provision of relief and development activities and projects in developing countries; and
- (d) without limiting the generality of clause 3.2(c), to apply and oversee the application of money and other property towards the provision or support of health clinics, the education and health education, vocational training, improvement of literacy, employment support and other programs which support improvements in the wellbeing of communities and the population in developing countries.

### **3.3 Powers**

Solely to carry out the Objects, the Company may exercise all of the powers of an individual and a company under the Corporations Act.

## **4. MEMBERS**

### **4.1 Eligibility to Become An Ordinary Member**

- (a) Any person that:
  - (1) signs and forwards to the Secretary a written application for membership in the form set out in Appendix 1 or in such other form as determined by the Board from time to time;
  - (2) pays the then applicable membership fee,

may be admitted as an Ordinary Member if approved by a resolution of the Board made in accordance with this Constitution.
- (b) The Board may decline the application of any applicant to become an Ordinary Member of the Company.

### **4.2 Notification of Result of Application**

- (a) Upon the Board accepting an applicant's application to become a Member of the Company, the Secretary will send to the person confirmation of their acceptance as a Member of the Company.
- (b) If the application of any applicant to become a Member of the Company is rejected, the Secretary must, as soon as practicable, notify that applicant of that rejection. In no case will the Board or the Company be required to give any reason for the rejection of the applicant.

### 4.3 Commencement of Membership

For the avoidance of doubt, an applicant who complies with clause 4.1 becomes a Member of the Company upon the making of a Board resolution to that effect.

### 4.4 Membership Fees

- (a) The annual membership fees payable by Members will be as determined by the Board from time to time.
- (b) There will be no entrance fee on becoming a Member.
- (c) Annual membership fees may be paid for up to 10 years in advance.

### 4.5 Cessation of Membership and Non Payment of Membership Fees

A person immediately ceases to be a Member if:

- (a) the person resigns his or her Membership by giving written notice to the Secretary;
- (b) the person dies;
- (c) the person is expelled in accordance with clause 4.6;
- (d) the person becomes bankrupt or insolvent or makes an arrangement or composition with creditors of the person's joint or separate estate generally;
- (e) the person becomes of unsound mind or becomes a person whose person or estate is liable to be dealt with in any way under a law related to mental health;
- (f) the Board deeming, in its sole discretion, the Member to be an untraceable Member because the person has not responded to correspondence within 60 days; or
- (g) a majority of the Directors of the Board present at a meeting of the Board resolve to expel that person as a Member for failure to pay their membership fees and at the time that resolution is passed:
  - (1) a notice of default in relation to the failure of that person to pay their membership fees had been sent to the person by the Secretary not earlier than 60 days after the date those fees were due to be paid;
  - (2) the notice of default gives the person a further period of at least 30 days in which to rectify the default by paying the outstanding membership fees; and
  - (3) the person fails to rectify the default by paying the outstanding membership fees within the period allowed by the notice of default.

### 4.6 Discipline of Member

Subject to clause 4.7, if in the opinion of the Board, a person is guilty of past or present conduct that is detrimental to the interests or objects of the Company, the Board may resolve to expel or suspend such person from membership of the Company.

### 4.7 Discipline of Member and Natural Justice Procedure

- (a) A resolution of the Board passed at a Board meeting pursuant to clause 4.6 (**"the Resolution"**), will be of no force or effect unless prior to passing the Resolution:

- (1) the Board gives not less than 14 days prior notice in writing to the person referred to in the proposed resolution (“**the Notice**”);
  - (2) the Notice includes a notification to the person that he or she has a personal right of appearance at the Board meeting at which the proposed Resolution is to be considered; and
  - (3) the Notice includes a statement containing reasonable particulars of the person’s detrimental conduct to be considered by the Board.
- (b) Either prior to or at the meeting of the Board, the person may request the Chair to elaborate upon any of the particulars set forth in the said statement. The Board should attempt to comply with such a request. The person may put to the Board such facts or submissions as he may consider relevant and shall be given a reasonable opportunity to address the Board.
- (c) The Resolution will not be passed unless it is carried by a majority of 75% of the Directors of the Board present at that meeting of the Board.

#### **4.8. Admission of Life Members**

- (a) Any person:
- (1) who was admitted as a Life Member of the Company prior to the date that this clause 4.8 takes effect; and
  - (2) is recored in the register as a LifeMember immediately prior to this clause taking effect,
- will continue to be classified as a Life Member of the company for as long as they remain a Member of the Company.
- (b) The Board may by a resolution made in accordance with this Constitution admit as a Life Member of the Company any person who is an Ordinary Member of the Company.
- (c) Any such admission of a person as a Life Member of the Company will take effect from the time the Board passes the resolution referred to in paragraph (b) of this clause or such later time as may be specified in that reolution.
- (d) At the time that a resolution referred to in paragraph (b) of this clause takes effect the Ordinary Member referred to in that reolution will cease to be classified as an Ordinary Member and will instead be classified as a Life Member.
- (e) In addition to the details of Members referred to in clause 5.1, the Secretary must note in the Register if a Member has been admitted as a Life Member.
- (f) Despite anything to the contrary in this Constitution, no membership fees of any nature may be levied by the Company on any person who has become a Life Member as a requirement to maintain their Life Membership of the Company.
- (g) Clauses 4.1, 4.4, 4.5(c) and 20.2 of this Constitution do not apply to Life Members.
- (h) Subject to this clause Life Members:

- (1) have the same rights, duties and obligations under this Constitution; and
- (2) are subject to the same provisions of this Constitution, as Ordinary Members.

## 5. REGISTER OF MEMBERS

### 5.1 The Register

The Secretary must keep the Register at the Office and must enter in the Register:

- (a) the full names and addresses of Members; and
- (b) the date on which each Member becomes and ceases to be a Member.

## 6. GENERAL MEETINGS

### 6.1 Annual general meeting

- (a) An Annual General Meeting of the Company must be held at least once in every calendar year.
- (b) The business of an Annual General Meeting may include any of the following (even if not stated in the notice of meeting):
  - (1) the annual financial statements and any auditor's report;
  - (2) the appointment of Directors; and
  - (3) the appointment and remuneration of any auditor.
- (c) At an Annual General Meeting, the chairperson must allow a reasonable opportunity for the Members:
  - (1) to ask questions or comment on the management of the Company; or
  - (2) if an auditor or an auditor's representative is present in their capacity as appointed auditor of the Company, to ask the auditor or the auditor's representative questions relevant to the conduct of the audit and the content of the auditor's report.

### 6.2 Holding of General Meetings

General meetings are to be held at the times and places resolved by the Company in general meeting or, if no time or place is resolved, as resolved by the Board.

