

CONSTITUTION

OF

MEDIA INDUSTRY TECHNOLOGIST CERTIFICATION

LIMITED



DIBBS ABBOTT STILLMAN | LAWYERS

Level 8 Angel Place 123 Pitt Street Sydney NSW 2000
GPO Box 983 Sydney NSW 2001 DX 101 Sydney
Tel 61 2 8233 9500 Fax 61 2 8233 9555
www.daslaw.com.au

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CORPORATIONS ACT 2001

CONSTITUTION

OF

MEDIA INDUSTRY TECHNOLOGIST CERTIFICATION LIMITED

A COMPANY LIMITED BY GUARANTEE

1. INTERPRETATION

1.1 Definitions

In this Constitution, unless the context otherwise requires:

"**Alternate Director**" means an alternate director appointed by a Director under Clause 18.11(a);

"**Board**" means the board of Directors;

"**Business Day**" means a day that is not a Saturday, Sunday or public holiday in New South Wales;

"**Chair**" means the chairperson of the Board appointed under Clause 14;

"**Chair Director**" has the meaning given to that term in Clause 13.1(a)(i);

"**Chief Operating Officer**" means a person appointed as chief operating officer of the Company under Clause 16;

"**Committee**" means a committee of persons formed pursuant to Clause 18.7;

"**Company**" means Media Industry Technologist Certification Limited;

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

"**Director**" means a person appointed as a director of the Company under Clause 13;

"**Elected Director**" has the meaning given to that term in Clause 13.1(a)(iv);

"**Governor Director**" has the meaning given to that term in Clause 13.1(a)(iii);

"**Insolvency**" means bankruptcy, winding up, liquidation, dissolution, becoming insolvent, being placed under administration or the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable jurisdiction and to the procedures, circumstances and events which constitute any of those conditions or matters;

"Member" means a person who is admitted as a member of the Company under Clause 3;

"Member Representative" means the representative of a member appointed under Clause 10.9;

"Membership Fee" means the amount (if any) set by the Directors on an annual or other basis which is a condition of membership;

"Objects" are those objects of the Company set out in Clause 2.1;

"Officer" has the meaning given to that term in the Corporations Act;

"Officeholder Director" has the meaning given to that term in Clause 13.1(a)(ii);

"Ordinary Majority" means:

- (a) in relation to a meeting of Directors, more than 50% of the total voting power of those persons present and entitled to vote;
- (b) in relation to a meeting of Members, more than 50% of the total number of votes exercised by those Members present in person or by proxy, attorney or representative and entitled to vote; and
- (c) in any other case, more than 50% in number of those persons from whom authorisation or instruction is required to be obtained;

"Ordinary Resolution" means a resolution approved by Ordinary Majority of a duly convened meeting at which a quorum is present;

"Register" means the register of Members to be kept pursuant to the Corporations Act;

"Registered Office" means the registered office for the time being of the Company;

"Secretary" means a secretary appointed under Clause 15 or an assistant or acting secretary of the Company;

"SMPTE" means Society of Motion Picture and Television Engineers Limited Inc (a USA-incorporated company);

"Special Majority" in relation to a decision of the Board means approval by a two-thirds majority of Directors;

"Special Resolution" in relation to a resolution of the Members has the meaning given in the Corporations Act; and

"Term" means the term of office of a Director, as set out in Clause 13.4.

1.2 Construction

In this Constitution, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;

- (c) the word person shall include corporations, incorporated and unincorporated associations and other entities;
- (d) a reference to a statute, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (e) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes electronic and facsimile transmission; and
- (f) reference to a month means a calendar month.

1.3 **Headings**

Headings do not affect the interpretation of this Constitution.

1.4 **Replaceable rules do not apply**

Any replaceable rules contained in the Corporations Act which are inconsistent with this Constitution do not apply to this Company.

2. **ESTABLISHMENT**

2.1 **Objects**

The central objective of the Company will be to create and administer a voluntary, industry-driven certification scheme for the Australian media industries. Consistent with the pursuit of this goal, the Company will:

- (a) conduct appropriate research related to the knowledge and skill requirements of the media industries;
- (b) promote greater industry awareness of the benefits associated with standardising and benchmarking employee skill levels and increased employee mobility;
- (c) seek industry feedback and input into the content and standard of the certification process;
- (d) devise an assessment process which will allow candidates to undertake a competency assessment to be certified as Media Technologists with industry-wide recognition;
- (e) administer the enrolment, assessment and certification process; and
- (f) undertake any other activities the Board determines to be in the interests of the Members and the furtherance of the general objectives of the Company,

and for those purposes the Company has the legal capacity of a natural person with all the consequential powers as conferred by the Corporations Act.

