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**TECHNICAL AND VOCATIONAL EDUCATION AND TRAINING
AUSTRALIA LIMITED**

ACN 062 758 632

(“Company”)

CONSTITUTION

A Company limited by Guarantee
and not having a share capital

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TABLE OF CONTENTS

1.	INTERPRETATION.....	1
2.	REPLACEABLE RULES.....	4
3.	PURPOSES OF THE COMPANY.....	4
4.	INCOME AND REMUNERATION.....	6
5.	LIMITED LIABILITY.....	6
6.	GUARANTEE.....	6
7.	WINDING UP.....	7
8.	MEMBERSHIP.....	7
9.	REGISTER OF MEMBERS.....	7
10.	APPLICATION.....	8
11.	CHARTER.....	8
12.	ANNUAL GENERAL MEETINGS.....	8
13.	DIRECTORS MAY CONVENE.....	8
14.	NOTICE OF GENERAL MEETINGS.....	9
15.	QUORUM.....	9
16.	LACK OF QUORUM.....	9
17.	MEMBERS' MEETING CHAIRPERSON.....	10
18.	ADJOURNMENT.....	10
19.	VOTING.....	10
20.	POLL.....	11
21.	CASTING VOTE.....	11
22.	PROXIES.....	11
23.	NUMBER OF VOTES.....	13
24.	CIRCULATING RESOLUTIONS.....	13
25.	ELECTRONIC MEETINGS OF MEMBERS.....	13
	DIRECTORS.....	14
26.	APPOINTMENT AND REMOVAL OF THE BOARD.....	14
27.	CASUAL VACANCY.....	15
28.	ROTATION OF DIRECTORS.....	15
29.	REMOVAL OF DIRECTOR.....	16
30.	VACATION OF OFFICE.....	17
31.	POWERS AND DUTIES OF THE DIRECTORS.....	17
32.	DIRECTORS POWERS.....	18
33.	SIGNATORIES.....	19
	DIRECTORS' MEETINGS.....	20
34.	PURPOSE OF DIRECTORS' MEETINGS.....	20
35.	MINUTES.....	20
36.	BOARD MEETINGS.....	20
37.	MAJORITY DECISIONS.....	20

38.	CONFLICT OF INTEREST	20
39.	QUORUM FOR BOARD MEETINGS	21
40.	LACK OF BOARD QUORUM	21
41.	BOARD SUB-COMMITTEES	21
42.	METHOD OF MEETING.....	21
43.	SUB-COMMITTEE MEETINGS	22
44.	DEFECTS IN APPOINTMENT OF DIRECTORS	22
45.	CIRCULATING MINUTES	22
46.	SECRETARY	22
47.	SEAL.....	22
48.	ACCOUNTS	23
49.	AUDIT	23
50.	NOTICE	23
51.	ENTITLEMENTS TO NOTICE	24
52.	OFFICERS INDEMNITIES AND INSURANCE	24

1. Interpretation

1.1 In this Constitution unless the context requires otherwise:-

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

“**AEShareNet Charter**” means the AEShareNet Charter between AEShareNet Limited or the Company as the successor of AEShareNet Limited and the other persons admitted as members of that charter up to the date of this Constitution but subject to amendment from time to time in accordance with its provisions.

“**AQTF**” means the Australian Quality Training Framework collaboratively developed by NQC or if the Australian Quality Training Framework ceases to exist for any reason, any replacement or successor that fulfils the function of the Australian Quality Training Framework;

“**Board**” means the board of Directors of the Company;

“**Board Chairperson**” means the chairperson of the Board appointed in accordance with clause 26.5;

“**Charter**” unless the reference is to AEShareNet Charter, means such other Charter as the Company may decide to implement by special resolution at a general meeting of Members from time to time;

“**Charter Member**” means a member of the AEShareNet Charter or other relevant Charter as applicable.

