

Constitution

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Constitution

THE KING DAVID SCHOOL HOLDINGS LIMITED ("Company")

1 Definitions and interpretation

1.1 Definitions

In this Constitution, unless the context requires otherwise:

"ACNC Act" means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

"Applicable Act" means:

- (a) while the Company is a Registered Charity, the ACNC Act and the Corporations Act; or
- (b) if the Company is not, or ceases to be, a Registered Charity, even if it is still a charity, the Corporations Act

"Chairperson" means the person appointed from time to time pursuant to clause 16.1(c) and who may include the President.

"Commissioner" means the Commissioner of Taxation, a second Commissioner of Taxation or a Deputy Commissioner of Taxation or other delegate of the Commissioner of Taxation for the purposes of the Tax Act.

"Company" means the company defined at the beginning of this Constitution.

"Constitution" means this Constitution as supplemented, substituted or amended from time to time and includes any rules, regulations and by-laws of the Company for the time being in force.

"Corporations Act" means the *Corporations Act 2001* (Cth).

"Council Member" means each Director.

"Director" means a person occupying a position on the School Council.

"Elected Director" means a person elected as a Director pursuant to clause 17 and **"Elected Council Member"** has the same meaning.

"Eligible Charity" means a fund, authority or institution which –

- (a) is charitable at law; and
- (b) gifts or contributions to which are deductible under item 1 of the table in section 30-15 of the Tax Act; and
- (c) if required under the Tax Act, which has objects and purposes similar to the objects and purposes of the Company.

"Executive" means the persons who, together, comprise the executive body of the Company, established under clause 16.

"First Resolution" has the meaning given to that term in clause 10.3(a).

“Gift Fund” means the Gift Fund established for the purposes of the Tax Act in accordance with clause 5.

“Government Agency” means:

- (a) the Victorian Registration and Qualifications Authority;
- (b) a government or government department;
- (c) a governmental, semi-governmental, regulatory or judicial entity or authority; or
- (d) a person (whether autonomous or not) who is charged with the administration of a law.

“GST” has the meaning given to that term by Section 195-1 of the GST Act.

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999*

“Immediate Past President” means the person who held the office of President immediately prior to the incumbent President.

“KDS Parents’ Association” means The King David School Parents' Association Inc. (registered in the State of Victoria, incorporation number A0031076E).

“Member” means a natural person who is entered as a member in the Register and includes:

- (a) each Council Member;
- (b) each PJV Member;
- (c) each Parent Member;
- (d) the member of the School alumni appointed in accordance with clause 6.2(b) from time to time;
- (e) each member of any other class of Membership established by the School Council in accordance with clause 6.1(d).

“Membership” means the contractual rights of a person (being an individual) to membership of the Company, being the rights attaching to the class of membership conferred on that person.

“Membership Year” means each period of 12 Months between annual general meetings of the Company.

“Month” means calendar month.

“Office” means the Company’s registered office.

“Parent” means a person who is a Student's biological parent or adoptive parent (and includes a legal guardian of that Student) and who has paid all fees due and payable for that Student to the School.

“Parent Members” means the three Parents appointed as Members by the President and the Principal from time to time, after consultation with the KDS Parents’ Association.

“Patron” means a person who is a benefactor of the Company and who has been accorded the honorary title of Patron pursuant to clause 26.

“PJV” means Progressive Judaism Victoria Inc., registered under the *Associations Incorporation Act 1981* (Vic), registration number A0055157K, incorporating its

predecessor the unincorporated association known as the "Victorian Union for Progressive Judaism", and includes any successor.

"PJV Members" means the two members of PJV appointed to be Members by the School Council from time to time.

"Present" means, when used in relation to a Member at a meeting, present in person or by proxy or attorney.

"President" means the person appointed to that position from time to time pursuant to clause 16.1(c).

"Principles of The King David School" means the principles set out in clause 2.

"Progressive Judaism" means Judaism that embraces Jewish tradition and aims to make it meaningful in contemporary life based, inter alia, on the following beliefs:

- (a) that Judaism is built on the narrative and laws set out in the Torah (Five Books of Moses), and emphasises ethical behaviour and prescribes a way of lifeguiding personal and communal behaviours;
- (b) an emphasis on *Tikkun Olam* (social action and justice), the belief that through social or environmental action Progressive Jews are partners with God in creating the world as it should be;
- (c) a belief that it is the task of Progressive Jews to apply the Torah's teachings to contemporary life. *Halacha* (Jewish law) is regarded not as a static set of decisions made historically by rabbis, but a vital process requiring continuing engagement with core beliefs of Progressive Jews in the context of the contemporary world;
- (d) individuals are responsible for developing a personal understanding of what God wants of them and, in consequence, Progressive Judaism emphasises education, requiring each person to engage with Jewish texts and traditions; and
- (e) in line with contemporary understanding, all genders are treated equally.

"Rabbi" means a person trained in Jewish law, ritual and tradition and ordained for leadership of a Jewish congregation who is or who may become associated with the School and appointed from time to time by PJV and, in the event that PJV is no longer in existence at the relevant time, then by World Union for Progressive Judaism or a Victorian-based congregation of Progressive Judaism that is a member of the World Union for Progressive Judaism.

"Register" means the register of members of the Company.

"Registered Charity" means a charity that is registered under the ACNC Act

"Responsible Person" means an individual who –

- (a) performs a significant public function;
- (b) is a member of a professional body having a code of ethics or rules of conduct;
- (c) is officially charged with spiritual functions by a religious institution;
- (d) is a director of a company whose shares are listed on the ASX Limited;
- (e) has received formal recognition from government for services to the community;
- (f) is an individual before whom a statutory declaration may be made; or
- (g) is approved as a Responsible Person by the Commissioner.

"School" means The King David School currently located at:

- (a) 373-375 Dandenong Road, Armadale, Victoria,
- (b) 517-519 Orrong Road, Armadale, Victoria;
- (c) 520 Orrong Road, Armadale, Victoria; and
- (d) such other premises occupied by or on behalf of the Company in addition to or substitution for any of the foregoing premises.

"School Council" or **"the Board of Directors"** means the governing board of management of the Company established pursuant to clause 16.

"Secretary" means a person appointed or elected to that position from time to time pursuant to clauses 16.1(c) or 24.1.

"Security Interest" means any mortgage, lien, hypothecation, charge (whether fixed or floating), bill of sale, caveat, pledge, claim, trust arrangement, preferential right, right of set-off, title retention or other form of encumbrance and includes any "security interest" within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth).

"Student" means a person enrolled in the Years Prep to 12 and attending the School.

"Subscription" means the annual subscription fee payable by Members pursuant to clause 6.4.

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

"Treasurer" means the person appointed to that position from time to time pursuant to clauses 16.1(c) or 25.1.

"Unincorporated Association" means the unincorporated body known as "The Liberal Jewish Day School" operating under the name "The King David School" (ABN 37 411 684 705) whose funds and other assets and liabilities vested in the Company on or about the date of adoption of this Constitution.

"Union for Progressive Judaism" means Union for Progressive Judaism Inc. Registration No. A0042291F, or its successor from time to time.

"Vice-President" means the person appointed to that position from time to time pursuant to clause 16.1(c).

"World Union for Progressive Judaism" means the international umbrella organization of the Reform, Liberal, Progressive and Reconstructionist movements, the international office of which is located at 13 King David Street, Jerusalem 94101 Israel, or its successor from time to time.

1.2 Words and expressions

In this Constitution, unless the context requires otherwise:

- (a) a reference to a day, means a weekday that is not a public holiday or a day when the School is closed for a Jewish religious festival;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- (e) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Constitution;
- (f) a reference to this Constitution includes any schedules or annexures;
- (g) headings are for convenience and do not affect interpretation;
- (h) a reference to any document or agreement includes a reference to that document or agreement including, without limitation, this Constitution as amended, novated, supplemented, varied or replaced from time to time;
- (i) a reference to “\$”, “A\$” or “dollar” is a reference to Australian currency;
- (j) a reference to a time is a reference to Australian Eastern Standard Time or Australian Eastern Daylight Time, whichever is appropriate;
- (k) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (l) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (m) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (n) a reference to any legislation or to any provision of any legislation or a regulation thereunder includes:
 - (i) any modification or re-enactment of the legislation or regulation;
 - (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
 - (iii) where relevant, corresponding legislation in any Australian State or Territory;
- (o) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Constitution or any part of it;
- (p) the words “including”, “for example”, “such as” or other similar expressions (in any form) are not words of limitation; and
- (q) words or expressions defined in the Corporations Act but not in this Constitution have the same meaning in this Constitution.