2.2 **Assets and income**

The assets and income of the Company must be applied solely towards the promotion of the objects of the Company as set out in this Constitution and no portion is to be distributed directly or indirectly to the Members except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.

2.3 **Liability**

The liability of the Members is limited to the amount specified in Clause 2.4.

2.4 **Contribution upon winding up**

Every Member undertakes to contribute an amount not exceeding \$100.00 to the assets of the Company in the event of it being wound up whilst they are a Member or within one year afterwards for:

- (a) payment of the debts and liabilities of the Company contracted before the time when they ceased to be a Member;
- (b) the costs charges and expenses of winding up; and
- (c) an adjustment of the rights of contributories among themselves,

however the liability of a Member to contribute towards the payment of the debts and liabilities of the Company or the costs, charges and expenses of the winding up of the Company is limited to the amount set out in this Clause 2.4.

2.5 **Transfer of property**

If the Company is wound up or dissolved, any property remaining after such dissolution or winding up and after the satisfaction of all its debts and liabilities must be transferred to an institution or institutions having objects or purposes substantially similar to the objects of the Company, which is not carried on for the profit or gain of its individual members. The institution or institutions will be determined by the Members at or before the time of dissolution and in default by a Judge of the Supreme Court of New South Wales who has or acquires jurisdiction in the matter.

3. **MEMBERS**

3.1 **Members**

Subject to this Constitution, the Members of the Company at the date of adoption of this Constitution are:

- a) John Philip Maizels
- b) Dominic John Case; and
- c) Michael Frank Day.

Any subsequent Member will be admitted pursuant to Clause 3.2.

3.2 **Application for admission as a Member**

- (a) A person (other than a person already admitted in accordance with Clause 3.1) who wishes to be a Member must:
 - (i) be proposed for membership by a Member;
 - (ii) lodge with the Secretary a written application for membership (in the form approved by the Board) signed by the applicant and by the Member who is proposing the applicant; and

- (iii) lodge with their application a document in a form approved by the Board confirming that the applicant adheres to the Objects.
- (b) The Board must consider the application for membership at its next meeting after the application is received.
- (c) An applicant may only be admitted as a Member if their application is approved by a Special Majority of the Board. The Board has complete discretion in deciding whether to accept or reject an application and is not required to give any reasons for rejecting an application.
- (d) The Secretary must inform an applicant of the result of their application as soon as practicable after the meeting of the Board at which the application was considered.

3.3 Admission of Members

The Company must admit as a Member any person who:

- (a) satisfies the criteria set out in Clause 3.2; and
- (b) pays the Membership Fee (if any).

4. REGISTER OF MEMBERS

- (a) The Secretary must keep the Register at the Registered Office and shall enter in it the full names and addresses of Members, the date upon which Members became Members and the date upon which any Member ceased to be a Member. The Register must not be used for any other purpose and is to be open for inspection by Members at the determination of the Directors.
- (b) Members are entitled to a certificate of membership. The certificate of membership must be returned to the Company on cessation of membership.

5. CESSATION AND TERMINATION OF MEMBERSHIP

5.1 Cessation

A Member shall cease to be a Member of the Company:

- (a) on tendering his or her resignation in writing addressed to the Secretary accompanied by their certificate of membership. Such resignation is effective on receipt of that notice; or
- (b) on his or her death.

5.2 Termination

- (a) The Board may terminate the membership of a Member if the Member:
 - (i) is convicted of an indictable offence;
 - (ii) becomes insolvent or becomes an insolvent under administration within the meaning of the Corporations Act; or
 - (iii) in the opinion of the Board, acts in a manner which is injurious or prejudicial to the character or interests of the Company.

- (b) A decision to terminate the membership of a person must be made by a Special Majority at a meeting of the Board. Before the Board terminates the membership of a Member it must give the Member full and fair opportunity to show why their membership should not be terminated.

5.3 **Moneys due and payable**

Any monies due and payable under this Constitution by a Member to the Company at the time the Member ceases to be a Member continue to be due and payable notwithstanding that the person is no longer a Member.

5.4 **Rights of Member following cessation or termination of membership**

Any person who ceases to be a Member shall forfeit all rights and privileges of membership and shall have no claim upon the Company except rights or claims as a creditor (if any).