### 6.3 Convening of General Meetings

- (a) The Directors may at any time convene a general meeting of the Company.
- (b) If the Company receives a written request from Members with at least 5% of the votes that may be cast at a general meeting to call a general meeting (**a Meeting Request**), the Board must:
  - (1) give all Members notice of a general meeting within 21 days of the Meeting Request; and

- (2) hold the general meeting within 2 months of the Meeting Request.
- (c) The Meeting Request must:
  - (1) be in writing;
  - (2) state the resolution/s to be proposed at the meeting;
  - (3) be signed by all the Members making the Meeting Request; and
  - (4) be given to the Company.
- (d) Members may inspect and copy the Register by appointment with the Secretary but only for the purpose contemplated in clause 6.3(b). The Register must not be used for any other purpose.
- (e) If the Board does not call the meeting within 21 days of a Meeting Request, 50% or more of the Members who made the Meeting Request may call a general meeting.
- (f) To call and hold a meeting under clause 6.3(e) the Members must:
  - (1) as far as possible, follow the general meeting procedures in this Constitution; and
  - (2) hold the general meeting within three months after making the Meeting Request.
- (g) The Company must pay the Members who make the Meeting Request any reasonable expenses they incur because the Board did not call and hold the meeting.
- (h) The Board must ensure that any general meeting is held at a reasonable time and, if any Members are entitled to physically attend, at a reasonable location or locations.
- (i) The Board 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 a Court under the Corporations Act.
- (j) If a general meeting is called and arranged to be held following a Meeting Request, the Directors may not:
  - (1) postpone it to be held later than 2 months after the Meeting Request; or
  - (2) cancel it without the consent of the requisitioning Members.

#### **6.4 Notice of Meetings**

- (a) At least 21 days prior notice must be given of a meeting of Members unless:
  - (1) the Corporations Act otherwise provides;
  - (2) in the case of an Annual General Meeting, all the Members entitled to attend and vote agree beforehand; or
  - (3) in the case of any other General Meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.

- (b) The notice must be in writing and:
- (1) specify the place, date and time of the meeting;
  - (2) in the case of special business, the general nature of that business;
  - (3) if virtual meeting technology is to be used, provide sufficient information to allow the Members to participate by means of the technology;
  - (4) include the information under clauses 9.1 and 9.2;
  - (5) include an approved form of appointment of proxy; and
  - (6) state that any proxy form (or a certified copy) must be signed and received by the Company at the Office, a facsimile number at the Office or a place, facsimile number or electronic address specified for the purpose in the notice of meeting, not later than the close of business on the Business Day before the general meeting or adjourned meeting or taking of the poll, at which the person named in the instrument proposes to vote.

#### **6.5 Omission to Give Notice**

The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice does not invalidate the proceedings at the meeting.

#### **6.6 Ordinary and Special Business**

- (a) Other than items of business requiring a Special Resolution due to the provisions of the Corporations Act or this Constitution, all other items of business to be conducted at a meeting of Members will be dealt with as ordinary business and will be passed upon the vote in favour of at least 50% of the votes cast by Members entitled to vote on the resolution.
- (b) Business conducted at an annual general meeting for:
- (1) the confirmation of the minutes of the preceding meeting;
  - (2) the receipt and consideration of the annual financial report and the reports of the Directors and the auditors;
  - (3) the election of Directors; and
  - (4) the transaction of any business which under the Corporations Act or this Constitution is required to be transacted,

will be dealt with as ordinary business.

#### **6.7 Resolutions to Amend Constitution**

- (a) A resolution to amend this Constitution or this clause 7.7 shall be dealt with as a Special Resolution and will be decided in the affirmative where 75% of the votes cast by Members present at the meeting are cast in favour of the resolution.
- (b) Any such amendment will be subject to meeting any requirements relating to any proposed amendment of this Constitution imposed on the Company:

- (1) by the Australian Taxation Office or any other governmental authority as a condition of the Company being and remaining tax exempt under the Tax Act or as a condition of the Gift Fund being and remaining a deductible gift recipient under the Tax Act;
- (2) by any law or any governmental authority that governs the activities of the Company and the operation of the Gift Fund and any other fund operated by the Company.

## 6.8 Members' Statements

- (a) Subject to clause 6.8(b), Members may request that the Company give to all of its Members a statement (**a Statement**) about:
  - (1) a resolution that is proposed to be moved at a General Meeting; or
  - (2) any other matter that may be properly considered at a General Meeting.
- (b) The Statement must be:
  - (1) no more than 1000 words; and
  - (2) non-defamatory.
- (c) The Members' request must be:
  - (1) in writing;
  - (2) signed by the Members making the request;
  - (3) given to the Secretary; and
  - (4) made by Members with at least 5% of the votes that may be cast on the resolution or at least 100 Members who are entitled to vote at the meeting.
- (d) The Board may, in its sole discretion, distribute any Statement that complies with clauses 6.8(b) and (c) as soon as practicable and in accordance with clause 26.

## 7. PROCEEDINGS AT GENERAL MEETINGS

### 7.1 Quorum

- (a) No business is to be transacted at any General Meeting unless a quorum is present at the time the meeting proceeds to business.
- (b) Subject to the following paragraph of this clause, the number of Members present in person or by proxy who shall constitute a quorum will be 5.
- (c) Should at anytime the total number of Members of the Company is less than 15, then the Members present in person or by proxy (being not less than 3) will be a quorum.

### 7.2 Lack of Quorum

If within 30 minutes after the time appointed for a General Meeting a quorum is not present:

- (a) in the case of a meeting convened upon the request of the Members, the meeting must be dissolved; and
- (b) in any other case, the meeting will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Directors determine.

At the adjourned meeting, the Members present in person or by proxy (being not less than 3) will be a quorum. If at the adjourned meeting that quorum is not present within 30 minutes after the time appointed for the meeting, the meeting will be dissolved.

### **7.3 Chair of General Meetings**

- (a) The Chairperson of the Board of Directors presides as the Chair at every General Meeting.
- (b) If there is no Chairperson or if the Chairperson is not present within 15 minutes after the time appointed for that meeting or is unable or unwilling or refuses to act as the Chair of that meeting, the Deputy Chairperson (if any) will act as the Chair at that meeting.
- (c) If there is no Chairperson or Deputy Chairperson, or if the Chairperson and Deputy Chairperson are not present within 15 minutes after the time appointed for that meeting or they are unable or unwilling or refuse to act as the Chair of that meeting, those entitled to be present and to vote at the meeting must choose another Director as the Chair.
- (d) If no Director is so chosen or if all the Directors present decline to act as the Chair of that meeting, the Members present must choose one of their own number to act as the Chair of that meeting of Members.
- (e) The Chair will be entitled to exercise one vote in their capacity as a Member of the Company on any motion put to the meeting, but in the case of an equality of votes will not have a second or casting vote.

### **7.4 Adjournment**

The Chair of a General Meeting may, with the consent of the meeting (and must if directed by the meeting), adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

### **7.5 Notice of adjourned meeting**

It is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned general meeting, unless the meeting is adjourned for 21 days or more, in which case notice of the adjourned meeting is to be given as in the case of an original meeting.

