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**Constitution
of the
Association of Professional
Staffing Companies
Australia Ltd**



1. Preliminary

1.1 Definitions

In this Constitution unless the contrary intention appears:

“Act” means any statute, order, regulation or other subordinate legislation from time to time in force concerning companies and affecting the company.

“Adoption Date” means the date this Constitution was adopted.

“Affiliate Associate Member” means a Member that meets the requirements of clause 3.2(d) and who is entered in the Register as an Affiliate Associate Member of the Company;

“Alternate Director” means a person appointed as an alternate Director under clause 6;

“Annual General Meeting” means an Annual General Meeting of the Company held in accordance with clause 5;

“Applicable APSCo Australia Dispute Resolution Procedures” means the APSCo Australia Dispute Resolution Procedures as applies to a Member in respect of a conduct complaint or dispute involving that Member and includes any directions duly given for the handling of that complaint or dispute;

“APSCo Australia Code of Conduct” means the statement attached to this Constitution as a guideline regarding the standard of conduct that the Company considers is becoming of Members and in the interests of the Company and as may be amended, added to, or deleted by resolution of the Directors;

“APSCo Australia Dispute Resolution Procedures” means the procedures, however described, established from time to time in accordance with this Constitution, for dealing with the resolution of conduct complaints and disputes involving Members;

“APSCo Australia Rules” means the rules designated as such in accordance with clause 10 and attached to this Constitution at the Adoption Date as may be amended, added to, or deleted by resolution of the Directors;

“APSCo Global” means The Association of Professional Staffing Companies (Global) Limited company number 03796626;

“Articles” means the Articles of Association of APSCo Global;

“**Auditor**” means the auditor or auditors for the time being of the Company;

“**Board**” means the whole or any number of Directors assembled at a meeting of Directors and being not less than a quorum;

“**Brand Associate Member**” means a Member which meets the requirement of clause 3.2(b) and which is entered in the Register as a Brand Associate Member.

“**Brand Associate Member Representative**” means the Member Representative of a Brand Associate Member;

“**Case Costs**” means fees and costs for dealing with conduct complaints or disputes charged in accordance with a scale fixed from time to time by the Directors under clause 4.3;

“**Chairperson**” means the Chairperson of the Board or the Chair of any Company meeting;

“**Committee Rules**” means the contractually binding rules designated as such under their chapter heading in the APSCo Australia Rules;

“**Company**” means the Association of Professional Staffing Companies Australia Limited;

“**Constitution**” means this Constitution as amended from time to time;

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

“**Director**” means any person formally and lawfully appointed or elected as a Director of the Company and where appropriate, includes an Alternate Director;

“**Directors**” means all or some of the directors of the Company for the time being acting as a Board unless the context otherwise requires;

“**Full Associate Member**” means a Member which meets the requirements of clause 3.2(a) and which is entered in the Register as a Full Associate Member.

“**Full Associate Member Representative**” means the Member Representative of a Full Associate Member;

“**Global Member**” means a Member which meets the requirements of clause 3.2(c) and which is entered in the Register as a Global Member;

“**GM Director**” has the meaning set out in clause 6.4(b).

“**GM Nominee**” has the meaning set out in clause 6.3(b).

“**Levies**” means the levies raised by the Directors pursuant to clause 4.1;

“Local Representative Committee” means the local representative committee as defined in the Articles;

“LRC Director” has the meaning set out in clause 6.4(c).

“Managing Director” means an appointed person to facilitate the daily management of the Company and the Board;

“Member” a person approved as a member of the Company under clause 3.4;

“Member Committee” means a committee established as such in accordance with the Committee Rules;

“Member Representative” means the natural person who is nominated by a Member which is not a natural person to represent that Member in respect of matters arising under the Constitution;

“Membership Rules” means the contractually binding rules designated as such under their chapter heading in the APSCo Australia Rules;

“Month” means calendar month;

“Office Bearer” means any person who from time to time occupies the position of President, Vice President or Finance Chair of the Company or such other position as determined by the Board from time to time;

“Office” means the registered office for the time being of the Company;

“President” means the President of the Company;

“Professional Staffing Services” means services for the recruitment, contract, on-hire, management or administration of professional talent;

“Professional Staffing Services Supplier” means a person who supplies or manages professional talent;

“President” means the President of the Company;

“Register” means the register of Members of the Company required to be kept under the *Corporations Act* and where appropriate includes a branch register;

“Secretary” includes any person appointed to perform the duties of Company Secretary of the Company;

“Special Resolution” means a resolution that has been passed by at least 75% of the votes cast by those entitled to vote on the resolution.