6. **TRANSFER OF MEMBERSHIP**

A right, privilege or obligation, which, a person has by reason of being a Member:

- (a) is not capable of being transferred or transmitted to another person with the exception of a corporate transfer to a wholly owned or majority controlled affiliate; and
- (b) terminates on cessation of the person's membership.

7. **GENERAL MEETINGS**

7.1 **Annual general meeting**

The Company must hold an annual general meeting of the Company in accordance with the requirements of the Corporations Act.

7.2 **Calling general meetings**

The Directors may whenever they think fit, and must upon a requisition made by Members in accordance with section 249D of the Corporations Act, convene a general meeting of the Company. General meetings are to be held at the times and places prescribed by the Company in general meeting or if no time or place is prescribed, as determined by the Directors.

7.3 **Notice of meetings**

Written notice of a meeting of the Members must be given to the Members in accordance with the Corporations Act. At least 21 days' notice of a general meeting must be given to the Members in accordance with this Constitution. The notice calling a meeting of the Members must:

- (a) set out the place, date and time for the meeting;
- (b) state the general nature of the meeting's business;
- (c) in the case of an election of Directors, state the names of the candidates for election; and
- (d) contain all other information which the Corporations Act requires to be included in the notice.

7.4 **Omission to give notice**

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

7.5 **Resolutions by the Members without a general meeting**

Any written resolution of the Members (whether in one document or in several copies) signed by each Member entitled to vote is as valid and effectual as a resolution duly passed at a general meeting of the Company, unless the Corporations Act requires a resolution to be passed at a general meeting of the Company.

8. **PROCEEDINGS AT GENERAL MEETINGS**

8.1 **Quorum**

- (a) No business is to be transacted at any general meeting unless a quorum is present at the time the meeting proceeds to business. Attendance by teleconference or equivalent electronic 2-way connection shall constitute a Member being present for the purposes of being counted as part of a quorum.
- (b) One third of the Members entitled to vote is a quorum for all general meetings. The quorum must include the Chair unless the Chair consents to the meeting's taking place in their absence.

8.2 **Lack of quorum**

If within 30 minutes after the time appointed for the meeting a quorum is not present, the meeting will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Directors determine. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting those Members (present in person or by proxy or representative and entitled to vote) will be a quorum.

8.3 **Chairperson**

The Chair may preside as chairperson at every general meeting. If there is no Chair, or if the Chair is not present within 30 minutes after the time appointed for the meeting, or if the Chair is unwilling to act as chairperson of the meeting, the Directors must choose another Director as chairperson of the general meeting. If no Director is so chosen or if all the Directors present decline to take the chair, the Members present must choose one of their own number to be chairperson of the general meeting.

8.4 **Adjournment**

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

8.5 **Notice of adjourned meeting**

It is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting, unless the meeting is adjourned for 30 days or more in which case notice of the adjourned meeting is to be given as in the case of an original meeting.

8.6 Decision by Ordinary Resolution

At a general meeting a resolution put to the vote of the meeting is to be decided by Ordinary Resolution on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or (other than on the election of the chairperson of a meeting or the adjournment of a meeting) by not less than 2 Members having the right to vote at the meeting.

8.7 Minutes as evidence of result

Unless a poll is duly demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously or carried by a particular majority or lost or not carried by a particular majority and an entry to that effect in the book containing the minutes of the proceedings of the Company signed by the chairperson will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

8.8 Taking of poll

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

9. VOTES OF MEMBERS

9.1 Entitlement to vote

Every Member present in person or represented by proxy or representative has one vote, whether on a show of hands or on a poll.

9.2 Casting vote

In the case of an equality of votes whether on a show of hands or on a poll the chairperson of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote in addition to the vote or votes to which the chairperson may be entitled as a Member.

10. PROXIES

10.1 Appointment of proxy

A Member may appoint one proxy only, who must be another Member, and that proxy is entitled to vote on a show of hands or on a poll. An instrument of proxy in which the name of the appointee is not filled in will be deemed to be given in favour of the chairperson of the meeting to which it relates.

10.2 Instrument of proxy

The instrument appointing a proxy must be in writing signed by the appointer or their attorney duly authorised in writing.

10.3 Proxy to be deposited at office

The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority (or a copy certified in another manner acceptable to the Directors) must be either deposited at or faxed to the Registered Office (or other electronic, fax or physical address specified for that purpose in the notice convening the meeting) or delivered to the Secretary or chairperson of the relevant meeting before the time for holding the meeting or adjourned meeting or taking of the poll at which the person named in the instrument proposes to vote and in default the instrument of proxy will not be treated as valid.