1.3 Replaceable rules and interaction with the Applicable Act

- (a) To the extent permitted by law, the replaceable rules contained in the Corporations Act do not apply to the Company;
- (b) While the Company is a Registered Charity, the ACNC Act and the Corporations Act override any clauses in this Constitution which are inconsistent with those Acts as they apply to a Registered Charity; and
- (c) If the Company is not a Registered Charity (even if it remains a charity) the Corporations Act overrides any clauses in this Constitution which are inconsistent with that Act.

2 Principles of The King David School

The School is conducted on the basis of providing a caring school community and educating Students regardless of their race or religion:

- (a) in Jewish heritage -
 - (i) in accordance with the principles of Progressive Judaism;

- (ii) alongside secular and other religious disciplines extant in Australian society; and
- (iii) through commitment to:
 - (A) Jewish tradition and culture;
 - (B) *Am Yisrael* (Jewish Peoplehood);
 - (C) the Hebrew language, Zionism, the State of Israel and religious plurality of Jewish life in the State;
 - (D) *Tikkun Olam* (social action and justice); and
 - (E) gender equality and Jewish religious pluralism;
- (b) in Australian heritage -
 - (i) through the acceptance of diversity of Australian society and indigenous culture; and
 - (ii) through the mutuality of Australian society, indigenous culture and Judaism to enhance the wellbeing of the broader community; and
- (c) in secular disciplines;

and as an affiliate of PJV and the Union for Progressive Judaism, and therefore associated with the World Union for Progressive Judaism.

3 Objects

3.1 Principal objects

The principal objects of the Company are to:

- (a) operate and maintain the School as a continuation and development of that educational institution established by the Unincorporated Association which:
 - (i) comprises and supports an early learning centre, primary school and secondary school to year 12 and such other academic years of education as the School Council determines;
 - (ii) is conducted in accordance with the Principles of The King David School set out in clause 2; and
 - (iii) provides secular education of the highest standard to Students;
- (b) educate Students in accordance with the Principles of The King David School and instil into Students a knowledge of Judaism in harmony with the objectives of PJV including an understanding, knowledge and appreciation of their Jewish culture and historical heritage; and
- (c) contribute to the educational facilities of the State of Victoria by the development, and provision of cultural, professional, technical and vocational services in the community under the auspices of the School which are consistent with Progressive Judaism.

3.2 Ancillary objects

For the purpose of achieving the principal objects set out in clause 3.1, the Company has and will continue to –

- (a) create and administer one or more funds into which all gifts, contributions, donations and bequests to the Company for the purposes of the Company will be credited;

- (b) coordinate and undertake fundraising and related development activities including any appeals and campaigns for the purposes of the Company and benefit of the School;
- (c) manage the investment of funds raised and held for the benefit of the School;
- (d) promote and otherwise pursue the purposes of the Company and the School;
- (e) conduct public programs including education programs, social and community programs and research programs;
- (f) disseminate information relating to education and community programs and to produce, edit, publish, issue, sell, circulate and preserve such papers, periodicals, books, circulars and other literary matters as are conducive to these objects;
- (g) establish and maintain relationships and close communications with corporations, entities, associations, foundations, institutions, organisations and groups including Federal, State and Local Government instrumentalities, authorities and professionals that may have related interests to the Company and utilise their resources and facilities to provide and achieve the objects of the Company;
- (h) seek and co-ordinate funding from Federal, State and Local Government and the private sector in the form of grants, gifts, donations and bequests committed to the objects of the Company and the School;
- (i) encourage and promote and generally create greater community awareness in the knowledge and understanding of the objects of the Company and the School;
- (j) provide or attract funds for the facilitation of any of the objects especially for the conduct of public programs including education and community programs;
- (k) take over the funds and other assets and liabilities of the Unincorporated Association; and
- (l) do all such other things as are incidental or conducive to the attainment of the objects and aims of the Company, the School and its Members.

The objects of the Company will be pursued principally in Australia.

3.3 Not for profit

- (a) The objects of the Company will not be carried on for the purpose of profit or gain to its Members and the income and property of the Company, from whatever sources derived, will be applied solely towards the promotion of the objects of the Company and the School. No income or property of the Company will be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to the Members of the Company.
- (b) Notwithstanding anything contained in clause 3.3(a), nothing contained in that clause will prevent the payment, in good faith, of remuneration to any officers or servants of the Company or to any Member in return for any services actually rendered to the Company or for goods supplied in the ordinary or usual way of business, or prevent the payment of interest at a rate not exceeding the rate fixed for the purposes of this clause 3.3(b) by the School Council on money borrowed from any Member or reasonable and proper rent for premises demised or let by any Member to the Company.

4 Powers of the Company

- 4.1 The Company has, subject to the Applicable Act, power to do all things necessary or convenient to be done for, or in connection with, the performance of its objects.

- 4.2 Without limiting the generality of clause 4.1, the Company has all the rights, powers and privileges and the legal capacity of a natural person including, but not limited to, the powers to:
- (a) accept gifts, devises, bequests or assignments made to the Company, whether on trust or otherwise, and whether unconditionally or subject to a condition and, if a gift, devise, bequest or assignment is accepted by the Company for the Company on trust or subject to a condition, to act as trustee or to comply with the condition, as the case may be;
 - (b) make available (whether in writing or in any other form and whether by sale or otherwise) information relating to the Company and its functions;
 - (c) to occupy, use and control any land or building owned or held under lease by any other person made available to the Company;
 - (d) acquire, hold and dispose of real and personal property;
 - (e) lease the whole or any part of any land or building for the purpose of the Company;
 - (f) occupy, use and control any other land or building owned or held under lease by any other person and made available to the Company;
 - (g) enter into contracts;
 - (h) erect buildings;
 - (i) employ managers and other staff to implement the objects of the Company and pay such fees, salaries, emoluments and expenses as the School Council considers reasonable to such persons;
 - (j) purchase or take on hire, or to accept as a gift or on deposit or loan, and to dispose of or otherwise deal with furnishings, equipment and other goods;
 - (k) act as trustee of moneys or other property vested in the Company on trust; and
 - (l) do anything incidental to any of the Company's objects.
- 4.3 Notwithstanding anything contained in this Constitution, any money or other property held by the Company for the Company on trust or accepted by the Company for the Company subject to a condition, will not be dealt with except in accordance with the obligations of the Company as trustee or as the person who has accepted the money or other property subject to the condition, as the case may be.
- 4.4 It is intended that the public will contribute to the Gift Fund and the Company will invite the general public to make gifts to the Gift Fund for the purpose of carrying out the objects of the Company.

5 Gift Fund

- (a) The Company may (and will, if required under the Tax Act), establish and maintain, for the specific purposes set out in clauses 2 and 3, the Gift Fund:
 - (i) to which gifts of money, contributions or property for those purposes are to be made;
 - (ii) to which any money received by the Company because of those gifts, contributions or property is to be credited; and
 - (iii) that does not receive any other money, contributions or property.
- (b) The School Council will determine the name of the Gift Fund.
- (c) The Gift Fund will not be maintained for the purpose of profit or gain to the Members of the Company.