“Vice President” means the Vice President(s) of the Company;

“Writing” and **“written”** includes printing, lithography, photography and typewriting

and all other modes of representing or reproducing words in visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise;

“**Year**” means the financial year of the Company ending on 30 June.

1.2 *Interpretation*

In this Constitution unless the contrary intention appears:

- (a) **(examples)** examples do not form part of this Constitution;
- (b) **(gender)** words importing any gender include all other genders;
- (c) **(person)** the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (d) **(singular includes plural)** the singular includes the plural and vice versa;
- (e) **(regulations)** a reference to a law includes regulations and instruments made under that law;
- (f) **(amendments to statutes)** a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (g) **(from time to time)** a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (h) **(signed)** where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors;
- (i) **(headings)** headings to these clauses do not affect their construction;
- (j) **(Corporations Act)** an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the *Corporations Act*, the same meaning as in that provision of the *Corporations Act*;
- (k) **(Replaceable Rules)** except as provided by clauses 5.1, 6.1 and 7.1, provisions of the *Corporations Act* that apply as Replaceable Rules are displaced by this Constitution and accordingly do not apply to the Company.

1.3 *Effect of Constitution and APSCo Australia Rules*

- (a) Pursuant to the *Corporations Act*:
- (i) this Constitution (as amended from time to time) and any Replaceable Rules which are not displaced by this Constitution have effect as a contract:
- 1 between the Company and each Member;
 - 2 between the Company and each Director and Company Secretary;
 - 3 between a Member and each other Member; and
- (ii) each Member agrees upon becoming a Member to be bound by any modification to the Constitution, duly made, that increases the Member's liability to pay money to the Company.
- (b) Additionally, the provisions of this Constitution, any APSCo Australia Rules designated as contractually binding rules, and any Applicable APSCo Australia Dispute Resolution Procedures, each as in force from time to time, shall form and have effect as a binding contract between the Company and each Member, the terms of which incorporate and are to be determined by reference to provisions thereof on the basis that any alteration to the Constitution, the APSCo Australia Rules designated as contractually binding rules, and any Applicable APSCo Australia Dispute Resolution Procedures, duly made as permitted by this Constitution, alters prospectively the terms of such contract.

2. The Company

2.1 *Public company limited by guarantee*

- (a) The Company is a public company limited by guarantee.
- (b) Each Member undertakes to contribute an amount not exceeding one hundred dollars (\$100.00) to the property of the Company if the Company is wound up:
- (i) at a time when that person is a Member; or
 - (ii) within one year of the time that person ceased to be a Member,

for payment of the Company's debts and liabilities contracted before he, she or it ceases to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves.

2.2 *Objects*

The objects of the Company are:

- (a) to safe guard and advance the interests of organisations within industry sectors from which Members are admitted;
- (b) to act as a central body for the Members to provide services and advice directed to the maintenance, development and protection of the business interests of the Members and such other services for the Members as the Company may from time to time decide;
- (c) to promote excellence, productivity and best practice in companies which are Members, or individuals which are engaged as directors, officers, employees, or otherwise by, Members by developing services to assist in improving standards of business performance, methods and profitability;
- (d) to enhance the professionalism, knowledge and competencies of individuals working in the professional staffing sector through the provision of professional development programs;
- (e) to represent the Members' interests in matters of legislation and in negotiating, with and making representations to, Government, regulatory authorities, industries, other Associations and the public generally on any matters that affect the interests of the Members.
- (f) to foster ethical and procedural best practice among Members by:
 - (i) administering and regulating, as far as it is lawful and practicable to do so, Member adherence to a standard of conduct becoming of a Member;
 - (ii) managing conduct complaints against Members;
 - (iii) acting as a dispute resolution facilitator, as required for disputes involving Members;
 - (iv) adopting from time to time procedures for managing conduct complaints against and disputes involving Members known as APSCo Australia Dispute Resolution Procedures;
 - (v) developing the resources needed to be able to meet the objects of the Company;
 - (vi) developing a wide public awareness of the benefits and services of the Company;
 - (vii) taking such steps as the Company considers necessary to protect, promote and advance the APSCo Australia Dispute Resolution Procedures and standard of conduct becoming of a Member;
 - (viii) facilitating access to dispute resolution services which have objects similar or complementary to those of the Company;
 - (ix) consulting and maintaining relations with stakeholders and other