10.4 Form of proxy

Every instrument of proxy whether for a specified meeting or otherwise must as nearly as circumstances will admit be addressed to the Company in such form as the Directors from time to time prescribe, subject to any requirements under the Corporations Act.

10.5 Power to demand poll

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

10.6 Votes of proxies

A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or unsoundness of mind of the appointer or revocation of the instrument or of the authority under which the instrument was executed provided that no intimation in writing of the death, unsoundness of mind or revocation has been received by the Company before the meeting or adjourned meeting at which the instrument is used. A proxy is not revoked by the appointer attending and taking part in any meeting but if the appointer votes on a resolution either on a show of hands or on a poll the person acting as proxy for that appointer has no vote as proxy on that resolution.

10.7 Identification of proxy

The chairperson of a meeting may require a person acting as a proxy to establish to the satisfaction of the chairperson that they are the person nominated as proxy in the form of proxy lodged under this Constitution and failing compliance that person may be excluded from voting either upon a show of hands or upon a poll.

10.8 Power of attorney

- (a) If a Member executes or proposes to execute an instrument or to act by or through an attorney they must:
 - (i) produce the instrument appointing the attorney to the Company for noting;
 - (ii) pay the prescribed fee (if any) to the Company for that noting; and
 - (iii) (if required) file with the Company a certified copy of that instrument which is to be retained by the Company.
- (b) The Directors may on the first production of that instrument of attorney and from time to time subsequently require any evidence as they think fit that the instrument of attorney is effective and current.

10.9 **Appointment of a representative**

Any Member may, by written notice to the Company, appoint such person as it thinks fit to represent and act for it in respect of its membership and to attend and vote at meetings of the Company, to demand or join in demanding a poll or to vote at such poll. During the currency of their appointment, a Member Representative may exercise all of the powers that the appointing Member may exercise under this Constitution or under the Corporations Act. Any appointment of a representative should specify the period of currency and may be revoked at any time during that currency by notice in writing to the Company by the Member. A Member may only have one representative appointed under this clause at any one time.

11. **DIRECTORS**

11.1 **Number**

Subject to this Constitution, and unless otherwise determined by the Directors, the number of Directors will be not less than 3 nor more than 7.

11.2 **No remuneration**

The Company is prohibited from making payments to any Director other than for payment of:

- (a) out-of-pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount approved by the Board;
- (b) any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as a Director, where the provision of the service and amount payable has the approval of the Board and is not more than an amount which commercially would be reasonable payment for the service to recognise substantial additional time spent by individual Directors on the activities of the Company; and
- (c) any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Board.

11.3 **Directors' vacancies**

The continuing Directors may act notwithstanding any vacancy in their number but should the number of Directors fall below the minimum number fixed in accordance with this Constitution the Directors may act for the purpose of increasing the number of Directors pursuant to Clause 11.4 or of summoning a general meeting of the Company or in emergencies but for no other purpose.

11.4 **Casual vacancies**

If at any time there is a casual vacancy on the Board in the sense that the number of Directors falls below the maximum number fixed in accordance with this Constitution:

- (a) in the case of a casual vacancy for the position of an Elected Director, the remaining Directors may by Ordinary Resolution appoint a person as a Director to fill that casual vacancy and that person shall, subject to the terms of this Constitution, hold office until the next annual general meeting of the Company, at which time that person shall automatically retire and be eligible for re-election; and
- (b) in the case of a casual vacancy for the position of the Chair Director, the Officeholder Director or the Governor Director, within 5 Business Days of the casual vacancy arising the Board must give written notice of the vacancy to the Australia Section of SMPTE,

requesting the Australia Section of SMPTE to nominate a replacement for that position within 60 days. If:

- (i) the Australia Section of SMPTE nominates a person to fill that casual vacancy within 60 days of the date of the notice, that person shall fill the casual vacancy and shall hold office, subject to the terms of this Constitution, until the next annual general meeting of the Company, at which time that person shall automatically retire and be eligible for re-appointment;
- (ii) the Australia Section of SMPTE does not nominate a replacement for that position within 60 days of the date of the notice, the remaining Directors may by Ordinary Resolution appoint a person to fill the casual vacancy and that person shall hold office, subject to the terms of this Constitution, until the next annual general meeting of the Company, at which time that person shall automatically retire and be eligible for re-appointment to stand as an Elected Director.