“**Commonwealth Government**” means the government of the Commonwealth of Australia;

“**Company**” means Technical and Vocational Education and Training Australia Limited ACN 062 758 632 trading under the name of TVET Australia;

“**DEST**” means the Commonwealth Department of Education, Science and Training, an agency of the Commonwealth Government or, if the Department of Education, Science and Training ceases to exist in name or otherwise, then DEST shall mean such other body as is determined by the Members of the Company;

“**Directors**” means the persons appointed as directors of the Company;

“**document**” includes any paper or other material on which there is writing or printing or on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, a disc, tape or other article from which sounds, images or messages are capable of being reproduced;

“**Member**” means a member of the Company;

“**Members’ Meeting Chairperson**” means the Member who is elected by an ordinary majority as the chairperson of the relevant meeting of Members by those Members present in person or by proxy at the relevant meeting;

“**MCVTE**” means the Ministerial Council for Vocational and Technical Education as established under the *Skilling Australia’s Workforce Act 2005* which consists of the Ministers from the Commonwealth and each State and Territory that is a party to the Skilling Australia’s Workforce Agreement and who have responsibility for vocational and technical education or if that council ceases to exist for any reason, any replacement council, body, committee, or person that fulfils the functions of that council;

“**National Industry Bodies**” means the peak employer / employee industry bodies, namely Australian Chamber of Commerce and Industry, Australian Industry Group, Business Council of Australia, National Farmers’ Federation, and the Australian Council of Trade Unions and/or their successors;

“**NISC**” means the National Industry Skills Committee as defined by the *Skilling Australia’s Workforce Act 2005* (Commonwealth) or if that committee ceases to exist for any reason, any replacement council, body, committee, or person that fulfils the functions of that committee;

“**NQC**” means the National Quality Council as defined by the *Skilling Australia’s Workforce Act 2005* (Commonwealth) or if that council ceases to exist for any reason, any replacement council, body, committee, or person that fulfils the functions of that council;

“**NSOC**” means the National Senior Officials Committee which consists of the Chief Executive Officers of Commonwealth, State and Territory Government agencies responsible for vocational and technical education or if that committee ceases to exist for any reason, any replacement council, body, committee, or person that fulfils the functions of that committee;

“**Qualified Person**” means the person nominated as Board Chairperson or any other person who has skills and abilities to contribute expertise relevant to the Company in areas required to achieve the purposes of the Company including intellectual property, product development or distribution expertise, regulation

or quality assessment for training providers. No person shall be a Qualified Person if that person:

- has a paid or unpaid involvement in State or Territory Government processes relating to the assessment and regulation of the quality of RTOs and training providers seeking registration under the AQTF; or
- has a conflict of interest as a Director in relation to the Company's commercial operations, namely the publishing and distribution of training materials and the regulation of the quality of RTOs and training providers seeking registration under the AQTF;

“**RTO**” or “**Registered Training Organisation**” means a training organisation registered by a State or Territory registering body or delegate in accordance with the relevant legislation within each jurisdiction and the AQTF 2007 or the version of the AQTF that is current from time to time;

“**Seal**” means the common seal of the Company and includes any official seal of the Company;

“**Secretary**” means any person appointed to perform the duties of a secretary of the Company;

“**Skilling Australia's Workforce Agreement**” has the meaning given under the *Skilling Australia's Workforce Act 2005* (Commonwealth);

“**State and Territory Ministers**” means the government Ministers who have responsibility for vocational education and training from the State and Territory governments in each of the States of New South Wales, Victoria, Queensland, South Australia, Tasmania, Western Australia and of the Northern Territory and the Australian Capital Territory;

“**Subscriber**” means a person who has agreed to the terms of this Constitution at the registration of the Company.

“**Training Package**” means an integrated set of nationally endorsed standards, guidelines and qualifications for training, assessing and recognising people's skills, developed by industry to meet the training needs of an industry or group of industries;

- 1.2 The singular shall mean and include the plural and vice versa and any gender shall mean and include all other genders.

- 1.3 References to any statutory enactment shall mean and be construed as references to that enactment as amended modified and re-enacted from time to time.
- 1.4 The headings used in this Constitution are for ease of reference only and shall not affect the Constitution or interpretation of this Constitution.
- 1.5 The expression “person” shall include any corporation, firm, partnership, association, government and non-government department and any other entity or body of persons whether incorporated or not regardless of whether it constitutes a separate legal entity or not.
- 1.6 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 Act, the same meaning as in that provision of the Act.
- 1.7 Where any word or phrase is given a default meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.8 Except so far as the contrary intention appears in this Constitution, a reference to anything to be managed by the Directors includes a reference to that thing being managed by an executive officer under the general direction or control of the Directors.

2. Replaceable Rules

All Replaceable Rules contained in the Act shall not apply to the Company, except those which are mandatory for public companies.