- (d) All gifts or contributions made to the Gift Fund and any money received because of those gifts or contributions will be applied solely towards the promotion of the objects of the Company set out in clause 2 and no portion of the Gift Fund will be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to the Members of the Company.
- (e) The Company must maintain a separate bank account for the Gift Fund and must comply with subdivision 30-BA of the Tax Act with respect to the administration of the Gift Fund.
- (f) The Gift Fund will be administered by a committee of not less than three persons appointed by the School Council, a majority of which must be Responsible Persons. The Gift Fund committee will have the sole responsibility for decisions regarding the use and application of all gifts or contributions made to the Gift Fund and any money received because of those gifts or contributions for the purposes set out in clause 2.
- (g) In accordance with the Tax Act, receipts issued for gifts must state:
 - (i) the name of the Company;
 - (ii) the ABN applicable to the Company; and
 - (iii) the fact that the receipt is for a gift.
- (h) Clauses 5(b) to 5(g) (both inclusive) apply only if the Company is required to establish a Gift Fund by the Tax Act if determined by the School Council.

6 Membership and eligibility

6.1 Number, classes and obligations of Membership

- (a) Subject to this Constitution and the Corporations Act, there must always be at least one Member.
- (b) The maximum number of Members is 18 Members provided always that not less than 26% of the Members comprise of members of the PJV.
- (c) The Members will comprise:
 - (i) each Council Member;
 - (ii) two PJV Members;
 - (iii) three Parent Members, at least one of whom must be a member of the PJV;
 - (iv) a member of the School alumni; and
 - (v) such other member of any other class of Membership established by the School Council from time to time, in accordance with clause 6.1(d).
- (d) The School Council may, from time to time but subject to clauses 7.2 and 7.3, establish different classes of Membership and may prescribe the qualifications, rights and privileges of persons admitted to Membership in, or transferred into, such classes of Membership. For the avoidance of doubt, the School Council may not amend the requirement referred to in clause 6.1(c)(iii) for that class of Membership.
- (e) Each Member must comply with the provisions of this Constitution.

6.2 Admission and Cessation of Membership

Members will be admitted and removed from Membership as follows:

- (a) in respect of each PJV Member, by resolution of School Council in accordance with cause 23.9;

- (b) in respect of each Parent Member, he or she will be appointed by unanimous decision of the President and Principal after consultation with the KDS Parents' Association and he or she will be automatically removed from the Membership when he or she ceases to meet the requirements set out in the definition of "Parent" under clause 1.1;
- (c) in respect of the member of the School alumni referred to in clause 6.1(c)(iv), by unanimous decision of the President and Principal after consultation with the KDS Parents' Association; and
- (d) in respect of each Council Member, he or she will automatically be admitted and removed from Membership upon his or her appointment to the office of Council Member and his or her removal or resignation from that office respectively; and
- (e) in respect of each Member from any other class of Membership, in accordance with the provisions set out in clauses 6.3 and 10.

6.3 Admission to Other Classes of Membership

- (a) Subject to clause 6.2, a person who is not a Member of the Company at the date of registration of the Company (or who was a Member at that time but has ceased to be a Member) will not be admitted to in any class of Membership referred to in clause 6.2(e) unless:
 - (i) the person applies for Membership in accordance with clause 6.3(b); and
 - (ii) admission as a Member is approved by the School Council.
- (b) Each application must:
 - (i) be in writing, in the form prescribed by the School Council, and signed by the applicant;
 - (ii) contain such other particulars as the School Council may either generally or, in a particular case, require;
 - (iii) contain, or be accompanied by, the undertaking referred to in clause 6.5 and
 - (iv) be delivered with payment for the first year's Subscription to the Secretary at the Office.
- (c) As soon as practicable after receipt of an application referred to in clause 6.3(b), the Secretary must refer the application to the School Council.
- (d) On an application being referred to the School Council, the Directors will determine, in their absolute discretion, whether to approve or to reject the application.
- (e) The Directors may, without giving any reason, decline to accept an application for Membership.
- (f) If an application is approved by the School Council, the Secretary must, as soon as practicable if the applicant is a natural person, notify the applicant in writing that he or she has been approved for Membership.
- (g) An applicant for Membership becomes a Member and is entitled to exercise the rights of Membership when his or her name is entered into the Register.
- (h) The Secretary must, within 28 days after approval by the School Council and receipt of the amounts referred to in clause 6.4, enter the applicant's name in the Register.
- (i) If an application has been rejected by the School Council, the Secretary must, as soon as practicable:

- (i) notify the applicant in writing that his or her application has been rejected; and
- (ii) return to the applicant the first year's Subscription (if any) which accompanied the application.

6.4 Subscription

- (a) Subject to the following provisions of this clause 6.4, the School Council may require the payment of a Subscription by Members in any Membership Year.
- (b) If the first Membership Year applicable to the person seeking admission to Membership is comprised of less than 365 days, the first year's Subscription payable by that person is to be apportioned according to the number of days remaining in that Membership Year.
- (c) The Subscription is to be paid by each Member, in advance at the commencement of each financial year or as otherwise determined by the School Council, by delivery to the Secretary or to such other person or in such other manner as the School Council determines, from time to time.

6.5 Undertaking

- (a) Every Member must provide a written undertaking in accordance with clause 6.5(b).
- (b) Every Member undertakes to contribute to the property of the Company if the Company is 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 of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributors among themselves such amount as may be required, not exceeding, in any event, \$20.00 per Member.

6.6 GST

- (a) All payments that are required to be made by a Member under this Constitution (including but not limited to Subscriptions) are exclusive of GST.
- (b) If any payment referred to in clause 6.6(a) is for, or is in connection with, a supply made by the Company under this Constitution on which the Company is liable to pay GST, then such payment will be increased by the prevailing rate of that GST and the Member will pay that increased amount to the Company at the same time and in the same manner as all other payments required to be made.
- (c) The Company must issue to the Member a tax invoice for the increased amount referred to in clause 6.6(b) within 14 days from the date that the increased amount is required to be paid by the Member.

7 Rights of members

7.1 Rights and privileges

- (a) Subject to this Constitution, the Members are entitled to all the rights and privileges of Membership of the Company.
- (b) A right, privilege, or obligation of a person by reason of his Membership:
 - (i) is personal to that Member and is not capable of being transferred or transmitted to another person; and
 - (ii) terminates on cessation of Membership whether by death, resignation or otherwise as set out in clause 10.

7.2 Variation of Rights

If at any time the Directors exercise the powers under clause 6.1(d), the rights, restrictions or obligations of Members or any class of Members may be varied with either:

- (a) the written consent of not less than 66% of the existing Members whose rights are being varied; or
- (b) the sanction by a resolution passed by 66% of the Members present and voting at a separate general meeting of the existing Members whose rights are being varied.

7.3 Effect of new class of Membership

If the School Council establishes a new class of Membership that has the same rights, restrictions or obligations as an existing class of Membership, the establishment of that new class of Membership is not treated as a variation of the rights attaching to that class.

8 Register of member

8.1 Information in Register

The Secretary must keep and maintain a Register containing:

- (a) the name and address of each Member;
- (b) the date on which each Member's name was entered in the register; and
- (c) any other information which the School Council considers necessary.

8.2 Inspection and copies

Subject to the Corporations Act and any other law which applies to the Company:

- (a) the Register will be made available for inspection, free of charge, to any Member on request; and
- (b) a Member may make a copy of entries in the Register.

9 Default by members

- (a) If a Member fails to pay his or her Subscription, in whole or in part, in any Membership Year for more than 30 days after the due date for payment:
 - (i) all of the rights and privileges of that Member will be automatically suspended until the Subscription, or such part which is payable and remains outstanding, is paid or until his or her Membership has been determined in accordance with clause 9(b); and
 - (ii) the Secretary will give notice to that Member requiring payment of the Subscription, or such part of the Subscription which is payable and remains outstanding.
- (b) If any Member fails to pay his or her Subscription in accordance with clause 9(a), or any part which is payable and remains outstanding for more than 30 days after service of the notice to the Member in accordance with clause 9(a)(ii), the Member will automatically cease to be a Member pursuant to clause 10 and the Secretary must notify that Member accordingly.

10 Cessation of membership

10.1 Ceasing to be a Member

A person ceases to be a Member of the Company if:

- (a) the person resigns his or her Membership as provided in clause 11.1; or
- (b) the person ceases to hold office as a Director in accordance with clause 16.8; or
- (c) the provisions of clauses 9(a) and 9(b) or the succeeding provisions of this clause 10 become applicable to that Member.