disciplinary or dispute resolution schemes which have objects similar or complementary to those of the Company;

- (x) acquiring, where relevant and appropriate, knowledge of proposed Australian, or other overseas legislation and other regulatory standards and codes of practice which may affect professional conduct and dispute resolution standards;
 - (xi) compiling and distributing to stakeholders statistical and other data of interest and informing stakeholders on matters and questions affecting, or of interest to, professional industries;
 - (xii) maintaining effective lines of communication between the Company and its stakeholders, and to communicate to stakeholders results and outcomes of the APSCo Australia Dispute Resolution Procedures and related matters; and
- (g) to encourage research and publication relevant to the above objects.

2.3 *Assets and income of the Company*

(a) Subject to clause 2.3(b), the assets and income of the Company shall be applied solely in furtherance of its objects.

(b) No portion of the assets or income of the Company shall be distributed directly or indirectly to the Members of the Company except:

- (i) as bona fide compensation for goods or services supplied to or expenses incurred on behalf of the Company; or
- (ii) to indemnify a person under clause 9 of this Constitution.

(c) The Company must not subscribe to, support with its funds, or amalgamate with, any association or organisation which does not, to the same extent as this Constitution, restrict the application of its income and property and prohibit the making of distributions to its members.

(d) In the event that the Company is wound up, any surplus assets remaining after the payment of the Company's debts and liabilities must be transferred to an organisation with similar purposes and which has rules prohibiting the distribution of its assets and income to its members.

2.4 *Changes to the Constitution*

This Constitution shall not be altered except by way of a special resolution of the Company. A resolution of the Company is a special resolution if it is passed by a majority of not less than 75% of Members present at a general meeting who are eligible to vote including those Members who have appointed a proxy in accordance with clause 5.8.

3. Members

3.1 *Membership categories and classes*

- (a) Members of the Company shall be categorised as:
- (i) Global Members;
 - (ii) Full Associate Members;
 - (iii) Brand Associate Members; and
 - (iv) Affiliate Associate Members.
- (b) The Board may, from time to time, determine and vary by resolution:
- (i) various classes within each category of membership of the Company;
 - (ii) the requirements with respect to professional standards, business operation and certification to be and remain a Member within each class of membership;
 - (iii) the rights, entitlements and obligations attached to being a Member in each class; and
 - (iv) additional benefits which Members may enjoy by reason of their membership of any category or class of membership of the Company.
- (c) The membership classes, requirements, rights, entitlements and obligations so determined or varied under clause 3.1(b) are to be published in the APSCo Australia Rules. Additional benefits under clause 3.1(b)(iv) do not form part of the APSCo Australia Rules.

3.2 *Who may apply (or be invited) to be a Member*

- (a) **(Full Associate Member)** Any company, partnership and other organisation which agrees in writing to be bound by and comply with the Constitution and the APSCo Australia Rules, and which, in the opinion of the Board is sufficiently involved in the supply or management of professional talent in industry sectors, as approved from time to time by a majority decision of the Board, can apply for approval to become a Full Associate Member of the Company. This includes, RPO, MSP, CMCs and internal recruitment teams.
- (b) **(Brand Associate Member)** Any company nominated by any group of two or more associated companies, partnerships or other organisations ("**Group**") who are involved in such industry sectors, as approved from time to time by a majority decision of the Board, can apply to be a Brand Associate Member of the Company.