12. POWERS AND DUTIES OF BOARD

The management of the business and affairs of the Company is vested in the Board who in addition to the powers and authorities conferred by this Constitution or otherwise may exercise all powers and do all acts and things as can be exercised or done by the Company and are not required to be exercised or done by the Company in general meeting.

13. APPOINTMENT AND REMOVAL OF DIRECTORS

13.1 Directors

- (a) While the Australia Section of SMPTE is in existence, the Board shall consist of:
 - (i) the Chair of the Australia Section of SMPTE, or if that person is unwilling to act, a person nominated in writing by the Australia Section of SMPTE ("Chair Director");
 - (ii) an Officeholder of the Australia Section of SMPTE, appointed by the Australia Section of SMPTE, or if that person is unwilling to act, a person nominated in writing by the Australia Section of SMPTE ("Officeholder Director");
 - (iii) a Governor of SMPTE to be appointed in writing for that purpose by the Australia Section of SMPTE, or if that person is unwilling to act, a person nominated in writing by the Australia Section of SMPTE ("Governor Director"); and
 - (iv) 4 persons who are elected in accordance with Clause 13.3 below ("Elected Directors")
- (b) If at any time the Australia Section of SMPTE ceases to exist, the Board shall consist of 7 Elected Directors.

13.2 Directors

As at the date of adoption of this Constitution;

- (a) the Chair Director is vacant and will be appointed pursuant to Clause 11.4(b);
- (b) the Officeholder Director is Michael Frank Day;

- (c) the Governor Director is John Philip Maizels;
- (d) the Elected Directors are:
 - (i) Dominic Anthony Schipano;
 - (ii) Dominic John Case;
 - (iii) Derek Paul Allsop; and
 - (iv) Charles Francis Sevier.

13.3 Elected Directors

- (a) The process for the election of Elected Directors will be as follows:
 - (i) any 2 persons who are Members may propose and second any other person to be elected as an Elected Director;
 - (ii) the nomination must be in writing, signed by the person who is nominated and that person's proposer and seconder and shall be lodged with the Secretary at least 35 days prior to the annual general meeting at which the election is to take place, or such other period as determined by the Board;
 - (iii) if the number of nominees exceeds the number of vacancies for Elected Directors on the Board, balloting lists shall be prepared for distribution at the relevant annual general meeting containing the names of the candidates in random sequence and each Member present at the annual general meeting in person or by proxy, attorney or representative shall be entitled to vote for any number of such candidates not exceeding the number of Elected Director vacancies;
 - (iv) if an insufficient number of candidates are nominated to fill the number of vacancies for Elected Directors on the Board, all those persons nominated shall become Directors automatically from the end of the annual general meeting, without the need for a vote, and the remaining positions on the Board will be filled in accordance with Clause 11.4;
- (b) An Elected Director must not hold office for more than 3 consecutive Terms; and
- (c) An Elected Director may be removed from office at any time by written resolution if the Company has a sole Member, and by Ordinary Resolution of the Members of which at least 21 days' notice has been given in any other case.

13.4 Term

- (a) At each annual general meeting, the following Directors (including their Alternate Director) automatically retire and the Directors (other than their Alternate Director) are eligible for re-election (and if not re-elected, that retirement takes effect at the conclusion of that annual general meeting):
 - (i) any Director appointed to fill a casual vacancy in accordance with this Constitution since the previous annual general meeting;
 - (ii) one half (or if that is not a whole number, the next lowest whole number nearest to one half) of the Elected Directors who are not:

- (A) to retire under paragraph (i); or
 - (B) an Alternate Director,
selected in accordance with Clause 13.4(b); and
 - (iii) any Elected Director who, if that Elected Director did not retire at the annual general meeting, would at the next annual general meeting, have held that office for more than 2 years.
- (b) The Elected Directors who retire by reason of Clause 13.4(a)(ii) are those of the Elected Directors the subject of that clause who have been in office the longest, and, as between Elected Directors who have been in office for an identical period, those to retire are (unless they otherwise agree among themselves) to be selected by lot.
 - (c) The term of the following Directors shall be from the date of their appointment to the next annual general meeting of the Company at which time those Directors shall automatically retire and be eligible for re-appointment:
 - (i) the Chair Director;
 - (ii) the Officeholder Director; and
 - (iii) the Governor Director.