10.2 Continuing liability

A Member who resigns continues to be liable for any Subscription and all arrears due and unpaid at the date of his or her resignation and for all other amounts due by such person to the Company.

10.3 Power to censure, suspend or expel

- (a) If any Member:
 - (i) fails to comply with this Constitution; or
 - (ii) fails to comply with any of the rules, regulations or by-laws of the Company; or
 - (iii) is guilty of any conduct which, in the opinion of the Directors, is unbecoming of a Member or prejudicial to the interests of the Company or its Members,

the School Council may, subject to clause 10.3(c), by resolution of the Directors (the “**First Resolution**”) censure, suspend or expel that Member.

- (b) The Secretary must, as soon as practicable after the First Resolution has been passed, serve on the Member a notice in writing:
 - (i) setting out the First Resolution and the grounds on which it is based;
 - (ii) stating that the Member may within 21 days after service of the notice appeal the decision and require the First Resolution to be confirmed by Members in general meeting; and
 - (iii) informing the Member that if he or she appeals the decision, the Member may:
 - (A) attend the general meeting; or
 - (B) give to the School Council a written statement for circulation to Members.
- (c) A First Resolution under clause 10.3(a) does not take effect until the later of:
 - (i) 21 days after service on the Member of a notice in accordance with clause 10.3(b); or
 - (ii) if the Member exercises a right of appeal, the date the Members confirm the First Resolution in accordance with clause 10.3(f).
- (d) If the Member exercises his or her right of appeal, , the School Council must call a general meeting of Members within 21 days after the date on which the Member has given notice to the School Council and the general meeting must be held not later than two calendar months after the notice was received.
- (e) At a general meeting of the Members called in accordance with clause 10.3(d):
 - (i) no business other than the question of the appeal shall be transacted;

- (ii) the Directors may place before the meeting details of the grounds for the First Resolution and the reasons for the passing of the First Resolution;
 - (iii) the Member, or his representative, must be given an opportunity to be heard; and
 - (iv) the Members Present must vote by secret ballot on the question whether the First Resolution should be confirmed or revoked.
- (f) If at the general meeting:
- (i) a majority of the Members Present and voting, vote in favour of the confirmation of the First Resolution, the First Resolution will stand confirmed; and
 - (ii) in any other case, the First Resolution will be revoked.
- (g) No Member is entitled to vote at any general meeting called in accordance with clause 10.3(d) unless all amounts then due and payable to the Company by that Member have been paid.
- (h) If the First Resolution is confirmed by Members, the Member concerned will immediately cease to be entitled to exercise any rights or privileges as a Member and, in the case of a resolution to expel the Member concerned, that Member will be immediately expelled.

11 Resignation of member

- 11.1 A Member may resign from the Company by giving one month's notice in writing to the Secretary of his intention to resign and on the expiration of that period of notice, the Member will cease to be a Member.
- 11.2 On expiry of notice under clause 11.1, the Secretary will make an entry in the Register recording the date on which the Member ceased to be a Member.

12 General meetings

12.1 Annual General Meeting

- (a) The Company will hold an annual general meeting in accordance with this Constitution and the Applicable Act:
- (i) within 18 months after registration of the Company; and
 - (ii) after the first AGM, at least once in every calendar year.
- (b) To the extent applicable to the Company, the business of the annual general meeting may include:
- (i) the election of the Directors;
 - (ii) the consideration of the financial reports of the Company, the Directors' report and the auditor's report; and
 - (iii) such other business as may be properly transacted or required by the Applicable Act at the annual general meeting.

12.2 General meetings

All general meetings other than the annual general meeting will be called general meetings.

12.3 Calling

The School Council may call a general meeting at any time. The ability of Members to:

- (a) request that the School Council call a general meeting; and
 - (b) call and arrange to hold a general meeting themselves,
- is limited to the powers set out in the Applicable Act.

12.4 Notice

Subject to the provisions of the Applicable Act allowing general meetings to be held on shorter notice, at least 21 days written notice of a general meeting must be given to:

- (a) each Member;
- (b) each Director;
- (c) any auditor of the Company; and
- (d) any other person required by law.

No other person is entitled to receive notice of a general meeting.

12.5 Content of notice

A notice of a general meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and the special resolution itself; and
- (d) contain a statement specifying that:
 - (i) the Member has a right to appoint a proxy;
 - (ii) the proxy does not need to be a Member; and
 - (iii) a Member entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

12.6 Failure to give notice

The failure or accidental omission to send notice of a general meeting to, or the non-receipt of a notice by, any person entitled to notice does not invalidate the proceedings or any resolution passed at the meeting.

12.7 Postponement or cancellation or change of general meeting

Subject to the Applicable Act, the School Council may at any time prior to the time at which a general meeting is to be held, postpone or cancel any general meeting or change the place of any general meeting. Any such postponement, cancellation or change must be communicated to each Member of the Company and each other person to whom notice was given, in any manner permitted under clause 31.

12.8 Resolutions without general meetings

- (a) Subject to the Applicable Act, the Company may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Member signs.

13 Proceedings at general meetings

13.1 Quorum

- (a) No business may be transacted at an annual general meeting or any other general meeting unless a quorum is Present at the time when the meeting proceeds to business.
- (b) Subject to clause 13.1(c), a quorum consists of at least 50% of the Members entitled to be Present and vote at the meeting, one of whom must be the President or the Vice-President and provided always that not less than 26% of the individuals counted towards a quorum are members of the PJV.
- (c) If the Company only has one Member entitled to be Present and vote at the meeting, the quorum is one.

13.2 Determining quorum

Each individual present at a general meeting may only be counted once toward a quorum. If a Member has appointed more than one proxy, only one of them may be counted towards a quorum.

13.3 Use of technology

- (a) General meetings can be held using audio or audio-visual technology.
- (b) If a general meeting is held by audio or audio-visual technology:
 - (i) a Member is treated as Present if the Member is able to hear and be heard by all others attending; and
 - (ii) unless the Chairperson is notified that a Member is leaving the meeting, the Member will be assumed to have been Present for the duration of the meeting.

13.4 Quorum not present

If a quorum is not present within 15 minutes after the time appointed for a general meeting:

- (a) if the meeting was convened at the request Members, it is automatically dissolved; and
- (b) in any other case:
 - (i) it will stand adjourned to the same time and place on the fifth business day after the meeting; and
 - (ii) if a quorum is not present within 15 minutes from the time appointed for the adjourned meeting, the Members Present (being not less than two) will comprise a quorum.

13.5 Chairing meetings

The Chairperson (or his or her delegate) will chair every meeting of the Members. If:

- (a) there is no Chairperson and no delegate nominated by the Chairperson;
- (b) the Chairperson (or his or her delegate, as the case may be) is not present within 15 minutes after the time appointed for holding the meeting; or
- (c) the Chairperson (or his or her delegate, as the case may be) is unwilling to act as chair of the meeting,

the Council Members Present and entitled to vote will elect a Council Member to chair the meeting.

13.6 Function of Chairperson

The Chairperson (or his or her delegate, as the case may be) of a general meeting is responsible for the general conduct and procedures to be adopted at the meeting.

13.7 Adjournment by chairperson

The Chairperson (or his or her delegate, as the case may be) of a general meeting at which a quorum is present

- (a) may, with the consent of the meeting; and
- (b) must, if directed by resolution of the meeting, adjourn the meeting to another time and place.

13.8 Adjourned meeting

The only business that can be transacted at an adjourned meeting is the unfinished business of the initial meeting. Notice of the adjourned meeting must be given if the meeting is adjourned for one month or more.

13.9 Show of hands

Unless a poll is demanded under clause 13.11:

- (a) a resolution put to a vote at a general meeting must be decided on a show of hands; and
- (b) a declaration by the Chairperson that a resolution has been carried, carried by a particular majority or lost and an entry to that effect in the minutes of the meeting will be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour or against the resolution.