### **7.6 Decision on resolutions**

- (a) Subject to clause 7.6(b) a resolution put to the vote at a General Meeting of the Company, is to be decided on a show of hands unless:
  - (1) a poll is (before or on the declaration of the result of the show of hands) demanded by the Chair (other than a resolution for the election of the Chair of



a meeting or a resolution for the adjournment of a meeting) or by not less than 3 Members having the right to vote at the meeting; or

(2) virtual meeting technology is used, in which case voting must occur by poll.

- (b) A question arising at a General Meeting of the Company relating to the order of business, procedure or conduct of the meeting must be referred to the Chair of the meeting, whose decision is final.

## **7.7 Minutes as Evidence of Result**

Unless a poll is duly demanded under clause 7.8, a declaration by the Chair of that meeting that a resolution has, on the show of hands, been carried or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company signed by the Chair of that meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

## **7.8 Taking of poll**

- (a) If a poll is required or duly demanded it must be taken before the close of the meeting in the manner and at the time and place, as the Chair of the meeting may direct. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded provided that a poll on the election of a Chair of a meeting or on any question of adjournment must be taken at the meeting and without adjournment.
- (b) The demand for a poll does not prevent the meeting continuing for the transaction of any business other than the question on which a poll has been demanded.
- (c) The demand for a poll may be withdrawn.
- (d) In the case of a dispute as to the admission or rejection of a vote on a show of hands or on a poll, the Chair of that meeting must determine the dispute and the determination made in good faith will be final and conclusive.

## **7.9 Use of virtual meeting technology in General Meetings**

- (a) The Company may hold a General Meeting at any two or more locations using any virtual meeting technology that gives the Members as a whole a reasonable opportunity to participate including a reasonable opportunity to exercise a right to speak.
- (b) A person participating through the use of virtual meeting technology will be deemed to be present at the meeting in person.
- (c) A person participating through the use of virtual meeting technology:
- (1) must be given the opportunity to participate in a vote in real time; and
  - (2) may, in the sole discretion of the Board, be given the opportunity to record a vote in advance of the meeting, in which case the voter may elect to vote in real time or in advance.
- (d) A document that is required or permitted to be tabled at a meeting using virtual meeting technology is taken to have been tabled if it is:

- (1) given to the persons entitled to attend the meeting (whether physically or using virtual meeting technology) before the meeting; or
- (2) made accessible to the persons entitled to attend the meeting (whether physically or using virtual meeting technology) during the meeting.

## **8. VOTES OF MEMBERS**

### **8.1 Entitlement to vote**

Subject to this Constitution, at a General Meeting every Member present in person or represented by proxy has one vote, whether on a show of hands or on a poll.

### **8.2 When there is an equality of votes**

In the case of an equality of votes whether on a show of hands or on a poll, the motion is lost.

### **8.3 Circulating Member Resolutions**

- (a) This clause does not apply to a special resolution, a resolution to remove a Director or a resolution to appoint or remove an auditor.
- (b) At the discretion of the Board, a resolution may be passed without a meeting if:
  - (1) notice is given to all Members entitled to vote; and
  - (2) at least 75% of Members entitled to vote approve the resolution in writing.
- (c) For the purpose of this clause:
  - (1) the notice must include the wording of the resolution and may be distributed by any means, including electronic communication;
  - (2) approval in writing includes approval by email and any other means of electronic communication; and
  - (3) the resolution will fail if it does not receive the required approval within seven days after the notice is given.
- (d) The resolution is passed when approval is given to the Secretary by the last person necessary to constitute 75% majority in favour of the resolution.

## **9. PROXIES**

### **9.1 Appointment of Proxy**

- (a) Subject to clause 9.1(b), a Member may appoint one proxy only, who may but need not be a Member of the Company, and that proxy is entitled to vote on a show of hands or on a poll.
- (b) If the Member is entitled to cast two or more votes at the meeting, they may appoint two proxies. If the Member appoints two proxies and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half of the votes.

## **9.2 Instrument of proxy**

The instrument appointing a proxy must be in writing signed by the appointor. 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 direction, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.

## **9.3 Proxy to be Deposited at Office**

- (a) The instrument appointing a proxy and the authority (if any) under which it is signed, or a certified copy of the authority, must be received by the Company not later than the close of business on the Business Day before the general meeting or adjourned meeting or taking of the poll, at which the person named in the instrument proposes to vote. If this clause 9.3 is not complied with, the instrument of proxy will be treated as invalid.
- (b) An instrument appointing a proxy is received when it is received at any of the following:
  - (1) the Office;
  - (2) a facsimile number at the Office; or
  - (3) a place, facsimile number or electronic address specified for the purpose in the notice of meeting.

## **9.4 Form of proxy**

- (a) An instrument appointing a proxy shall be in the form of that contained in Appendix 2 or in a form that is as similar to the form contained in Appendix 2 as the circumstances allow.
- (b) An instrument of proxy in which the name of the appointee is not filled in is taken to be given in favour of the Chair of the meeting to which it relates.

## **9.5 Power to demand poll**

The instrument appointing a proxy is taken to confer authority to demand, or join in demanding, a poll.

## **9.6 Identification of Proxy**

The Chair of a meeting may require a person acting as a proxy to establish to the satisfaction of the Chair of that meeting that he or she is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person does not comply, that person may be excluded from voting either upon a show of hands or upon a poll.

# **10. DIRECTORS**

## **10.1 Number**

- (a) At the first annual General Meeting following the adoption of this Constitution, the Members will elect not less than three (3) and not more than nine (9) Directors.
- (b) The period for which the Directors referred to in paragraph (a) of this clause will hold office will expire on or prior to the end of the third annual General Meeting held after the annual General Meeting referred to in that paragraph. The times at

which the tenure of each of those Directors terms of office expire will be determined in accordance with clause 11.1 of this Constitution.

- (c) Until the time of commencement of the first annual General Meeting following the adoption of this Constitution, there will be no change in the number of Directors entitled to hold office under the previous Constitution of the Company.

## **10.2 Eligibility**

Any natural person committed to the Objects is eligible to be a Director provided:

- (a) the person is a Member;
- (b) the person has consented in writing to be a Director;
- (c) the person has suitable qualifications, skills and experience to discharge the functions of a Director, as determined by the Board from time to time; and
- (d) the person is not ineligible to be a Director under:
  - (1) the Corporations Act; or
  - (2) the ACNC Legislation.

## **10.3 No remuneration**

Except as provided for in clause 19.2, no Director may receive any remuneration for his or her services as a Director.