3. Purposes of the Company

The purposes for which the Company is established are to conduct publicly-funded, business and commercial activities with the intention of improving the quality of education and training related to the activities of the MCVTE and having the following broad objectives:-

- 3.1 To provide independent secretariat and support services for councils and committees as determined from time to time by the MCVTE, including NISC and NQC whilst engaging with other councils and committees as required by MCVTE and in accordance with jointly agreed protocols and protocols set down by those councils and committees governing the nature and content of the secretariat and support services to be provided.

- 3.2 To develop an online 'one stop shop' or single entry point for users to identify and acquire training materials, read copyright requirements and enter licenses for the use of that material.
- 3.3 To publish and produce high quality, useable and cost-effective national competency standards, training packages and competency based curriculum and related materials which support the use of national training products.
- 3.4 To maintain and enhance the existing central point of discovery for materials available from public and private sector organisations
- 3.5 To facilitate the discovery and use of learning resources.
- 3.6 To further develop and manage a system to provide easy access to adaptable training materials.
- 3.7 To distribute, market and publish training materials, including training packages.
- 3.8 To archive copyright training materials.
- 3.9 To manage and further develop a copyright and licensing system for training or other materials and play a leadership role in the development of policies, practices, standards and protocols within the sector in relation to copyright matters.
- 3.10 To co-ordinate advice to the MCVTE through the NQC on inter-operability standards in relation to training materials.
- 3.11 To provide awareness-raising, education, training, consultancy and research services in relation to intellectual property management and copyright.
- 3.12 To undertake such other business and commercial activities related to the attainment of the purposes of the Company.
- 3.13 To provide registration and audit services under the AQTF to RTOs operating in multiple jurisdictions.
- 3.14 To provide additional registration and audit functions under the AQTF and on behalf of States and Territories where they agree to delegate those functions.
- 3.15 To make recommendations on issues of registration and audit in respect of RTOs that deliver training services to overseas students in accordance with the *Education Services for Overseas Students Act 2000 (Cth)*.

PROVIDED THAT notwithstanding anything to the contrary in this Constitution the Company shall only do such acts matters and things which in law are charitable.

4. Income and Remuneration

- 4.1 The income and property of the Company shall be applied solely toward the promotion of the purposes of the Company as set forth in this Constitution and no portion of it shall be paid or transferred directly or indirectly by way of dividend bonus or in any other manner by way of profit to Members of the Company.
- 4.2 The Directors may be remunerated, but only in accordance with a determination made from time to time by the Members.
- 4.3 Directors are entitled to receive the following additional remuneration:-
- 4.3.1 Reimbursement of out-of-pocket expenses incurred in carrying out the duties of a Director where the payment does not exceed the amount approved by the Board.
- 4.3.2 Payment for any service rendered to the Company in a professional or technical capacity where the provision of that service has the approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms.
- 4.3.3 Payment as an employee of the Company where the terms of employment have been approved by resolution of the Board.

5. Limited Liability

The liability of the Members of the Company is limited.

6. Guarantee

Every Member of the Company undertakes to contribute up to twenty dollars (\$20.00) to the property of the Company in the event of its being wound up while he or she is a Member or within one year after he or she ceases to be a Member for payment of the debts and liabilities of the Company (contracted before he or she ceases to be a Member) and the costs charges and expenses of winding up and for adjustment of the rights of contributories among themselves.

7. Winding Up

If upon the winding up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed amongst the Members of the Company but shall be given or transferred to some other institution or institutions with purposes similar to the Company and whose Constitution shall prohibit the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Company by this Constitution, such institution or institutions to be determined by the Members of the Company at or before the time of dissolution and in default of such a determination by application to any relevant Court having jurisdiction for determination.

8. Membership

- 8.1 Only Ministers on the MCVTE from time to time are eligible for membership of the Company.
- 8.2 The Members are those Ministers on the MCVTE who are Members as at the date of adopting of this Constitution who by the adoption of this Constitution agree to be Members and be bound by this Constitution and their successors.
- 8.3 A Member shall automatically cease to be a Member on the happening of any of the following events:-
- 8.3.1 The Member ceases to be a Minister on the MCVTE.
- 8.3.2 The Member resigns his or her membership by notice in writing to the Secretary of the Company.
- 8.4 There shall be no entrance fee or annual subscription payable by any Member for his or her membership of the Company.
- 8.5 Each Member, in their capacity as a representative of a relevant “Body Politic” (as defined in the AEShareNet Charter), will be required to pay the annual subscription fees as a Charter Member of the AEShareNet Charter.