13.5 Termination

A person ceases to be a Director if:

- (a) the Director dies;
- (b) the Director enters into any form of Insolvency
- (c) the Director is absent, without the permission of the Board, from more than half of the meetings of the Board in any 6 month period;
- (d) the Director ceases to be or is disqualified from being a director under the Corporations Act;
- (e) the Director becomes of unsound mind or an individual whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (f) the Director resigns either by giving notice in writing to the Secretary, which is effective on the date of receipt of that notice;
- (g) the Director retires as a Director at an annual general meeting in accordance with Clause 13.4;
- (h) the Director is removed as a Director by the Members in accordance with Clause 13.3(c);
- (i) in the case of the Governor Director, the Officeholder Director and the Chair Director, any of those persons ceasing to hold the relevant office;
- (j) in the case of any Director appointed in writing by the Australia Section of SMPTE, notice in writing revoking that Director's appointment is provided to the Company by the Australia Section of SMPTE; and

- (k) at the annual general meeting following appointment, in the case of a Director having been appointed to fill a casual vacancy.

14. **CHAIR**

The Board may from time to time appoint one of their number as Chair of the Company for such term as they may think fit and any Chair so appointed may be removed or replaced by a majority decision of the rest of the Board in its sole discretion.

15. **SECRETARY**

The Board must appoint a person or persons as a Secretary of the Company, in accordance with the Corporations Act for such term at such remuneration and upon such conditions as they may think fit. Subject to the terms of any agreement entered into in a particular case, the Board may revoke any such appointment. A Secretary may or may not be a Director.

16. **CHIEF EXECUTIVE OFFICER**

The Board may from time to time appoint a person (whether a Member of the Company or not) to act as the Chief Executive Officer of the Company for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment. The Chief Executive Officer may or may not be a Director.

17. **DIRECTORS' CONTRACTS AND CONFLICTS OF INTEREST**

17.1 **Directors' interests**

Subject to the Corporations Act:

- (a) no Director or proposed Director is disqualified by that office from:
- (i) entering into a contract, agreement or arrangement with the Company;
 - (ii) becoming or remaining a Director of any company in which the Company is in any way interested or which is in any way interested in the Company;
- (b) no contract, agreement or arrangement in which a Director is in any way interested, entered into by or on behalf of the Company can be avoided; and
- (c) no Director who:
- (i) enters into a contract, agreement or arrangement in which the Director has an interest; or
 - (ii) is a director of the other company with which the Company has entered into the contract, agreement or arrangement,

is liable to account to the Company for any profits or remuneration realised by that Director as a result of their being interested or being a director of the other company.

17.2 **Declaration of interest**

- (a) The nature of a Director's interest in any contract agreement or arrangement must be declared by that Director at a meeting of the Board in accordance with the Corporations Act as soon as practicable after the relevant facts have come to that Director's knowledge.

18.4 Notice of meetings

Not less than 5 Business Days' notice of a Board meeting is to be given to all Directors except to a Director whom the Secretary when giving notice to other Directors reasonably believes to be outside Australia at the time of giving the notice.

18.5 Chairperson of meetings

The Chair or the Chair's Alternate Director may preside as chairperson at every Board meeting. If there is no Chair, or if neither the Chair nor the Chair's Alternate Director is present within 30 minutes after the time appointed for the Board meeting, or if they are both unwilling to act as chairperson of the meeting the Directors present must choose one of their number to be chairperson of that meeting.

18.6 Decision of questions

Subject to Clause 18.9, questions arising at any meeting of Directors are to be decided by a majority of votes. Each Director has one vote and a determination by a majority of the Directors will for all purposes be deemed a determination of the Directors. In case of an equality of votes at a meeting at which more than 3 Directors are present the Chair has a second or casting vote.

18.7 Delegation to Committees

- (a) The Directors may delegate any of their powers to a Committee or Committees consisting of Directors or other persons as the Directors think fit.
- (b) Committees must in exercise of the powers delegated comply with all directions imposed on them by the Directors.
- (c) The meetings and proceedings of Committees consisting of more than 1 person are to be governed by the provisions of this Constitution regulating the meetings and proceedings of the Directors so far as they are applicable and are not superseded by any regulations made by the Directors under this Constitution.

18.8 Validation of irregular acts

All acts done by any meeting of the Directors or by a Committee or by any person acting as a Director will, even if it is later discovered that there was some defect in the appointment or continuance in office of a Director or person acting as aforesaid or that they or any of them were disqualified or had vacated office or were not entitled to vote, be as valid as if every person had been duly appointed or had duly continued in office and was qualified and had continued to be a Director and had been entitled to vote.