## **10.4 Vacancies and Additional Directors**

- (a) Subject to clauses 11.1 and 11.3 and to paragraphs (b) and (c) of this clause, the Board may by resolution at any time, and from time to time, appoint any Member as a Director, either to fill a casual vacancy or as an addition to the existing Directors.
- (b) The Board is not entitled to appoint a Member as a Director pursuant to paragraph (a) of this clause if to do so would cause the number of Directors at any time to exceed the number fixed in accordance with this Constitution.
- (c) The Member appointed by the Board as a Director pursuant to paragraph (a) of this clause (whether to fill a casual vacancy or as an addition to the existing Directors):
  - (1) holds office only until the end of the next annual General Meeting, at which time they may be eligible for election by the Members;
  - (2) will not be taken into account in determining the Directors who are to retire by rotation at that meeting under clause 11.1.

## **10.5 Saving Provision**

Clause 10.1(a) only applies from the close of the first annual general meeting following adoption of this Constitution.

## 11. APPOINTMENT, REMOVAL AND DISQUALIFICATION OF DIRECTORS

### 11.1 Director's Retirement by Rotation, Maximum Consecutive Terms, Additional Directors and Filling of Vacated Offices

- (a) At the commencement of the first annual general meeting following the adoption of this Constitution, the tenure of each Director will automatically expire but the Director will be eligible for re-election.
- (b) Subject to the succeeding paragraphs of this clause, at every annual General Meeting commencing with the second annual General Meeting following the adoption of this Constitution, one third of the Directors (or if their number is not a multiple of three (3) then the nearest number to but not exceeding one-third) will retire from office but will be eligible for re-election as a Director.
- (c) For the purpose of clause 11.1(b), those Directors whose tenure will automatically expire will be determined in the following order:
  - (1) firstly, those Directors who have agreed to resign; then
  - (2) secondly, those Directors that must resign due to the expiration of their term of office under clause 11.1(d); then
  - (3) thirdly, and subject to clause 11.1(d), those Directors who have held the office of Director of the Company for the longest continuous period of time. If 2 or more Directors have held office for an equal continuous period of time, then the selection between them will be determined by lot administered by the Secretary.
- (d) No Director may retain office after the third annual General Meeting after the Director' was last appointed by an annual General Meeting without submitting himself or herself for election even though such submission results in more than one-third retiring from office at that meeting.
- (e) For the avoidance of doubt, a retiring Director will be entitled to act as a Director throughout the meeting at which he or she retires.
- (f) If a Member has been elected as a Director for three (3) consecutive terms at annual General Meetings of the Company, they are not eligible:
  - (1) to be elected as a Director at an annual General Meeting; or
  - (2) to be appointed by the Board as a Director (whether to fill a casual vacancy or as an additional Director) pursuant to clause 10.4,
 until the second annual General Meeting following the expiration of the last of those three (3) consecutive terms.
- (g) Subject to paragraph (f) of this clause, the vacated office of a Director may be filled at an annual General Meeting by the Members re-electing the Director whose tenure has expired or electing another Member to fill the vacancy.
- (h) Apart from:
  - (1) Directors whose tenure will expire at an annual General Meeting and who are eligible for re-election (and who advise the Secretary in writing that they wish to stand for re-election); and

(2) a person recommended by the Board for election as a Director,  
no Member is eligible for election as a Director at any General Meeting unless:

- (3) the prospective eligible candidate for the position of Director; or
- (4) any Member intending to nominate a prospective eligible candidate for the position of Director,

has at least 28 clear days before the meeting sent to the Secretary a notice in writing duly signed by 2 Members signifying the nominee's candidature for the office or the intention of such eligible candidate to nominate for the office of Director. Notice of each and every candidature must be forwarded to all Members not less than 21 days (or such lesser period as is from time to time permitted by the Corporations Act) prior to the meeting at which an election is to take place.

- (i) Any Director may retire from office upon giving notice in writing to the Board of the Director's intention to do so and such resignation takes effect upon the date specified in the notice or its earlier acceptance by the Board.

## **11.2 Removal of Directors**

- (a) Subject to clause 11.2(b), the Members in General Meeting may, by resolution, remove any Director from office.
- (b) No resolution for the removal of a Director from office is to be put to a General Meeting, unless notice signed by a Member duly qualified to vote at that meeting and signifying the intention of that Member to propose that resolution is received by the Company not less than 28 clear days before the date appointed for holding the meeting.
- (c) The Director who is the subject of the notice referred to in clause 11.2(b) may make representations in writing to the Secretary or Chairperson or Deputy Chairperson within a period of 28 days and may request that the representations be provided to the Members.
- (d) The Secretary or Chairperson or Deputy Chairperson may give a copy of the representations to each Member or, if they are not so given, the Director who is the subject of the notice may require that the representations be read out at the meeting.

## **11.3 Disqualification of Directors**

- (a) In addition to the circumstances in which the office of Director becomes vacant by virtue of the Corporations Act, the ACNC Legislation or elsewhere in this Constitution, the office of a Director becomes vacant if:
  - (1) the Director becomes of unsound mind or a person whose personal estate is dealt with in any way under the law relating to mental health;
  - (2) the Director becomes an insolvent under administration or makes any composition or arrangement with his or her creditors or any class of them;
  - (3) the Director is removed from office pursuant to this Constitution, the Corporations Act or the ACNC Legislation;

- (4) the Director is absent from three (3) consecutive meetings of the Board without leave of absence from the Chair and the Board resolves that the Director's office be vacated;
  - (5) the period for which the Director is appointed expires;
  - (6) the Director dies or ceases to be a Member; or
  - (7) the Director becomes ineligible to be a Director under the Corporations Act or the ACNC Legislation.
- (b) No proceedings of the Board, or any resolution passed at any meeting, will be invalidated by reason of any Director taking part or concurring in such meeting or resolution being then disqualified until an entry is made in the minutes of the Board of the Director's office having been so vacated.
- (c) Any Director whose office becomes so vacant will be eligible for re-election and the disqualifying conditions relating to that Director may be dispensed with, altered, varied or modified by a Special Resolution.

#### **11.4 Alternate Directors**

- (a) With the approval of a majority of the other Directors, a Director may appoint an Alternate Director to exercise some or all of the Director's powers for a specified period.
- (b) The person appointed as an Alternate Director must be a Member of the Company and otherwise eligible under this Constitution to be appointed as a Director at that time.
- (c) If the appointing Director requests the Company to give the Alternate Director notice of Directors' meetings, the Company must do so.
- (d) When an Alternate Director exercises the Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the appointing Director.
- (e) The appointing Director may terminate the Alternate Director's appointment at any time.
- (f) An appointment or its termination must be in writing. A copy must be given to the Company.
- (g) If the Director who appointed an Alternate Director is not present at a meeting of Directors, that Alternate Director may, subject to this Constitution and the Corporations Act, exercise all powers that the appointing Director may exercise (except the power to appoint an Alternate Director under paragraph (a) of this clause). However, an Alternate Director cannot exercise any powers of their appointing Director if that appointing Director ceases to be a Director.
- (h) The Company will not pay any remuneration to an Alternate Director for acting in that capacity.