9. Register of Members

- 9.1 The Company Secretary must maintain a Register of Members at the registered office.

- 9.2 When an applicant has been accepted for membership the Secretary must cause the Member's name to be entered in the Register of Members and must send to the Member written notice of the acceptance.
- 9.3 The address of a Member in the Register of Members will be the address of the Member for the purpose of service of any notices to Members.
- 9.4 The rights of any Member will not be transferable.

10. Application

Applications for membership shall be made in such form and in such manner as the Members may from time to time prescribe and every applicant for membership shall sign an acknowledgement that the prospective Member will be bound by the provisions of this Constitution.

11. Charter

- 11.1 There shall be a Charter (or more than one Charter) making further provision for the carrying out of the purposes of the Company.
- 11.2 The first Charter shall be that annexed to the initial Constitution as Annexure B and agreed by the Subscribers at the time of registration of the Company.
- 11.3 The Charter binds the Company and all Members (in addition to the Charter Members).
- 11.4 Subject to any provisions to the contrary contained in the Charter, the Charter may be amended by special resolution at a general meeting of the Company.

12. Annual General Meetings

An annual general meeting of the Company shall be held in accordance with the provisions of the Act and at such time and place as the Directors shall in each year determine.

13. Directors may Convene

- 13.1 The Board of Directors may whenever it thinks fit convene a general meeting of Members. Such general meeting shall be held as soon as practicable.
- 13.2 Any two (2) Members may whenever they think fit by notice in writing require the Directors to convene a general meeting of the Members. Such general meeting shall be held as soon as practicable.

14. Notice of General Meetings

- 14.1 Subject to the provisions of the Act and at common law relating to agreements for shorter notice, at least 21 days notice must be given of a meeting of the Members.
- 14.2 A notice of meeting of the Members must specify:-
- 14.2.1 The place, the day and the time of the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this).
- 14.2.2 The general nature of the business to be transacted at the meeting, and
- 14.2.3 Such other information as is required by section 249L of the Act.
- 14.3 The Company may hold a meeting of its Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- 14.4 Notice of every meeting of the Members must be given in the manner authorised by clause 50 to:-
- 14.4.1 Every Member and every Director, and
- 14.4.2 The auditor for the time being of the Company, and
- No other person is entitled to receive notices of meetings of the Members.
- Note: See Section 249H of the Act.

15. Quorum

- 15.1 No business shall be transacted at any general meeting unless a quorum of Members is present in person or by proxy at all times during the meeting.
- 15.2 A quorum shall be five (5) Members entitled to vote.

16. Lack of Quorum

If a quorum is not present within half an hour from the time appointed from the meeting:-

- 16.1 where the meeting was convened upon the requisition of Members - the meeting shall be dissolved; or

16.2 in any other case:-

16.2.1 the meeting stands adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and place; and

16.2.2 if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting:-

16.2.2.1 two Members (or one Member where the Company has only one Member entitled to vote) constitute a quorum; or

16.2.2.2 where two Members (or one Member where the company has only one member entitled to vote) are not present the meeting shall be dissolved.

17. Members' Meeting Chairperson

The Members' Meeting Chairperson shall preside as chairperson at every general meeting of the Company.

18. Adjournment

The Members' Meeting Chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place.

19. Voting

19.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands of the Members present in person or by proxy or by any other method as the Members' Meeting Chairperson may determine unless a poll is (before or on the declaration of the result of the show of hands) demanded:-

19.1.1 by the Members' Meeting Chairperson; or

19.1.2 by at least two Members present in person.

19.2 Unless a poll is so demanded a declaration by the Members' Meeting Chairperson that a resolution has been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence

of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

19.3 The demand for a poll may be withdrawn.

20. Poll

If a poll is duly demanded it shall be taken in such a manner and either at once or after an interval or adjournment or otherwise as the Members' Meeting Chairperson directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a Members' Meeting Chairperson or on a question of adjournment shall be taken immediately.

21. Casting Vote

In the case of an equality of votes, whether on a show of hands or on a poll, the Members' Meeting Chairperson of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

22. Proxies

22.1 A Member who is entitled to attend and cast a vote at a meeting of the Company's Members may appoint a person (whether or not a Member) as the Member's proxy to attend and vote for the Member at the meeting.

22.2 Instruments appointing proxies.

22.2.1 An instrument appointing a proxy must be in writing under the hand of the appointor or of his or her attorney duly authorised in writing or, if the appointor is a corporation, either under seal or executed in accordance with the Act or under the hand of an officer or attorney duly authorised.