13.10 Majority vote

A resolution of Members must be passed by a majority of the votes cast by Members entitled to vote on the resolution unless otherwise required under the Applicable Act or this Constitution.

13.11 Demanding a poll

Either before or on declaration of the result of a show of hands, a poll may be demanded by:

- (a) the Chairperson;
- (b) at least three Members entitled to vote on the resolution; or
- (c) Members with at least 5% of the votes that may be cast on the resolution on a poll.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

13.12 When and how polls must be taken

A poll will be taken when and in the manner the Chairperson directs, except for:

- (a) a poll demanded on the election of a Chairperson; or
- (b) a poll demanded on the adjournment of a meeting,

which must be taken immediately. The result of the poll will be the outcome of the resolution in respect of which the poll was demanded.

13.13 Equal number of votes

If an equal number of votes is cast for and against a resolution and the Chairperson (or his or her delegate, as the case may be) does not have a casting vote in addition to their vote as a Member, proxy or attorney, then the resolution is not passed.

14 Voting at general meetings

Subject to this Constitution and any rights or restrictions imposed on or attached to a class of Membership, every Member who is Present at a general meeting and entitled to vote on a show of hands and on a poll, has one vote.

14.1 Unpaid Subscription

A Member is not entitled to vote at a general meeting if any Subscription owing by that Member is more than 30 days in arrears at the date of the meeting.

14.2 Objections

An objection to the qualification of any voter:

- (a) may only be raised at the meeting or adjourned meeting at which the voter tendered its vote; and
- (b) must be determined by the Chairperson, whose decision, if made in good faith, will be final and conclusive.

A vote that the Chairperson does not disallow pursuant to an objection is valid for all purposes.

15 Proxies, attorneys and representatives

15.1 Proxies

A Member entitled to attend and vote at a general meeting may appoint a proxy to attend and vote for the Member at the meeting. A proxy may be an individual or a body corporate.

15.2 Number of proxies

A Member entitled to one vote at a general meeting may appoint one proxy. A Member entitled to more than one vote may appoint no more than two proxies.

15.3 Rights of proxies

Subject to this Constitution and the proxy's terms of appointment, a proxy has the same rights as the appointing Member to speak at a general meeting, to vote and to join in and demand a poll.

15.4 Voting rights of proxies

A proxy may vote either on a show of hands or a poll. If a proxy's appointment specifies the way in which the proxy must vote, the proxy must follow those instructions.

15.5 Attorneys

A Member may appoint an attorney to act for the Member at general meetings but shall not be entitled to appoint an attorney and a proxy to represent that Member at the same general meetings.

15.6 Rights of attorneys

Unless restricted by the terms of appointment or the Applicable Act, an attorney may exercise the same powers on the Member's behalf that the Member could exercise at a general meeting or in voting on a resolution.

15.7 No membership requirement

A proxy or attorney may, but need not be, a Member.

15.8 Standing appointments

A Member may appoint a proxy or attorney to act at a particular general meeting or make a standing appointment. A Member may revoke any appointment.

15.9 Instrument of appointment of proxies

Subject to clause 15.11, the instrument of appointment of a proxy must be in a written form approved by the School Council and must be signed or executed by the appointing Member or that Member's attorney.

15.10 Instrument of appointment of attorneys

Subject to clause 15.11, the instrument of appointment of an attorney must be in a written form and must consist of a valid power of attorney signed by the appointing Member in the presence of at least one witness.

15.11 Alternative method of appointment

Notwithstanding clauses 15.9 and 15.10, the instrument of appointment of a proxy or attorney will be valid if it is in a form and is authenticated in any manner prescribed by the Corporations Act.

15.12 Company must receive appointments

The appointment of a proxy or attorney is only effective in relation to a general meeting if the Company receives the instrument effecting the appointment and any additional documents required by clause 15.14 at least 48 hours before the time for holding the meeting or adjourned meeting (unless the notice of meeting specifies a shorter time period).

15.13 Definition of receipt

The Company receives the documents referred to in clause 15.12 when they are received:

- (a) at the Office;
- (b) at a fax number at the Office;
- (c) at a place, fax number or electronic address specified in the notice of meeting; or
- (d) if the notice of meeting specifies other electronic means by which a Member may give the documents, by those means in accordance with the Applicable Act.

15.14 Additional documents

If an appointment purports to be executed under a power of attorney or other authority, the original power or authority or a certified copy of it must be received by the Company along with the appointment.

15.15 Chairperson may declare appointment valid

If:

- (a) the instrument of appointment of a proxy or attorney does not comply with the terms of this Constitution; or

- (b) the appointment and any additional documents are not received by the Company in accordance with the terms of this Constitution,
the appointment will be treated as invalid unless the Chairperson declares otherwise.

15.16 Adjourned meetings

An appointment of a proxy or attorney for a particular general meeting is valid at the adjourned meeting.

15.17 Rights of proxies and attorneys if Member present

A proxy or attorney has no power to act for a Member at a general meeting at which the Member is present in person. A proxy has no power to act for a Member at a general meeting at which the Member is present by attorney.

15.18 Priority of conflicting appointments

The following rules govern conflicting appointments:

- (a) an appointment of a proxy is revoked (or suspended for the particular general meeting if a standing appointment) if the Company receives a further proxy appointment that would result in the Member having more proxies than the Member is entitled to under clause 15.2;
- (b) the proxy appointment made first in time under clause 15.18(a) is the first to be treated as revoked or suspended under that clause; and
- (c) if more than one attorney appointed by a Member is present at a general meeting and the Company has not received notice of revocation of any of the appointments:
 - (i) an attorney appointed to act at that particular meeting may act to the exclusion of an attorney appointed under a standing appointment; and
 - (ii) subject to clause 15.18(c)(i), the more recently appointed attorney may act to the exclusion of an attorney appointed earlier in time.

15.19 Continuing authority

A vote cast by a proxy or attorney at a general meeting will be valid even if, before the vote, the appointing Member:

- (a) dies or becomes mentally incapacitated; or
- (b) revokes the appointment or the authority under which the appointment was made by a third party,

unless the Company has received written notification of the matter before the start or resumption of the meeting.

16 School Council and Executive

16.1 Minimum and maximum number

- (a) Subject to clause 16.5, the Company must have at least three Directors, unless otherwise provided by the Corporations Act, but not more than 12 Directors.
- (b) The Directors will comprise:
 - (i) a Rabbi of a member or affiliate of the PJV proposed by the School Council;
 - (ii) subject to clause 16.7(b), the Immediate Past President;

- (iii) up to seven persons elected by the Members in accordance with clause 17, provided that at least two of the persons elected are members of PJV;
 - (iv) up to two persons co-opted by the other Directors; and
 - (v) the then current president of the KDS Parents' Association.
- (c) The Executive will, if appointed by resolution of the School Council, comprise a Chairperson, President, Vice President, Secretary and Treasurer appointed from among the Directors by the School Council.

16.2 Membership requirement

A Director must be a Member and must agree to abide by the provisions of this Constitution.

16.3 Other positions

A Director may simultaneously hold any other office or position in the Company on terms determined by the School Council.

16.4 Meetings of Members

A Director is entitled to notice of, and to attend, all general meetings and class meetings.

16.5 Appointment and removal by Members

Subject to clause 16.1, the Company may by resolution passed in general meeting:

- (a) appoint a person to be a Director;
- (b) remove a Director from office;
- (c) appoint another person in a Director's place;
- (d) fix the maximum number of Directors and increase or reduce that number; and
- (e) determine any rotation and retirement policies for Directors

but any resolution to remove a person appointed under clause 16.1(b)(i) will not take effect until a replacement has been appointed.

16.6 Appointment by School Council

- (a) The School Council may appoint a person to be a Director at any time either to fill a casual vacancy or as an addition to the existing Directors but the total number of Directors must not exceed any maximum number fixed in accordance with clause 16.1(a).
- (b) A Director appointed to fill a casual vacancy in accordance with clause 16.6(a) will hold office for the remainder of the term of office of the Director whose office has become vacant and will be eligible for re-appointment in accordance with this Constitution at the end of that term.