## **12. OFFICE BEARERS**

### **12.1 Office Bearers**

The Office Bearers of the Company will consist of a Chairperson and a Deputy Chairperson, each of whom will be a Director of the Company.

### **12.2 Appointment and Termination of Office Bearers**

At the first meeting of the Board following each annual General Meeting, the Board will endeavour to appoint members of the Board to be the Chairperson and the Deputy Chairperson of the Company. The appointments will expire at the conclusion of the next annual General Meeting. These Office Bearers will be eligible for re-election and may serve an unlimited number of times as an Office Bearer for as long as they remain Directors of the Company. Subject to this Constitution, the Board will determine the powers and duties of each Office Bearer and may terminate a Director's appointment as an Office Bearer at any time.

### **12.3 Chairperson to preside at Annual General Meeting**

The person holding the office of Chairperson of the Board immediately before the commencement of an annual General Meeting will preside as the Chair of that annual General Meeting.

## **13. DUTIES OF DIRECTORS**

### **13.1 Management of the Company**

- (a) Subject to the Corporations Act, the ACNC Legislation and any other provision of this Constitution, the management of the business and affairs of the Company will be managed by the Board which may exercise all the powers and do everything that the Company may exercise or do and which is not required to be exercised or done by the Company in General Meeting. Without limitation, the Board may exercise all the Company's powers to:
  - (1) borrow or otherwise raise money;
  - (2) charge Company property; and
  - (3) issue debentures or give any other security for a debt, liability or obligation of the Company or (subject to clause 19) any other person.
- (b) The powers of the Board are subject to the Corporations Act, the ACNC Legislation, this Constitution and to any rules (not being inconsistent with this Constitution) from time to time made by the Company in General Meeting. No rule made by the Company in General Meeting invalidates any prior act of the Board which would have been valid if that rule had not been made.
- (c) Directors must comply with any duties imposed on them by the Corporations Act and with the duties described in governance standard 5 of the ACNC Legislation.
- (d) The Board may:
  - (1) appoint or employ a person to be an officer, agent or attorney of the Company with powers, discretions and duties, including those vested in or exercisable by the Board;



- (2) authorise an officer to delegate powers and duties vested in that officer; and
- (3) dismiss or remove any agent, officer or attorney with or without cause.

## **14. PROCEEDINGS OF DIRECTORS**

### **14.1 Procedures Generally**

The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. A Director may at any time, and the Secretary shall on the requisition of a Director, convene a Board meeting.

### **14.2 Quorum**

- (a) The quorum for a Board meeting is one-half of the number of Directors then holding office. If that is not a whole number, then the quorum will be the next whole number greater than one-half of the number of Directors then holding office.
- (b) No business may be conducted unless a quorum is present.
- (c) If the number of Directors in office at any time is not sufficient to constitute a quorum at a Board meeting, the remaining Directors must act as soon as possible to:
  - (1) increase the Directors to a number sufficient to constitute a quorum required under the Constitution;
  - (2) convene a general meeting of the Company for that purpose; or
  - (3) appoint additional Directors,
 and until that has happened the Directors may only act if and to the extent that there is an emergency requiring them to act.

### **14.3 Frequency of Board Meetings**

If and for as long as the Company is a signatory to the Code, the Board must meet at least twice (or such other number of times as may be required in order to comply with the Code from time to time) during each Financial Year.

### **14.4 Notice of Board Meetings**

- (a) Notice of a Board meeting is to be given to all Directors except to a Director whom the Secretary when giving notice to other Directors reasonably believes to be outside Australia.
- (b) A notice of meeting must:
  - (1) specify the time and place of the meeting;
  - (2) indicate the general nature of the business to be conducted; and
  - (3) be given at least 48 hours before the date of the meeting (unless the Board unanimously waives this requirement).
- (c) Non-receipt of notice of a Board meeting by, or a failure to give notice of a Board meeting to, a Director does not invalidate any act matter or thing done by or

resolution passed at the meeting if non-receipt or failure occurred by accident or error.

#### **14.5 Chair of Board Meetings**

- (a) The Chair will preside at every Board meeting, or if there is no Chair, or if at any Board meeting the Chair is not present within 10 minutes after the appointed time for holding the meeting, or if being present the Chair is unwilling to preside, the Deputy Chair will preside or if the Deputy Chair is not present or is unwilling to preside at the meeting, then the Directors who are present may choose one of their number to Chair the Board meeting.
- (b) The Chair will be entitled to exercise one vote in their capacity as a Director on any motion put to a meeting of the Board, but in the case of an equality of votes will not have a second or casting vote.

#### **14.6 Determinations**

Subject to this Constitution, questions arising at any Board meeting are to be decided by a majority of votes. Each Director has one vote and a determination by a majority of the Directors will for all purposes be deemed a determination of the Directors. If there is equality of votes at a meeting at which a quorum is present, the motion is lost.

#### **14.7 Delegation to Committees**

The Board may delegate any of its powers to one or more Committees consisting of one or more Directors or other persons as the Board thinks fit. Any Committee formed must comply with the regulations that may be imposed on it by the Board in exercising the Committee's delegated power.

#### **14.8 Procedure of Committees**

The meetings of Committees consisting of more than one person are governed by the clauses of this Constitution regulating the meetings of the Directors so far as they are applicable and are not superseded by any regulations made by the Directors under this Constitution.

#### **14.9 Validation of Irregular Acts**

Any act done by any Board meeting or by a Committee or by any person acting as a Director will be valid even if it is later discovered:

- (a) that there was some defect in the appointment or continuance in office of a Director or such other person; or
- (b) that any of them was disqualified or had vacated office or were not entitled to vote.

#### **14.10 Written Resolutions**

A resolution in writing signed or (subject to the Corporations Act) approved by fax or email by more than one half of all Directors of the Company is as valid and effectual as if it had been passed at a duly held Board meeting. That resolution may consist of several copies of a document each signed or approved by one or more Directors.

#### **14.11 Board Meetings by Electronic Communication**

For the purposes of this Constitution, the contemporaneous linking together by Electronic Communication of a number of Directors not less than the quorum, whether or not any one or more of the Directors is out of Australia, is deemed to constitute a Board meeting and all the provisions of this Constitution as to the Board meetings will apply to such meetings held by Electronic Communication so long as the following conditions are met:

- (a) all the Directors for the time being entitled to receive notice of the Board meeting entitled to notice of a meeting by Electronic Communication and to be linked by Electronic Communication for the purposes of such meeting. Notice of any such meeting may be given by the Electronic Communication or in any other manner permitted by this Constitution;
- (b) at the commencement of the Board meeting each Director taking part in the meeting by Electronic Communication is able to hear each of the other Directors taking part;
- (c) at the commencement of the Board meeting each Director must acknowledge his or her presence for the purpose of the Board meeting to all the other Directors taking part;
- (d) a minute of the proceedings of a meeting by Electronic Communication is sufficient evidence of those proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chair.