18.9 Written resolutions

A resolution in writing signed by all the Directors for the time being in Australia (not being less than a quorum) is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted. That resolution may consist of several copies of a document each signed by one or more Directors.

18.10 Mode of meetings

The Directors may meet in person or by telephone or other instantaneous means of conferring for the dispatch of business (or by any combination of those means) which allows each person present to hear and be heard by each other person present, and adjourn and otherwise regulate its meetings as it determines.

- (b) A Director who holds an office or possesses a property whereby duties or interests might be created whether directly or indirectly in conflict with their duties or interests as Director must, declare at a meeting of the Directors the fact and the nature, character and extent of the conflict.
- (c) A general notice that a Director is a member of any specified firm, partnership, entity or corporation and is to be regarded as interested in all transactions with that firm or corporation is a sufficient declaration under this clause as regards the Director and the transactions. After giving the general notice it is not necessary for the Director to give any special notice relating to any particular transaction with that firm or corporation. It is the duty of the Secretary to record in the minutes any declaration made or any general notice given by a Director pursuant to this clause.

17.3 **Votes by interested Directors**

Subject to the Corporations Act, a Director who has a material personal interest in a matter that is being considered at a meeting of Directors:

- (a) must not vote on the matter (or in relation to a proposed resolution under Clause 17.3(d) in relation to the matter, whether in relation to themselves or a different Director); and
- (b) must not be present while the matter (or a proposed resolution of that kind) is being considered at the meeting,

unless:

- (c) the matter applies to an interest that the Director has as a Member in common with the other Members; or
- (d) the Directors who do not have a have a material personal interest in the matter have passed a resolution that specifies the Director, the material personal interest and the matter, and states that the Directors voting for the resolution are satisfied that the interest should not disqualify the Director from considering or voting on the matter.

18. **PROCEEDINGS OF DIRECTORS**

18.1 **Board meetings**

The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings and proceedings as they think necessary for the transaction of business.

18.2 **Quorum**

The quorum necessary for the transaction of business of the Board is 3 Directors, or such greater number as the Board may determine from time to time. The quorum must include the Chair or the Chair's Alternate Director, unless the Chair consents to the meeting's taking place in their absence.

18.3 **Calling of meetings**

The Secretary may at any time (and must upon the request of a Director) convene a meeting of the Board.

18.11 Alternate Directors

- (a) Subject to Clause 18.11(b), any Director who is unable to attend a meeting of the Directors may, with the prior approval of the Board (excluding the appointing Director), appoint another person as an Alternate Director who, when acting as such, is an officer of the Company and not an agent of the appointing Director, and is subject to all the duties and has all the powers and rights of the appointing Director.
- (b) Any such appointment must be notified in writing (including, without limitation, by facsimile transmission or electronic mail) by the appointing Director to the Company, which must be produced at the meeting at which it is to be used and be left with the Secretary for retention with the Company's records.
- (c) If the appointing Director is not present at a meeting of the Board, an Alternate Director appointed for the purpose of that meeting may attend and vote at that meeting in the place of the appointing Director. The Alternate Director will have a vote for each Director by whom they are so appointed in addition to their own vote.
- (d) The appointing Director may, at any time and regardless of the period of appointment, revoke the appointment of an Alternate Director by notice in writing (including, without limitation, by facsimile transmission or electronic mail) from the appointing Director to the Company.

19. BORROWING POWERS

The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge all or part of its undertaking assets and uncalled capital and to issue debentures debenture stock and other securities outright or as security for any debt contract guarantee engagement obligation or liability of the Company or of any third party and on the terms and conditions as the Directors think fit.

20. MINUTES

The Directors shall cause minutes, signed by the chairperson of the meeting at which proceedings were held or by the chairperson of the next succeeding meeting, to be kept in accordance with the Corporations Act:

- (a) of the names of the Directors present at each meeting of the Directors and of any Committee; and
- (b) of all resolutions and proceedings of general meetings and of meetings of Directors and of Committees.

21. ACCOUNTS**21.1 Accounting and other records**

- (a) The Board must cause proper financial records to be kept and must send to Members, as required by the Act, copies of the Company's financial report (including the financial statements), the directors' report and the auditor's report on the financial report, for each financial year of the Company. The Directors must lay before the annual general meeting those reports for the last financial year that ended before an annual general meeting, as required by the Act.
- (b) Subject to the Act, the Board may offer Members an option not to be sent a copy of the Company's financial reports. If a Member who has selected this option subsequently

wishes to receive the Company's financial reports, the Company must send current and/or future reports to that Member.