16.7 Term of office

- (a) Subject to clause 16.8, the remaining provisions of this clause and the terms of any agreement between the Company and the relevant Director, Directors hold office for a term each of two years commencing from the date of appointment but will be eligible for re-appointment by Members for three further consecutive terms each for two years.
- (b) The Immediate Past President will hold office for a term of only one year from the date that the person ceased to be President and will be eligible for appointment as a co-opted Director under clause 16.1(b)(iv) at the end of that term.

- (c) If a Director is co-opted in accordance with clause 16.1(b)(iv), that Director will hold office until the date of the next annual general meeting but will be eligible for re-appointment by Members as an Elected Council Member.
- (d) A Director who has served as a Director for four consecutive two year terms or a total of eight consecutive years as provided by clause 16.7(a), is not prohibited from continuing to act, or being appointed to act, on any committee or advisory board established by the School Council. Any such former Director will be eligible for re-election by Members as an Elected Council Member after a period of not less than two years after that person ceased to be a Director or such longer interval determined to be appropriate by the School Council.

16.8 Cessation of appointment

A person automatically ceases to be a Director if:

- (a) the person is not permitted by the Applicable Act (or an order made under the Applicable Act) to be a Director;
- (b) the person becomes bankrupt or enters into or becomes subject to any arrangement or composition with creditors;
- (c) the person becomes mentally incapable or a person whose estate or property is liable to be dealt with in any way under any law relating to mental health;
- (d) the person resigns by notice in writing to the Company;
- (e) the person ceases to be a Member;
- (f) the person does not satisfy a Working with Children Check under the *Working with Children Act 2005* (Vic) insofar as that Act applies to the person's role as a Director;
- (g) the person is removed from office under clause 16.5; or
- (h) the term for which the person was appointed or elected expires; or
- (i) in case of the Director referred to in clause 16.1(b)(v), when he or she ceases to hold the office of the president of the KDS Parents' Association.

17 Election of Directors

17.1 Procedures for election of Directors

- (a) The election of Directors, excluding Directors who retire in accordance with clause 16.7 but are eligible to be considered for re-appointment, will take place in accordance with the following procedures of this clause.
- (b) The Nomination and Governance Committee will identify the number of vacancies and, in the case of vacancies as Elected Directors, call for nominations by Parents and, in all other cases, search for suitable candidates for recommendation to fill the vacancies.
- (c) Each nomination for appointment as a Director must be:
 - (i) in writing in the form prescribed by the Nomination and Governance Committee;
 - (ii) in the case of nominations for Elected Directors, signed by at least three Parents;
 - (iii) accompanied by a written consent by each candidate to his or her nomination and such other information reasonably requested by the Nomination and Governance Committee; and

- (iv) delivered to the Secretary at the Office not less than 60 days before the date of the general meeting at which the nominations are to be considered.
- (d) As soon as practicable after receipt of nominations referred to in clause 17.1(c):
 - (i) the Secretary must refer each nomination, together with the consents and information requested, to the Nomination and Governance Committee; and
 - (ii) the Nomination and Governance Committee must:
 - (A) consider the suitability of all candidates for appointment as Elected Directors; and
 - (B) deliver its recommendations to the School Council.
- (e) The School Council must consider the recommendations of the Nomination and Governance Committee and determine whether or not to approve the recommendations.
- (f) The School Council will notify the Nomination and Governance Committee of its determination and the candidates it has approved for appointment as Directors.
- (g) A person will not be eligible to be considered for appointment as an Elected Director or a co-opted Director if the School Council has determined, in its absolute discretion, that the person does not have the appropriate balance of experience, skills and/or is otherwise deemed unsuitable. The decision of the School Council shall be final and binding.

17.2 Nominations equal to vacancies

If the number of nominations approved for appointment as Directors is equal to the number of vacancies, each candidate will be submitted for election at the next general meeting to be held for that purpose in accordance with clause 13.

17.3 Nominations exceed vacancies

If the number of nominations approved for appointment as Directors exceed the number of vacancies, unless otherwise determined by the School Council, each candidate will be submitted for election by ballot at the next general meeting to be held for that purpose in accordance with clause 13. The rules of procedure for the election by ballot will be determined by the School Council.

17.4 Insufficient nominations

- (a) If there are insufficient nominations received to fill the vacancies as Elected Directors, the Nomination and Governance Committee may nominate suitable candidates.
- (b) The provisions of clause 17.1 will apply to nominations by the Nomination and Governance Committee with such modifications and adaptations as may be necessary.

18 Remuneration of Directors

18.1 Honorary

The office of Directors shall be honorary and will not attract any remuneration per se.

18.2 Expenses

The Company will pay Directors all reasonable travelling and other expenses properly incurred:

- (a) in attending School Council meetings or any meetings of committees of Directors;

- (b) in attending any general meetings of the Company; and
- (c) in connection with the Company's business.

18.3 School Council approval

All payments to Directors under clause 18.2 must be approved by the School Council.

19 Powers and duties of Directors

19.1 Management of the Company

The business of the Company will be managed by the School Council. The School Council may exercise all the powers of the Company except any powers that are required by this Constitution or the Applicable Act to be exercised by the Company in general meeting.

19.2 Specific powers

Without limiting the generality of clause 19.1, the School Council may exercise all the powers of the Company to:

- (a) borrow money;
- (b) grant Security Interests in relation to any of the Company's property or business to secure any debt, liability or obligation of the Company or any other person;
- (c) guarantee, indemnify or otherwise become liable for the payment of money or the performance of any obligation by or of any other person; and
- (d) pay out of the Company's funds all expenses of the promotion, formation and registration of the Company and the vesting in it of the assets acquired by the Company,

on any terms determined by the School Council.

19.3 Duties under the Applicable Act

A Director must comply with the Applicable Act and fulfil any duties prescribed in the Applicable Act and the common law including:

- (a) reasonable care and diligence;
- (b) good faith and proper purpose;
- (c) proper use of position;
- (d) proper use of information;
- (e) disclosure of any material personal interest in the manner set out in clause 19.5.
- (f) responsible management of financial affairs; and
- (g) not to allow the Company to trade while insolvent.

19.4 No disqualification

A Director is not disqualified by reason only of being a Director from:

- (a) holding any office, place of profit or position of employment with the Company;
- (b) acting in a professional capacity for the Company;
- (c) being a member or creditor of any corporation (including the Company) or partnership; or
- (d) entering into any agreement or arrangement with the Company.

19.5 Disclosure of interests

If required by the Applicable Act, a Director must disclose to the School Council any material personal interest the Director has in a matter directly or indirectly relating to the affairs of the Company. The Secretary must record details of any such disclosures in the minutes of the relevant School Council meeting.

19.6 Obligation of secrecy

Every Director of the Company must keep the transactions and affairs of the Company confidential, except:

- (a) to the extent necessary to enable the person to perform his or her duties to the Company;
- (b) as required by the School Council or the Company in general meeting; and
- (c) as required by law.

20 Nomination and Governance Committee

20.1 Establishment

The School Council will establish a Nomination and Governance Committee.

20.2 Functions of the Nomination and Governance Committee

- (a) The principal functions of the Nomination and Governance Committee include:
 - (i) to evaluate and make recommendations to the School Council in relation to the selection and nomination of candidates for appointment as Directors under clauses 16.1(b)(iii) and 16.1(b)(iv);
 - (ii) reviewing and making recommendations to the School Council regarding the structure, size and composition of the School Council including the balance of skills, knowledge and experience;
 - (iii) identifying suitable candidates to fill vacancies on the School Council as and when they arise;
 - (iv) identifying the existing Directors who are due for re-election in accordance with the Constitution;
 - (v) assessing and making recommendations to the School Council in relation to appropriate succession planning and ensuring that appropriate processes and procedures are implemented and maintained; and
 - (vi) ensuring that the School Council complies with all relevant regulatory or legislative governance requirements of Government Authorities and informing the School Council of any changes to such requirements.
- (b) The School Council may confer or impose on the Nomination and Governance Committee such other functions as may be necessary or convenient to assist the School Council.