### **15. MINUTES**

#### **15.1 Minutes to be Kept**

- (a) The Directors must ensure that:
  - (1) minutes of all General Meetings, Board meetings and committee meetings (including the names of the Directors present at each Board meeting and of any Committee); and
  - (2) all resolutions and proceedings of General Meetings and of Board meeting and of Committees; and
  - (3) records of resolutions passed by Members, Directors and committees without a meeting,

are recorded and kept with the Company's records as soon as practicable (being no later than one month after the meeting or passing of the resolution).

- (b) The minutes must be signed by the Chair of the meeting at which the proceedings were held or by the Chair of the next meeting.
- (c) The Company must ensure that Directors have access to the Company's records and financial documents at all reasonable times.

## **16. CONFIDENTIALITY AND DIRECTORS**

### **16.1 Confidentiality**

A Director must:

- (a) keep confidential all Confidential Information; and
- (b) not disclose any Confidential Information to any person, except:
  - (1) as required by law;
  - (2) with the prior written consent of the Company; or
  - (3) to the Company's agents, employees or advisers in the proper performance of the Director's responsibilities and duties under this Constitution and as may be determined from time to time by the Board.

### **16.2 Use of Confidential Information**

No Director may use any Confidential Information for the benefit of any person except the Company.

### **16.3 Confidential Information in the Public Domain**

If any Confidential Information is lawfully within the public domain then to the extent that the Confidential Information is public, and subject to clause 16.4, a Director's obligations under clause 16.1 will cease in respect of that Confidential Information.

### **16.4 Uncertainty**

If there is uncertainty as to whether:

- (a) any information is Confidential Information; or
- (b) any Confidential Information is lawfully within the public domain,

that information will be deemed to be Confidential Information and is not within the public domain, unless the Director is advised by the Board in writing to the contrary.

### **16.5 Security**

A Director must:

- (a) maintain proper and secure custody of all Confidential Information; and
- (b) use his or her best endeavours to prevent the use or disclosure of the Confidential Information by third parties.

### **16.6 Delivery or destruction of Confidential Information**

- (a) A Director must immediately deliver to the Company all Confidential Information that is physically capable of delivery:
  - (1) at the end of that person's term as a Director; and
  - (2) at any time at the request of a person authorised by the Board.

- (b) Instead of delivering Confidential Information, the Board may direct the Director to destroy Confidential Information and certify in writing to the Company that the Confidential Information has been destroyed.
- (c) The Board may direct that Confidential Information contained in computer software or data be destroyed by erasing it from the magnetic media on which it is stored so that the information cannot be recovered or reconstructed.

#### **16.7 Director must not make Copies**

- (a) A Director must not make any copy or summary of any Confidential Information, except if required to do so in the course of his or her duties as a Director.
- (b) If a Director is required to make a copy or summary of Confidential Information in the course of the Director's duties and functions as a Director, the copy or summary belongs to the Company.

#### **16.8 Obligations to Continue**

- (a) A Director must comply with the obligations under this clause 16 at all times during and after that person's term as a Director.
- (b) The Company may enforce the obligations under this clause 16 at any time.

#### **16.9 No limitation**

Nothing in this clause 16 shall limit any other duty of confidentiality of a Director at law or in equity.

### **17. DIRECTORS CONFLICTS OF INTEREST**

#### **17.1 Conflicts of Interest**

- (a) A Director must disclose the fact, nature, character and extent of any perceived or actual material conflict of interest to the other Directors (or the Members if the other Directors share that conflict).
- (b) For the avoidance of doubt, a conflict of interest will be deemed to exist for the purposes of this clause if a Director is involved as an officer, employee or consultant in:
  - (1) a project or an entity that proposes to carry out a project in any Recipient Country which (having regard to the past activities of the Company or its Affiliates in that Recipient Country and any planned future direction of the activities of the Company in that Recipient Country) it would be reasonable to conclude is of a nature that the Company or its Affiliates may be interested in undertaking or funding;
  - (2) a project or an entity that proposes to carry out a project in any Recipient Country or in any other country where an Affiliate operates which requires any assistance from the Company or any of those Affiliates in order to implement or fund that project.
- (c) The nature of a Director's interest in any contract, agreement or arrangement or the existence of a potential project referred to in clause 17.1(b) must be declared by

that Director to their fellow Directors as soon as reasonably practicable after they become aware of it, and in any event not later than the next meeting of the Directors held after the relevant facts have come to his or her knowledge.

- (d) A general notice that a Director is a member of any specified firm or corporation and is to be regarded as interested in all transactions with that firm or corporation is a sufficient declaration under this clause as regards the Director and the transactions. After giving the general notice it is not necessary for the Director to give any special notice relating to any particular transaction with that firm or corporation. This paragraph does not apply to the declaration of the existence of a potential project referred to in clause 17.1(b).
- (e) The Secretary must record in the minutes any declaration made or any general notice given by a Director under this clause.

- (f) Subject to the Corporations Act and the ACNC Legislation, a Director who has a material personal interest in a matter that is being considered at a meeting of Directors:

- (1) must not be present while the matter is being considered at a Board meeting; or
- (2) vote on the matter,

unless permitted by clause 17.1(g).

- (g) Provided the Board approves and it is permitted by law, a Director may be present or vote if:

- (1) the interest arises because the Director is a Member and the other Members have the same interest;
- (2) the interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as an officer of the Company;
- (3) the interest relates to any payment by the Company under clause 24 in respect of an indemnity permitted under the Corporations Act or any contract relating to such an indemnity; or
- (4) ASIC makes an order allowing the Director to vote on the matter; or
- (5) the interest relates to a contract the Company is proposing to enter into that:
  - (A) is subject to approval by the Members; and
  - (B) will not impose any obligation on the Company if it is not approved by the Members;
- (6) the Directors who do not have a material personal interest in the matter pass a resolution that:
  - (A) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company, and
  - (B) states that those Directors are satisfied that the interest should not stop the Director from voting or being present; or

- (7) the interest arises merely because the Director has a right of subrogation in relation to a guarantee or indemnity referred to in clause 13.

## **17.2 Director's interests**

Provided a Director complies with clause 17.1 they may:

- (a) hold any other position in the Company, except that of auditor;
- (b) hold any office or place of profit in any other entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a Member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) sign or participate in the execution of a document by or on behalf of the Company; and
- (g) do any of the above despite the fiduciary relationship of the Director's office:
  - (1) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (2) without affecting the validity of any contract or arrangement.