22.2.2 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote in the resolution except as specified in the instrument.

22.2.3 An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.

22.3 An instrument appointment a proxy must be in the following form or in a form that is as similar to the following form as the circumstances allow:-

(Name of Company)

I/We being a Member/Members of the abovenamed Company appoint of or, in his/her absence, of as my/our proxy to vote for me/us on my/our behalf at the meeting of the Company’s Members to be held on the day of, 20.. and at any adjournment of that meeting.

This form is to be used * in favour of / * against the resolution

SIGNED this day of, 20..

* Strike out whichever is not desired # To be inserted if desired

22.4 An instrument appointing a proxy must not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a certified copy of that power or authority, is or are deposited not less than forty-eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four (24) hours before the time appointed for the taking of the poll, at the registered office of the Company or at such other place in Australia as is specified for that purpose in the notice convening the meeting.

22.5 A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal, or the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, if no intimation in writing of the death, unsoundness or mind or revocation has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

23. Number of Votes

A Member may vote in person or by proxy on a show of hands and every person present and entitled to vote shall have one vote and on a poll every Member present in person or by proxy shall have one vote.

24. Circulating resolutions

24.1 A resolution in writing signed by all Members entitled to receive notice of the resolution and vote on the resolution shall be as valid and effectual as if it had been passed at a General Meeting of the Company duly convened and held. Any such resolution may consist of several documents (including facsimile copies) in like form, each signed by one or more Members.

24.2 The resolution is passed when the last Member signs.

Note: See Section 249A of the Act.

25. Electronic Meetings of Members

25.1 Without limiting the generality of any other provision of this Constitution, a meeting of Members may be called or held using any technology consented to by all the Members. A consent of a Member for the purposes of this clause may be a standing one. A Member may only withdraw his or her consent with reasonable notice before the meeting of Members.

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

25.2.1 All the Members for the time being entitled to receive notice of the meeting of Members will be entitled to notice of a meeting held by an electronic device and to be linked by an electronic device for the purpose of such meeting. Notice of any such meeting must be given on the electronic device or in any other manner permitted by this Constitution.

25.2.2 Each of the Members taking part in the meeting by an electronic device must be able to hear each of the other Members taking part at the commencement of the meeting.

- 25.3 A Member may not leave a meeting held by an electronic device by disconnecting his or her electronic device unless he or she has previously expressly notified the Members' Meeting Chairperson of the meeting of his or her intention to leave the meeting, and a Member will be conclusively presumed to have been present and to have formed part of the quorum at all times during such a meeting until such notified time of his or her leaving the meeting.
- 25.4 A minute of the proceedings at meetings held by an electronic device will be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Members' Meeting Chairperson.
- 25.5 For the purpose of this clause "electronic device" includes telephone, television or any other audio or visual device that permits instantaneous communication.

DIRECTORS

26. Appointment and Removal of the Board

- 26.1 The number of Directors shall be not more than eight and the names of the first Directors shall be those Directors in office as at the date of adoption of this Constitution.
- 26.2 Only Qualified Persons nominated in the manner prescribed in clause 26.3 and 26.4 are eligible to be appointed, re-appointed, elected and re-elected as Directors and to remain as Directors.
- 26.3 Six (6) Directors must be appointed as follows:-
- 26.3.1 The Commonwealth Government Minister who has responsibility for vocational education and training will nominate two (2) Directors, of which one will, unless determined otherwise by the Minister at the Minister's discretion, be the chairperson of NQC. If the chairperson of NQC is nominated by the Minister, then that person shall be Board Chairperson providing they agree to be Board Chairperson. If the chairperson of NQC is not nominated by the Minister or does not want to be Board Chairperson, then the Minister will decide which other nominated Director will be appointed the Board Chairperson.
- 26.3.2 The State and Territory Ministers will nominate two (2) Directors.

- 26.3.3 The Commonwealth Government Minister who has responsibility for vocational education and training will also nominate two (2) further Directors following consultation with MCVTE drawn from nominations from National Industry Bodies.
- 26.4 The Directors shall have power at any time, and from time to time, to appoint up to a maximum of two persons who in the opinion of the Directors will provide relevant expertise such as intellectual property, product development or distribution, regulation or quality assessment for RTOs expertise as may be required by the Company.
- 26.5 The Board Chairperson shall be the person appointed pursuant to the provisions of clause 26.3.1.
- 26.6 In the absence of the Board Chairperson at any meeting of the Board, the Directors shall, by majority vote elect another person to fulfil the role of the chairperson at that meeting of the Board.