20.3 Membership

- (a) The Nomination and Governance Committee will consist of three members, each appointed by the School Council, at least two of whom must be Directors. The appointment may be made for a specified period or without specifying a period.
- (b) Except as provided in clause 20.3(a), a member of the Nomination and Governance Committee may, but need not, be a Director or a Member.

- (c) The School Council may remove any member of the Nomination and Governance Committee from office at any time, fill any vacancy and appoint additional members as it thinks fit.
- (d) The chairperson of the Nomination and Governance Committee must be a Director who is a member of the Nomination and Governance Committee.

20.4 Notice of appointment or removal

Any removal or appointment under clause 20.3(c) must be in writing, signed on behalf of the School Council and delivered to the relevant member of the Nomination and Governance Committee.

20.5 Conflicts

A person, save for a Director, must not be present during any deliberations with respect to his own appointment to the Nomination and Governance Committee.

20.6 Delegation of powers

The provisions of clause 22 apply to the Nomination and Governance Committee and each of its members.

21 Finance Committee

21.1 Establishment

The Board will establish a Finance Committee.

21.2 Functions of the Finance Committee

- (a) The principal functions of the Finance Committee include:
 - (i) to review and make recommendations to the Board in relation to the financial position of the Company including, reviewing and undertaking analysis of specific financial facilities;
 - (ii) assess and formulate strategies for improving the Company's financial performance and to develop financial strategies that reflect the priorities and outcomes required by the Board;
 - (iii) monitor and report to the Board on the status of the Company's investments and assets;
 - (iv) make recommendations to the Board on fundraising activities and investments where appropriate; and
 - (v) other matters which the Board may refer to the Finance Committee for review and consideration from time to time.
- (b) The Board may confer or impose on the Finance Committee such other functions as may be necessary or convenient in connection with the business of the Company.

21.3 Membership

- (a) The Finance Committee will consist of at least three members, each appointed by the Board, at least two of whom must be Directors. The appointment may be made for a specified period or without specifying a period.
- (b) Except as provided in clause 20.3(a), a member of the Finance Committee may, but need not, be a Director or a Member.
- (c) The Board may remove any member of the Finance Committee from office at any time, fill any vacancy and appoint additional members as it thinks fit.

- (d) The chairperson of the Finance Committee must be the Honorary Treasurer of the School.
- (e) A member of the Finance Committee ceases to hold office if he resigns, is removed from office pursuant to clause 20.3(c) or the provisions of clause 16.8 apply to that member.

21.4 Notice of appointment or removal

Any removal or appointment under clause 20.3(c) must be in writing, signed on behalf of the Board and delivered to the relevant member of the Finance Committee.

21.5 Conflicts

A person, save for a Director, must not be present during any deliberations with respect to his own appointment to the Finance Committee.

21.6 Delegation of powers

The provisions of clause 22 apply to the Finance Committee and each of its members.

22 Delegation of Directors' powers

22.1 Power to delegate

The School Council may, in addition to clause 20, delegate any of its powers to:

- (a) a committee or subcommittee of Directors, Members or any other person;
- (b) a Director; or
- (c) an employee or adviser of the Company.

22.2 Terms of delegation

A delegation of powers under clause 22.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including the power to delegate further) and subject to any restrictions that the School Council determines.

A document of delegation may contain provisions for the protection and convenience of those who deal with the delegate that the School Council thinks appropriate.

22.3 Delegate to comply with directions

A delegate under clause 22.1 must exercise its powers subject to any direction from the School Council.

22.4 School Council may revoke delegation

The School Council may revoke a delegation of its powers at any time.

22.5 Council Subcommittee

- (a) The School Council may establish one or more subcommittees comprising such persons as the School Council thinks fit. A member of subcommittee may, but need not, be a Director or Member.
- (b) A subcommittee will act in an advisory capacity only and in the exercise of the powers delegated in accordance with this clause 20, conform to any direction from the School Council.

22.6 Proceedings of committees and subcommittees

Subject to the terms on which power is delegated to a committee or subcommittee and any directions from the School Council:

- (a) a committee or subcommittee is free to determine the rules that regulate its meetings and proceedings; and
- (b) in the absence of such a determination, the rules will be the same as those that govern School Council meetings in this Constitution, so far as they are applicable,

but each committee or subcommittee is to be chaired by a Director and the School Council may change any of the powers, duties and functions of a committee or subcommittee, may remove any member of a committee or subcommittee or dissolve a committee or subcommittee at any time.

23 School Council meetings

23.1 Procedure

Subject to this Constitution and the Corporations Act, the School Council may meet, adjourn and otherwise regulate its meetings as it determines. The School Council may invite any Patron or any other person it considers necessary or appropriate to attend and speak at any meeting but that person is not entitled to vote.

23.2 Calling

A member of the Executive or any other two Directors may at any time, and the Secretary must on their request, convene a School Council meeting.

23.3 Notice

Each Director must be given reasonable notice of a School Council meeting or the resumption of an adjourned School Council meeting. Notice may be given in any manner determined or adopted by the School Council from time to time.

23.4 Use of technology

- (a) A School Council meeting may be held using any audio, audio-visual or other technology.
- (b) If a School Council meeting is held by audio or audio-visual technology:
 - (i) a Director is treated as Present if the Director is able to hear and be heard by all others attending; and
 - (ii) unless the Chairperson is notified that a Director is leaving the meeting, the Director will be assumed to have been Present for the duration of the meeting. A minute certified by the chairperson of such a meeting will be conclusive evidence of the proceedings at that meeting and the observance of all necessary formalities.

23.5 Consent

A Director's consent under clauses 23.3 and 23.4 may be a standing one and may only be withdrawn within a reasonable period before the meeting.

23.6 Quorum

The quorum necessary for the transaction of business at a School Council meeting is three Elected Directors unless the School Council determines a greater number. A quorum must be present for the entire meeting.

23.7 When a Director is treated as present

If a School Council meeting is held by audio or audio-visual technology:

- (a) a Director is treated as present if the Director is able to hear and be heard by all others attending; and
- (b) unless the Chairperson is notified that a Director is leaving the meeting, the Director will be assumed to have been present for the duration of the meeting.

If a meeting is held using any other technology consented to by all Directors, the School Council must determine the basis on which Directors are treated as present.

23.8 Chairperson

The Chairperson will chair every meeting of the School Council. If:

- (a) there is no Chairperson;
 - (b) the Chairperson is not present within 15 minutes after the time appointed for holding the meeting; or
 - (c) the Chairperson is unable to act as chair of the meeting,
- the Directors present and entitled to vote will elect a Director to chair the meeting.

23.9 Decisions

A resolution of the School Council must be passed by a majority of votes cast by Directors. If an equal number of votes is cast for and against a resolution:

- (a) the Chairperson does not have a casting vote in addition to the Chairperson's vote as a Director; and
- (b) the resolution is not passed.

23.10 Too few Directors

The Directors may continue to act even if there are vacancies on the School Council. If the number of Directors is reduced below the minimum required under clause 16.1, the continuing Directors may act only:

- (a) to convene a general meeting of Members; or
- (b) in emergencies.

23.11 Written resolutions passed by multiple Directors

The Directors may pass a resolution without holding a School Council meeting if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

23.12 Signing written resolutions

For the purposes of clause 23.11, the Company may accept a copy of a signed document sent by facsimile or electronic means.

23.13 Valid proceedings

Each resolution passed or other thing done by or with the participation of a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing that thing.

24 Secretary

24.1 Appointment

Subject to the Corporations Act, the School Council must appoint a Secretary who must be a Director, and the School Council may remove that Secretary from office at any time.

24.2 Terms

The appointment of a Secretary will be on the terms that the School Council determines.

24.3 Cessation of appointment

A person automatically ceases to be a Secretary if:

- (a) the person is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a Secretary;
- (b) the person becomes bankrupt or enters into or becomes subject to any arrangement or composition with one or more of its creditors;
- (c) the person becomes mentally incapable or a person whose estate or property is liable to be dealt with in any way under any law relating to mental health;
- (d) the person resigns by notice in writing to the Company;
- (e) the person does not satisfy a Working with Children Check under the *Working with Children Act 2005* (Vic) insofar as that Act applies to the person's role as a Secretary;
- (f) the person is removed from office under clause 24.1; or
- (g) the term for which the person was appointed expires.