## **18. COMPANY SECRETARY**

### **18.1 Appointment of Company Secretary**

- (a) The Directors must appoint at least one Secretary of the Company at the remuneration and on such terms and conditions as the Directors think fit. Any Secretary so appointed may be removed by the Directors.
- (b) A person may not be appointed as Secretary unless the person:
  - (1) consents in writing to being appointed as Secretary;
  - (2) is at least 18 years of age; and
  - (3) is a resident in Australia.

## **19. NON-PROFIT, USE OF INCOME AND PROPERTY AND PAYMENTS TO MEMBERS AND DIRECTORS**

### **19.1 Payments to Directors**

Except as provided in clause 19.2(b), no Director may receive any fees or other remuneration (in whatever form) for his or her services as a Director.

## **19.2 Use of Income and Property and Payments to Members and Directors**

- (a) The income and property of the Company must be applied solely towards the promotion of the Objects of the Company as set out in this Constitution. No portion of it is to be paid or transferred directly or indirectly by way of profit to Members or paid to Directors as fees for their services as Directors or paid to any Member Related Entities.
- (b) Paragraph 19.2(a) of this clause does not prevent the payment in good faith by the Company:
  - (1) of remuneration to any officers or servants of the Company for any services rendered to the Company, if such payment is approved by the Board and the amount payable is not more than an amount that would be commercially reasonable for the service;
  - (2) for goods supplied in the ordinary and usual course of business by Members or Directors or by any Member Related Entities;
  - (3) of interest at a reasonable and proper rate on money borrowed from any Members, Directors or any Member Related Entities;
  - (4) of reasonable and proper rent for premises leased or licensed to the Company by any Members, Directors or any Member Related Entities; or
  - (5) of out of pocket expenses incurred by a Director in performing Company duties if such payment is approved by the Board.

## **20. LIABILITY OF MEMBERS, GUARANTEE BY MEMBERS AND WINDING UP**

### **20.1 Liability of Members Limited**

The liability of the Members of the Company is limited.

### **20.2 Guarantee by Members**

Every Member of the Company undertakes to contribute an amount not exceeding \$20.00 to the property of the Company if it is wound while they remain a Member or within one year after they cease to be a Member, for payment of the debts and liabilities of the Company contracted before the Member ceases to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributors among themselves.

### **20.3 Winding Up**

Subject to clause 20.4 of this Constitution, if upon the winding up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any property or amount of money, that property or amount of money will not be paid to or distributed amongst the Members of the Company but will be given or transferred to one or more other funds, authorities or institutions:

- (a) each of which has objects similar to or not inconsistent with the Objects of the Company of this Constitution; and
- (b) whose constitution, memorandum and articles of association, by-laws or other governing rules prohibit the distribution of its income and property among its



members to an extent at least as great as is imposed on the Company under this Constitution,

to be determined by the Board at or before the time of dissolution and in default thereof by application to the Supreme Court of New South Wales for determination.

#### **20.4 Winding Up or Revocation of Status of the Company as a Deductible Gift Recipient**

If the Company is wound up or its endorsement as a deductible gift recipient is revoked (whichever occurs first), any surplus of the following assets shall be transferred to another organisation with similar objects, which is charitable at law, and to which income tax deductible gifts can be made:

- (a) gifts of money or property for the principal purpose of the organisation;
- (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the organisation;
- (c) money received by the organisation because of such gifts and contributions.

### **21. FINANCIAL RECORDS**

#### **21.1 Financial and Other Records**

- (a) The Directors must cause proper financial and other records to be kept and provide annual financial reporting to Members in accordance with all legal and regulatory requirements. The Directors must from time to time determine whether and to what extent and at what times and places and under what conditions or regulations any financial or other records of the Company are to be open to the inspection of Members who are not Directors.
- (b) No Member (who is not a Director) has the right to inspect any records of the Company except as conferred by statute or authorised by the Directors or by the Company in General Meeting.
- (c) The Company must retain its records for at least seven years.

#### **21.2 Time for Financial Reports**

The interval between the end of a Financial Year of the Company and the annual financial reporting to Members must not exceed the period (if any) prescribed by the Corporations Act or the ACNC Legislation.

#### **21.3 Audit**

If required by law, the Company's books of account will be examined and audited by the auditors appointed by the Members at the annual General Meeting.

### **22. GIFT FUND**

#### **22.1 Establishment and Maintenance of Gift Fund**

- (a) The Company will continue to maintain a Gift Fund for the purpose of the relief of people in countries declared by the Minister for Foreign Affairs to be developing countries. The Board will continue to ensure that Gift Fund is maintained and applied in such a way that the Gift Fund will remain the subject of a declaration of the Commonwealth Treasurer under section 30-85 of the Tax Act.

- (b) All gifts of money and property and any income derived from such money, property or other investments arising out of such gifts will be paid into or credited to the Gift Fund, and the Gift Fund will not receive any other money or property.
- (c) A separate bank account will be opened and maintained for the Gift Fund and all gifts and income derived from such gifts or the investment of such gifts will be kept separate from the other funds of the Company.
- (d) Receipts for donations of property to the Gift Fund are to be issued in the name of the Gift Fund and show its Australian Business Number.
- (e) The Gift Fund is only invested on an arm's length basis in investments that can be managed in a way to ensure that the use of the funds reflect the Objects of the Company and not as a means of excessive accumulation of investment assets.
- (f) Notwithstanding any other provision in this Constitution, if upon the first occurrence of the revocation of the Company's endorsement as a deductible gift recipient under Subdivision 30-B of the Tax Act or the winding up of the Gift Fund, there remains, after the satisfaction of all of the debts and liabilities of the Gift Fund, any property or money whatsoever, the surplus assets will be given or distributed to one or more other funds, authorities or institutions determined by the Company, which is charitable at law and which is a fund, authority or institution that operates a fund for the purpose of the relief of people in countries declared by the Minister for Foreign Affairs to be developing countries and which is, at the time of that gift or distribution, a fund that is the subject of a declaration of the Commonwealth Treasurer under section 30-85 of the Tax Act.

## **22.2 Future Gifts**

If any person, firm, company or association at any future date pays or transfers to the Company any money or any real or personal property and directs the Company to hold that money or property upon like trusts as are contained in this Constitution, the Company will in hold that money or property in the Gift Fund as fully as if it had been paid or transferred to the Company at the time of the adoption of this Constitution.

## **23. DISPUTES AND MEDIATION**

### **23.1 Application**

- (a) The grievance procedure set out in this clause applies to disputes under this Constitution between:
  - (1) a Member and another Member; or
  - (2) a Member and the Company.
- (b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute came to the attention of all of the parties.

### **23.2 Mediation**

- (a) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend the meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.