27. Casual Vacancy

The Directors shall have power at any time, and from time to time, to appoint a person, either to fill a casual vacancy or as an addition to the Directors but so that the total number of members of the Directors shall not at any time exceed the number fixed in accordance with this Constitution and shall at all times reflect the requirements for nomination in clause 26 of this Constitution. Any member of the board of Directors so appointed shall hold office only until the next following annual general meeting unless the appointment of that person as a Director is confirmed by resolution of that annual general meeting.

28. Rotation of Directors

With the exception of the Board Chairperson, the following provisions will apply to all the Directors:-

- 28.1 At every Annual General Meeting those Directors who have been in office for three years or until the third annual general meeting following such Directors' appointment (whichever is the longer) must retire.
- 28.2 The Directors or Director to retire pursuant to .1 of this clause will be the Directors or Director longest in office since last being elected, but as between Directors who were elected on the same day the Director or Directors to retire will (in default of agreement between them) be determined by lot. Any Director retiring under .4 or .6 of this clause will not be taken into account in

determining the number of Directors to retire by rotation or in determining which Directors will retire by rotation.

- 28.3 The Members at any general meeting at which any Directors retire in accordance with this clause may fill up the vacated office by electing a like number of persons to be Directors and may fill up any other vacancies.
- 28.4 If, at any Annual General Meeting at which an election of Directors ought to take place, the places of the retiring Directors are not filled up, the retiring Directors, or such of them as have not had their places filled up, will (if willing to act) continue in office until the Annual General Meeting in the next year, and so on from year to year until their places are filled up, unless and except insofar as it is determined at such meeting to reduce the number of Directors.
- 28.5 No person (not being a retiring Director) will be eligible for election to the office of Director at any general meeting unless such candidate has left at the registered office of the Company a notice in writing duly signed by the nominee giving such candidate's consent to the nomination. Notice of every candidate for the position of Director must be served on Members at least twenty-one (21) days before any general meeting at which the election is to take place.
- 28.6 A Director retiring subject to .4 of this clause will retain office until the dissolution or adjournment of the meeting at which such Director's successor is elected and will be eligible for re-election.
- 28.7 Subject to clause 26.2, a retiring Director is eligible for re-election.

29. Removal of Director

Subject to the provisions of the Act the Company in general meeting may at any time by ordinary resolution remove any appointed or elected Director before the expiration of such Director's period of office and, if so desired, elect another person in such Director's stead. The person so elected must hold office during such time only as the Director in whose place such Director is elected would have held office if such Director had not been removed.

Note: See Section 203D of the Act.

30. Vacation of Office

The office of a Director or Secretary shall become vacant by virtue of the provisions of the Act (if applicable) or alternatively under any one or more of the following if the Director:-

- 30.1 Ceases to hold that office entitling him or her to be nominated as a Director.
- 30.2 Becomes bankrupt or makes any arrangement or composition with his or her creditors generally.
- 30.3 Becomes prohibited from being a director of a company by reason of any provision of the Act.
- 30.4 Becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health.
- 30.5 Resigns his or her office by notice in writing to the Company.
- 30.6 For more than six months is absent without permission of the Directors from meetings of the Directors held during that period.
- 30.7 Is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of his or her interest as required by the Act.

31. Powers and Duties of the Directors

- 31.1 Subject to the Act and this Constitution, the business of the Company shall be managed by the Directors who may pay all expenses incurred including any expenses incurred in promoting and registering the Company. The Directors may exercise all such powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Company in general meeting. Any rule, regulation or by-law of the Company made by the Directors may be disallowed by the Company in general meeting but no resolution or regulation made by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if the resolution or regulation has not been passed or made.
- 31.2 The Directors may confer on an executive officer of the Company such of the powers conferred on the Directors by this Constitution, to be exercised for such purposes, on such terms, for such time and with such restrictions as they think fit and all or any of those powers may be conferred collaterally with, but

not to the exclusion of, the powers of the Directors and may be revoked or varied by the Directors as they think fit from time to time.