25 Treasurer

25.1 Appointment

- (a) The School Council must appoint a Treasurer. The appointment may be made for a specified period or without specifying a period and the School Council may remove the Treasurer from office at any time.
- (b) The Treasurer appointed pursuant to 25.1(a) must be a Director.

25.2 Responsibilities of Treasurer

- (a) The Treasurer will be responsible for:
 - (i) collecting and receiving all moneys due to the Company and making all payments authorised by the School Council; and
 - (ii) keeping correct accounts and books showing the financial affairs of the Company with full details of all receipts and expenditure connected with the activities and functions of the Company.
- (a) The Treasurer may delegate any of his or her powers under clause 25.2(a) to an employee of the Company, another officer, professional adviser or expert in relation to any of the matters within the Treasurer's responsibilities. The Treasurer will remain responsible for the exercise of any of the responsibilities by the delegate as if the responsibilities had been exercised by the Treasurer.
- (b) The accounts and books referred to in clause 25.2(a) will be available for inspection by the auditor and such other persons as authorised by the Corporations Act or as otherwise directed by the School Council.

26 Patrons

26.1 Appointment of Patron

- (a) The School Council may appoint one or more persons as Patrons of the Company for such period and on such terms as the School Council thinks fit.
- (b) A Patron of the Company is not a Director of the Company but shall, by invitation of the School Council, but not otherwise, be entitled to attend at any meetings of the School Council but will not be entitled to vote at any such meetings.
- (c) A Patron of the Company is not a Member of the Company and is not entitled to enjoy, nor exercise, any of the rights, privileges and obligations of Members.

26.2 Removal of Patrons

The School Council may at any time determine that the appointment of a Patron shall terminate on a certain date. If the School Council makes such a determination, it shall give notice to the Patron nominating the date upon which the Patron shall cease to hold that office.

26.3 Resignation of Patrons

A Patron may resign by giving one month's notice in writing to the Secretary of his intention to resign and upon the expiration of that period of notice, the Patron shall cease to be a Patron.

26.4 Role of Patrons

The School Council may determine the functions, if any, of Patrons.

27 Minutes

27.1 School Council must keep minutes

The School Council must cause minutes to be kept of:

- (a) the proceedings and resolutions of meetings of Members, Directors, committees and subcommittees;
- (b) the names of Directors present at each meeting of Directors or the persons present at each meeting of a committee or subcommittee;
- (c) any resolutions passed by Members or Directors without a meeting;
- (d) any disclosures or notices of Directors' interests; and
- (e) any other matters for which the Applicable Act requires minutes to be kept.

27.2 Minutes must be signed

Minutes must be signed in accordance with the Applicable Act. Minutes of a meeting must be signed within a reasonable time after the meeting by:

- (a) the Chairperson or the chair of that meeting; or
- (b) the Chairperson or the chair of the next meeting.

27.3 Minutes as evidence

A minute recorded and signed in accordance with the Applicable Act is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proven.

27.4 Access to minutes

The Company must ensure that the minute books for meetings of Members and for resolutions passed by Members without meetings are open for inspection by Members in accordance with the Applicable Act

28 Seal and execution of documents

28.1 Common seal

The School Council may decide whether or not the Company has a common seal. The School Council is responsible for the safe custody of a common seal and any duplicate seals.

28.2 Use of seals

A common seal or duplicate seal may only be used with the authority of the School Council.

28.3 Executing documents

Every document to which a common seal or duplicate seal is affixed must be signed by:

- (a) two Directors or a Director and a Secretary; or
- (b) any other person or combination of persons appointed by the School Council to attest to the fixing of the seal.

If a document is not required at law to be executed under seal, it will be binding on the Company if signed by two Directors or a Director and a Secretary or some other person or combination of persons appointed by the School Council for that purpose.

29 Accounts

29.1 Obligations

In accordance with the Applicable Act the Company must:

- (a) keep written financial records that:
 - (i) correctly record and explain its transactions and financial position and performance;
 - (ii) enable true and fair financial statements to be prepared and to be audited; and
- (b) prepare any reports required.

29.2 Inspection

A Member who is not a Director does not have any right to inspect the Company's financial records except:

- (i) as authorised by the School Council on terms determined by the School Council; or
- (ii) as required by the Applicable Act.

30 Audit

The School Council must appoint an auditor unless the Members at a general meeting have appointed an auditor or unless otherwise required or permitted by the Applicable Act.

31 Notices

31.1 Method

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature); and
- (b) either:
 - (i) delivered personally;
 - (ii) sent by post to that person's registered address or an alternative address nominated by that person; or
 - (iii) sent electronically or by fax to an electronic address or fax number nominated by that person.

31.2 Receipt

A notice given in accordance with clause 31.1 is taken as having been given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post:
 - (i) within Australia, on the second business day after the date of posting;
 - (ii) to or from a place outside Australia, on the seventh business day after the date of posting;
- (c) if transmitted by e-mail, on transmission; or
- (d) if transmitted by facsimile, at the time recorded on the transmission report indicating successful transmission of the entire notice,

but if the delivery or transmission is not on a business day or is after 5.00 pm (recipient's time) on a business day, the notice is taken to be received at 9.00 am (recipient's time) on the next business day.

31.3 Evidence of service

A certificate in writing signed by a Director or Secretary that a notice was sent is conclusive evidence of service.

32 Amendment to Constitution

This Constitution may be amended, modified or repealed by special resolution passed by Members in accordance with the Applicable Act.

33 Winding up

33.1 Distribution of Company's assets

On the first to occur of:

- (a) the winding up or deregistration of the Company; or
- (b) the Company ceasing to be a fund under item 1 of the table contained in section 30-15 of the Tax Act;

any surplus assets of the Company after satisfaction of all debts and liabilities of the Company must be paid, distributed or transferred to:

- (c) one or more Eligible Charities; or
- (d) to the extent required or permitted by the Tax Act, funds, charitable at law, which comply with the requirements of item 2 of the table in section 30-15 of the Tax Act.

33.2 Distribution of Gift Fund assets

If clause 5 applies, on the first to occur of the winding up or dissolution of the Gift Fund or the revocation of the endorsement of the Gift Fund as a deductible gift recipient under subdivision 30-BA of the Tax Act, the remaining money or property (if any) must be transferred to one or more Eligible Charities.

33.3 Conditions of distribution to Eligible Charities

Where gifts to an Eligible Charity are deductible only if, among other things, the conditions set out in the relevant table item in subdivision 30-B of the Tax Act are satisfied, a transfer under this clause 33 must be made in accordance with those conditions.

33.4 Identity of Eligible Charities

The identity of an Eligible Charity for the purposes of this clause 33 will be determined by the School Council at or before the time of winding up or deregistration of the Company, the Company ceasing to be a fund under item 1 of the table contained in section 30-15 of the Tax Act, winding up or dissolution of the Gift Fund or revocation of the endorsement of the Gift Fund as a deductible gift recipient and (where applicable) approved by a Commissioner and, in default, will be determined by the Supreme Court of Victoria.

34 Indemnity and insurance

34.1 Indemnity and insurance

Subject to and to the maximum extent permitted under the law, the Company:

- (a) indemnifies each of its officers; and
- (b) must enter into and pay premiums on a contract insuring any of its officers, against any liability incurred by an officer in that capacity, including any legal costs incurred in defending an action for such a liability.

34.2 Survival of indemnity

The indemnity in clause 34.1 will continue notwithstanding that an officer ceases to be an officer of the Company.

34.3 Indemnity and insurance subject to law

For the avoidance of doubt:

- (a) the indemnity in clause 34.1 does not apply so as to indemnify an officer from any liability for which the Company is prohibited from indemnifying the officer under the Corporations Act; and
- (b) the Company may not insure an officer against any liability for which the Company is prohibited from indemnifying the officer under the Corporations Act.