(c) **(Global Member)** Any company or association which is a recruitment trade body and which has members from a number of countries.

(d) **(Affiliate Associate Member)** Any company which provides goods, services and support to such industry sectors, as approved from time to time by a majority decision of the Board, subject to any dispensation as may be granted by the Board, agrees in writing to be bound by and comply with the Constitution and the APSCo Australia Rules and who:

(i) in the opinion of the Board is sufficiently involved in supporting the identified membership sectors; and

(ii) meets the criteria for eligibility set out in the Membership Rules with respect to the classes of Affiliate Associate membership;

can apply for approval, or may be invited by the Board, to become an Affiliate Associate Member of the Company.

3.3 How to apply for approval to become a Member

Applications for approval to become a Member are to be made in accordance with the APSCo Australia Rules.

3.4 Who may become a Member

(a) To become a Member a person or entity must have been approved by the Directors as a Member. Membership is not transferable.

(b) In deciding whether to approve a person or entity as a Member, the Directors shall act fairly having regard to the Constitution and the APSCo Australia Rules and may have regard to any other matter which the Directors consider to be relevant.

(c) The Board may:

(i) subject to clause 3.4(c)(iv), approve an entity as a Member subject to such terms and conditions (and in the case of Affiliate Associate Members with such dispensations) as the Directors may in their discretion determine;

***Example:** In the case of an Affiliate Associate Member, the Board may dispense with a requirement to adhere to the APSCo Australia Code of Conduct because the Affiliate Associate Member's conduct may be more appropriately governed by another professional code – e.g. a code of professional ethics applying to chartered accountants.*

(ii) impose different terms and conditions on admission to membership and on different persons admitted to membership;

(iii) may reject any application for membership without being required to provide to the applicant a reason for that rejection; and

(iv) only approve an entity as a Global Member if all existing Global Members provide their written approval of such new Global Member.

3.5 Resignation of Membership

(a) A Member may resign from membership of the Company by giving to the Secretary not less than 28 days' written notice to that effect. Membership ceases upon expiry of such notice.

(b) The Directors may in their absolute discretion resolve to accept a Member's resignation from membership at any time even if notice has not been given in accordance with this clause and may waive any portion of the notice period.

3.6 Expulsion, suspension, or reassignment of membership

(a) If a Member:

(i) is found to have engaged or been involved in:

1 any conduct, which in the opinion of the Directors is unbecoming of the Member or prejudicial to the interest of the Company; or

2 any refusal or neglect to comply with the provisions of this Constitution, or the APSCo Australia Rules or with any binding decision made pursuant to the APSCo Australia Rules;

(ii) after having received a reminder, fails to pay any monies owing to the Company within 90 days following the due date for payment;

(iii) fails to meet any condition necessary to maintain Membership within the category or class of membership according to which the Member has been registered;

(iv) is required to be licensed or authorised under any Act (however this is defined) and the Member ceases to be so licensed or authorised; or

(v) becomes insolvent,

the Directors, acting in good faith and in their sole discretion, may by resolution expel the Member; or suspend, or reassign the category or class of, the Membership of that Member.

3.7 Additional Sanctions

(a) The Directors acting in good faith and in their sole discretion may by resolution impose upon a Member found to have been engaged or involved in any conduct, refusal or neglect described in clause 3.6(a)(i) additional sanctions as follows:

- (i) a direction that the Member:
 - 1 pay a sum to the Company, to a Member or to any other person;
 - 2 do (or refrain from doing) any act;
 - 3 obtain such advice relating to his, her or its behaviour;
 - 4 undertake a course of training or education;
 - 5 implement preventative procedures; or
 - 6 pay all or any portion of the Case Costs,

upon such conditions as, in the circumstances, the Directors consider would be becoming of the Member;

- (ii) a reprimand made publicly or privately in such terms as the Directors think fit.

3.8 *Timing and effect*

Subject to clause 3.10(b), a resolution expelling or suspending a Member for a reason described in clause 3.6(a)(i) or imposing additional sanctions upon a Member takes effect on the fifteenth day after it is passed. In any other case, the resolution takes effect on the day it is made.