- (b) The mediator must be:
  - (1) a person chosen by agreement between the parties; or
  - (2) in the absence of agreement:
    - (A) in the case of a dispute between a Member and another Member, a person appointed by the Board; or
    - (B) in the case of a dispute between a Member and the Company, a person who is a mediator appointed or employed by the Australian Commercial Disputes Centre.
- (c) A mediator can be a Member but not a party to the dispute.
- (d) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (e) The mediator, in conducting the mediation must:
  - (1) give the parties to the mediation every opportunity to be heard; and
  - (2) allow due consideration by all parties of any written statement by any party; and
  - (3) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (f) The mediator must not determine the dispute.
- (g) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Corporations Act, the ACNC Legislation or otherwise at law.

## **24. INDEMNITY OF OFFICERS**

### **24.1 Officers and Employees to be Indemnified**

- (a) The Company will indemnify each Officer, employee, auditor and agent out of the assets of the Company to the Relevant Extent against any Liability incurred by the Officer, employee, auditor or agent in or arising out of the conduct of the business of the Company or a subsidiary of the Company or in or arising out of the discharge of the Duties of the Officer, employee, auditor or agent.
- (b) Subject to the Corporations Act and the ACNC Legislation, where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of any Officer, employee, auditor or agent.
- (c) Subject to the Corporations Act and the ACNC Legislation, where the Board considers it appropriate, the Company may:
  - (1) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an Officer, employee, auditor or agent against any Liability incurred by the Officer, employee, auditor or agent in or arising out of the conduct of the business of the Company or a subsidiary of the Company or in or arising out of the discharge of the Duties of the Officer, employee, auditor or agent; and

- (2) bind itself and amend any contract or deed with any Officer, employee, auditor or agent to make the payments.
- (d) In this clause:
- (1) “**Duties**” includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an Officer, employee, auditor or agent by the Company or, where applicable, a subsidiary of the Company to any other corporation;
  - (2) “**Liability**” means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending an action for a liability incurred as an Officer, employee or auditor of the Company or an agent acting within the authority conferred upon them by the Company;
  - (3) “**Officer**” means:
    - (A) a Director or Secretary or a director or secretary of a subsidiary of the Company; or
    - (B) a person:
      - (i) who makes or participates in making decisions that affect the whole, or a substantial part, of the business of the Company or a subsidiary of the Company;
      - (ii) who has the capacity to affect significantly the financial standing of the Company or a subsidiary of the Company; or
      - (iii) in accordance with whose instructions or wishes the Directors or the directors of a subsidiary of the Company are accustomed to act (excluding advice given by the person in the proper performance of functions attached to the person’s professional capacity or their business relationship with the Directors or the directors of a subsidiary of the Company or the Company or a subsidiary of the Company),
    - (C) and includes a former Officer;
  - (3) “**Relevant Extent**” means:
    - (A) to the extent the Company is not precluded by law from doing so;
    - (B) to the extent and for the amount that the Officer, employee, auditor or agent is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
    - (C) where the Liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the Duties in relation to another corporation, to the extent and for the amount that the Officer, employee, auditor or agent is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.

## **25. SEAL**

The Company does not have a common seal.

## **26. NOTICES**

### **26.1 Notices to Members**

The Company may give notice to a Member:

- (a) personally;
- (b) by sending it by post to the Member at his or her registered address;
- (c) by sending it to the fax number or electronic mail address (if any) nominated by the Member; or
- (d) in any other way allowed under the Corporations Act.

### **26.2 Deemed Service**

- (a) If a notice is sent by post, service of the notice is taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected at the time at which the letter would be delivered in the ordinary course of post.
- (b) A notice sent by fax is deemed to be received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the recipient if produced before 5.00pm on a Business Day, otherwise on the next Business Day.
- (c) A notice sent by electronic mail is deemed to be received on the day of transmission, if transmitted before 5.00pm on a Business Day, otherwise on the next Business Day.
- (d) A notice sent by electronic mail is deemed not to be served only if the computer system used to send it reports that delivery failed.

### **26.3 Persons Entitled to Notice of General Meeting**

- (a) Notice of every General Meeting must be given in the manner authorised to:
  - (1) every Member;
  - (2) every Director; and
  - (3) the auditor for the time being (if any) of the Company.
- (b) No other person is entitled to receive notices of General Meetings.

## **27. AMENDMENTS TO CONSTITUTION**

### **27.1 Approval of Government Authorities to Amend Constitution**

- (a) This Constitution may only be amended by the passing of a special resolution of the Members in General Meeting to that effect in accordance with this Constitution and the Corporations Act.

- (b) The Members must not pass a special resolution that amends this Constitution if passing it causes the Company to no longer be a Charity.
- (c) If at the time a special resolution referred to in paragraph (a) of this clause is passed, the Company is exempt from income tax under the Tax Act or the Gift Fund is a Deductible Gift Recipient under the Tax Act and the Australian Taxation Office, AusAid or any other government department or agency require that any amendment to this Constitution must be approved by them in order to ensure that the Company continues to be exempt from income tax or for the Gift Fund to continue to be a Deductible Gift Recipient, the amendments that are the subject of that special resolution will not be effective unless and until they are approved by the Australian Taxation Office, AusAid or that other government department or agency, as the case may be.
- (d) If due to the operation of the *Charitable Fundraising Act 1991* or any other law or regulation that applies to the Company, any government department or agency requires under that any amendment to this Constitution must be approved by them, the amendments that are the subject of a special resolution referred to in paragraph (a) of this clause will not be effective unless and until they are approved by that government department or agency.

**APPENDIX 1  
APPLICATION FOR MEMBERSHIP**

**APPLICATION FOR MEMBERSHIP of ASIAN AID ORGANISATION LIMITED ACN 002 286 419**

I, \_\_\_\_\_ of \_\_\_\_\_  
*(name of Eligible Entity)* *(address)*

desire to become a Member of **ASIAN AID ORGANISATION LIMITED ACN 002 286 419** (the "**Company**")

In the event of my admission as a Member, I agree to be bound by the Constitution and Rules of the Company for the time being in force.

\_\_\_\_\_  
*Signature of Applicant*

Date:

**APPENDIX 2  
FORM OF APPOINTMENT OF PROXY**

I, \_\_\_\_\_ of \_\_\_\_\_, being a Member of Asian Aid Organisation Limited ACN 002 286 419 ("**the Company**"), hereby appoint \_\_\_\_\_ of \_\_\_\_\_

or, failing him/her,  
of \_\_\_\_\_

as my proxy to vote for me and on my behalf at the \*Annual General/\*General Meeting of the Company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ and at any adjournment of that meeting.

This form is to be used in accordance with the directions below. Unless the proxy is directed, he or she may vote or abstain as he or she thinks fit.

[Description of resolution]	For	Against	Abstain
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\*Strike out whichever is not desired.

.....  
(Signature)

**INSTRUCTIONS**

- (i) *A proxy must be a Member of the Company.*
- (ii) *To direct the appointee to cast your vote in respect of an item of business in a particular manner either on a show of hands or on a poll, place a sufficient indication (including, without limitation, a tick or a cross) in the relevant box in respect of that item of business.*