21.2 **Auditors**

The Board must cause the financial records of the Company to be examined by a properly qualified auditor or auditors at least once for each financial year. An auditor is to be appointed and may be removed and their remuneration, rights and duties regulated in accordance with the Corporations Act.

22. **NOTICES**

22.1 **Method of giving notice**

A notice may be given by the Company to any Member either personally or by sending it by post to them at their registered address. Where a notice is sent by post, service of the notice is deemed to be effected by properly addressing prepaying and posting a letter containing the notice and to have been effected at the time at which the letter would be delivered in the ordinary course of post.

22.2 **Time of giving notice**

If the Directors determine, a notice may be given by facsimile transmission and service of the notice is deemed to be effected at the time at which in the ordinary course the facsimile transmission would be delivered.

22.3 **Electronic notice**

If the Directors determine, a notice may be sent by e-mail to the e-mail address provided by a person for the purposes of service and service of the notice is deemed to be effected at the time specified in a delivery confirmation report received by the sender, or, if such a confirmation report is not received (and in the absence of a delivery failure notification), on the following Business Day after the date of sending the message.

22.4 **Persons entitled to notice of general meeting**

Notice of every general meeting must be given in the manner authorised to:

- (a) every Member; and
- (b) the auditor for the time being (if any) of the Company,

and no other person is entitled to receive notices of general meetings.

23. **OFFICERS INDEMNITY AND INSURANCE**

23.1 **Indemnity**

Subject to Clause 23.2, the Company shall indemnify to the relevant extent each person who is an Officer of the Company out of the assets of the Company against any liability incurred by the Officer in his or her capacity as an Officer, save in relation to:

- (a) a liability owed to the Company or a related body corporate of the Company;
- (b) a liability for a pecuniary penalty order under section 1317G of the Corporations Act or a compensation order under section 1317H or 1317HA of the Corporations Act; or

- (c) a liability that is owed to someone other than the Company or a related body corporate of the Company and which did not arise out of conduct in good faith.

23.2 Legal Costs

The Company shall indemnify to the relevant extent every person who is an Officer of the Company against any liability for legal costs and expenses incurred by that person in his or her capacity as such unless the costs are incurred:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under Clause 23.1;
- (b) in defending or resisting criminal proceedings in which the person is found guilty;
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (provided that the Company shall indemnify the person in respect of costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the person under the Corporations Act in which the court denies the relief.

23.3 Past Officer

The Company must indemnify to the relevant extent any person who has previously been an Officer of the Company:

- (a) out of the assets of the Company against any liability incurred by that person in his or her capacity as an Officer of the Company save in relation to a liability specified in Clauses 23.1(a), 23.1(b) or 23.1(c); and
- (b) against any liability for legal costs and expenses incurred by that person in his or her capacity as an Officer of the Company, unless the costs are incurred in any of the circumstances specified in 23.2(a), 23.2(b), 23.2(c) or 23.2(d).

23.4 Auditor

The Company may indemnify to the relevant extent any person who is or has been an Auditor of the Company:

- (a) out of the assets of the Company against any liability incurred by that person in his or her capacity as an Auditor of the Company save in relation to a liability specified in Clauses 23.1(a), 23.1(b) or 23.1(c); and/or
- (b) against any liability for legal costs and expenses incurred by that person in his or her capacity as an Auditor of the Company, unless the costs are incurred in any of the circumstances specified in 23.2(a), 23.2(b), 23.2(c) or 23.2(d).

23.5 Definition

In this Clause 23:

- (a) "to the relevant extent" means:
 - (i) to the extent that the Company is not precluded by law from doing so;

SIGNED by)
DOMINIC JOHN CASE)
in the presence of:)

.....)
Witness)


.....)
Name (printed))

SIGNED by)
MICHAEL FRANK DAY)
in the presence of:)

)
.....)
Witness)

NATALIE PALOMO)
.....)
Name (printed))

.....



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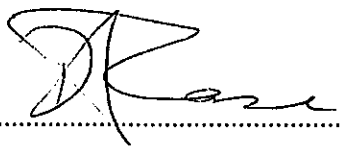
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SIGNED by)
DOMINIC JOHN CASE)
in the presence of:)

.....*Blanche Ambrose*.....)
Witness)

.....*Blanche Ambrose*.....)
Name (printed))


.....

SIGNED by)
MICHAEL FRANK DAY)
in the presence of:)

.....)
Witness)

.....)
Name (printed))

.....