32. Directors Powers

The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its property, or any part of it, as security for any debt, liability, or obligation of the Company and the Company has the powers set out in the Act that are consistent with the purposes of the Company, including but not limited to the following:-

- 32.1 To undertake any other business and commercial activities relating to the national training system as are consistent with the purposes of the Company.
- 32.2 To enter into agreements, including joint ventures, to provide goods and services related to training packages.
- 32.3 To appoint, employ, remove or suspend such managers, clerks, secretaries, project officers, workers and other persons as may be necessary or convenient for the purposes of the Company, and to enter into arrangements with any employer whereby the services of officers or employees of that employer are made available to the Company.
- 32.4 To take such steps as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Company in the form of grants, donations and funding from government and non-government organisations with respect to particular projects to be funded by the Company.
- 32.5 To purchase, take on lease or in exchange, hire, and otherwise acquire any lands, building, easement or property, real and personal, and any rights or privileges which may be requisite for the purpose of, or capable of being conveniently used in connection with, any of the purposes of the Company.
- 32.6 To invest and deal with moneys and other property of the Company not immediately required in such manner as may be deemed expedient by the Board.
- 32.7 To make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.
- 32.8 To sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company.

- 32.9 To take or hold mortgages, liens, and charges to secure payment of the purchase price or any unpaid balance of the purchase price, of any of the Company's products and property of whatsoever kind sold by the Company or any money due to the Company from purchasers and others.
- 32.10 To hold any gift of property, whether subject to any special trust or for any one or more of the purposes of the Company, provided that if the Company takes or holds any property which may be subject to any trusts, the Company shall only deal with that property in such manner as is allowed by law having regard to such trusts.
- 32.11 To carry on any other business or commercial activities which may seem to the Board capable of being conveniently carried on in connection with the Company's business or commercial activities or calculated directly or indirectly to enhance the value or render profitable any of the Company's property.
- 32.12 The Directors may, by power of attorney, appoint any person or persons (either by name or by reference to position or office held) to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- 32.13 Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit, and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him or her.
- 32.14 To do all such other things as are incidental or conducive to the attainment of the purposes of the Company and the exercise of the powers of the Company.

33. Signatories

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed by two Directors, as the case may be, or in such other manner and by such persons (whether Directors or officers of the Company or not) as the Directors from time to time determine but not otherwise.

DIRECTORS' MEETINGS

34. Purpose of Directors' Meetings

The Board of Directors may meet together for the despatch of business and adjourn and otherwise regulate its meetings as it thinks fit.

35. Minutes

The Board shall cause minutes to be made:-

- 35.1 of all appointments of officers and servants;
- 35.2 of names of members of the Directors present at all meetings of the Company and of the Directors;
- 35.3 of all proceedings at all meetings of the Company and of the Directors.

36. Board Meetings

- 35.1 The Directors may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit but must meet not less than three times in every calendar year. A Director may at any time and the Secretary shall on the requisition of a Director summon a meeting of the Directors by giving reasonable notice individually to each Director.
- 35.2 A Director may not attend or vote by proxy at a meeting of the Directors.

37. Majority Decisions

Questions arising at any meeting of the Directors shall be decided on by a majority of votes and a determination by a majority of the members of the Directors shall for all purposes be deemed a determination of the Directors. In case of an equality of votes the Board Chairperson of the meeting shall have a second or casting vote in addition to any vote he or she has in his or her capacity as a Director.

38. Conflict of Interest

Subject to the exceptions and other requirements provided under the Act, a Director shall not vote in respect of any contract or proposed contract with the Company in which he or she is interested, or any related matter, and if he or she does so his or her vote shall not be counted.

Note: See Sections 199A-199C of the Act.

39. Quorum for Board Meetings

The quorum necessary for the transaction of the business of the Directors shall be four (4).

40. Lack of Board Quorum

The continuing members of the Board may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the necessary quorum of Directors, the continuing member or members may act for the purpose of increasing the number of Directors to that number (or such other number as may be required by this Constitution) or of summoning a general meeting of the Company, but for no other purpose.

41. Board Sub-Committees

The Board may delegate any of its powers and or functions (not being duties imposed on the Directors as directors by the Act or the general law) to one or more sub-committees consisting of such Member or members of the Company as the Board thinks fit. Any sub-committee so formed shall conform to any regulation that may be imposed by the Board and subject to these regulation shall have power to co-opt any Member or members of the Company.

42. Method of Meeting

- 42.1 The Directors may meet together either in person or by telephone, television, electronic device (as defined in clause 25.5) or any other form of technology providing audio or audio-visual instantaneous communication consented to by Directors for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- 42.2 A resolution passed by such a conference shall, notwithstanding that the Directors are not present together at one place at the time of the conference, be deemed to have been passed at a meeting of the Directors held on the day and at the time at which the conference was held. The provisions of this Constitution relating to proceedings of Directors shall apply, in so far as they are capable of application, to such conferences.
- 42.3 A Director may not leave a meeting held by an instantaneous communication device by disconnecting his or her instantaneous communication device unless he or she has previously expressly notified the Board Chairperson of the meeting of his or her intention to leave the meeting, and a Director will be conclusively presumed to have been present and to have formed part of the

quorum at all times during such a meeting until such notified time of his or her leaving the meeting.

- 42.4 A consent of a Director for the purposes of this clause may be a standing one and a Director may only withdraw his or her consent with reasonable notice before the meeting of Directors.

43. Sub-Committee Meetings

A sub-committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present. Each member shall have one vote and in the case of an equality of votes the chairperson of the sub-committee shall have a second or casting vote.

44. Defects in Appointment of Directors

All acts done by any meeting of the Directors or of a committee of Directors or by any persons acting as a Director, notwithstanding that this is afterwards discovered that there was some defect in the appointment of a person to be a Director or to be a member of the committee, or to act as a Director, or that a person so appointed was disqualified, are as valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the committee to the extent required by the Act.

Note: See Section 201M of the Act.

45. Circulating Minutes

A resolution in writing signed by all Directors entitled to receive notice of a meeting of the Directors, shall be as valid and effectual as if it has been passed at a meeting of the Directors duly convened and held. The resolution may consist of several documents in identical form each signed by one or more Directors. The resolution is passed when the last Director signs.

46. Secretary

The Secretary shall in accordance with the Act be appointed by the Board for such term, upon such conditions as it thinks fit, and any Secretary so appointed may be removed by it.

47. Seal

The Directors shall provide for the safe custody of the seal (if any) which shall be only used by the authority of the Directors or of a sub-committee of the Directors

authorised by the Directors in that behalf, and every instrument to which the seal is affixed shall be signed by a Director and shall be countersigned by the Secretary or by a second Director.

48. Accounts

The Directors shall cause proper accounting and other records to be kept and shall distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached) accompanied by a copy of the Auditors report as required by the Act provided however that the Directors shall cause to be made out and laid before each annual general meeting a balance sheet and profit and loss account made up to date not more than five months before the date of the meeting.

49. Audit

A properly qualified auditor or auditors shall be appointed and his or her or their duties regulated in accordance with the Act.

50. Notice

- 50.1 A notice may be given by the Company to any Member either by serving it on him or her personally or by sending it by post to him or her at his or her address as shown in the register of Members or the address supplied by him or her to the Company for the giving of notices to him or her.
- 50.2 A notice may be given by the Company to any Director either by serving it on him or her personally or by sending it by post to him or her at his or her usual residential address or the address supplied by him or her to the Company for the giving of notices to him or her.
- 50.3 Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post.
- 50.4 A notice may also be served by facsimile. Such a notice is taken to be received on the business day on which it is sent, if confirmation by the sending facsimile machine is obtained.

51. Entitlements to Notice

51.1 Notice of every general meeting shall be given in any manner authorised in this clause to:-

51.1.1 Every Member.

51.1.2 The auditor or auditors for the time being of the Company.

51.1.3 The Directors for the time being of the Company.

51.2 No other person shall be entitled to receive notices of general meetings.

52. Officers Indemnities and Insurance

To the extent permitted by Part 2D.2 of the Act:-

52.1 The Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company against any liability for costs and expenses incurred by that person as an Officer of the Company or a wholly-owned subsidiary of the Company in defending any proceedings in which judgment is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any proceedings in which the Court grants relief to the person under the Act.

52.2 The Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company against any liability incurred by that person as an Officer of the Company or of a wholly-owned subsidiary of the Company, to another person (other than the Company or a related body corporate of the Company) unless the liability arises out of conduct involving a lack of good faith.

52.3 The Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Company or of a subsidiary of the Company against a liability:-

52.3.1 Incurred by the person in his or her capacity as an Officer of the Company or a subsidiary of the Company or in the course of acting in connection with the affairs of the Company or a subsidiary of the Company or otherwise arising out of the Officer's holding such office PROVIDED THAT the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of Sections 182 and 183 of the Act.

52.3.2 For costs and expenses incurred by that person in defending proceedings, whatever their outcome.

DATED this ____ day of _____ 2007