3.9 *Procedural safeguards*

(a) A Member may not be subjected to any resolution made under clause 3.6 or 3.7 unless:

- (i) the Member concerned:
 - 1 at least 7 days prior to the date of that meeting for reasons of non-payment of monies to the Company; or
 - 2 at least 21 days prior to the date of that meeting in any other instance; and

has been given:

- 3 notice of the first meeting of the Directors at which the resolution is to be considered which sets out the alleged grounds for

making the resolution and the nature of the resolution proposed to be made; and

4 an opportunity to provide reasons in writing why the resolution should not be made.

(b) An expelled, suspended or reassigned Member may be reinstated by the Directors in their absolute discretion and upon such terms and conditions as they may see fit.

3.10 Conduct Appeals

(a) A Member, found to have engaged or been involved in any conduct, refusal or neglect described in clause 3.6(a)(i) in consequence of which a resolution has been made under clause 3.6 or 3.7 (the “**Original Resolution**”), may appeal against the finding in the manner set out in the APSCo Australia Dispute Resolution Procedures (a “**Conduct Appeal**”).

(b) The Original Resolution will not take effect whilst the finding is subject to a Conduct Appeal.

(c) Following the determination of the Conduct Appeal, the Directors may, by further resolution (a “**Final Resolution**”), confirm, vary or rescind the Original Resolution.

(d) Subject to the *Corporations Act* a Final Resolution shall be final and binding upon the Member. There shall be no further right of appeal from a Final Resolution.

3.11 Effect of cessation of membership

(a) Cessation of membership:

- (i) includes suspension and reassignment of Membership;
- (ii) does not entitle the Member to repayment of the whole or any part of any levy raised under clause 4 or of any other fee or Case Costs previously paid by the Member;
- (iii) is without prejudice to the Member’s liability to pay any levy or other fee which has become due and payable before such cessation; and
- (iv) is without prejudice to the Member’s rights and obligations under clause 3 in respect of any conduct complaint or dispute commenced to be processed under the APSCo Australia Dispute Resolution Procedures before such cessation (including any determination, sanction, fees or Case Costs payable to the Company in respect of such a dispute).

3.12 Publication of cessation of membership

(a) Where a Member has ceased to be a Member of the Company, as soon as practicable after:

(i) the Directors receive notice of resignation of membership under clause 3.4; or

(ii) a resolution is passed under clause 3.6,

the Directors must publish notice of the cessation of membership to:

(iii) the Members of the Company;

(iv) a body in Australia that has objects similar or complementary to those of the Company; or

(v) where the Member's membership of the Company (or of a body in Australia that has objects similar or complementary to those of the Company) is a lawful requirement of any tender or contract for the supply of Services, to the principal requesting tenders or the acquirer of the Services as the case may be.

4. Levies, fees and Case Costs

4.1 Levies

(a) The Directors may at any time and from time to time obtain money for the purposes of the Company by raising a levy from the Members. The form, amount and terms of any levy may be determined by the Directors acting in good faith and in their sole discretion save that an extraordinary levy may only be raised from amongst all or any Global Members, and, without limitation, may include any or all of:

(i) an annual levy;

(ii) an extraordinary levy; or

(iii) a levy which varies between Members on any basis which the Directors acting in good faith and in their sole discretion think fit.

4.2 Fees

The Directors may at any time and from time to time obtain money for the purposes of the Company by charging a fee in such amount as they may determine for any services supplied by the Company and, without limitation may charge a fee for considering an application to be approved as a Member.

4.3 Case Costs

The Directors may at any time and from time to time fix a scale of Case Costs.

4.4 Notice or invoice for payment

- (a) The Company may give to a Member notice or invoice for payment of any levy, fees or Case Costs to be raised from or paid by that Member.
- (b) A notice of any levy must include particulars of the total amount of any levy to be raised and the amounts payable by each Member.
- (c) Levies, fees and Case Costs will be due and payable by each Member on or before the date specified in the notice or invoice.
- (d) The Directors may, from time to time, give notice to Members that:
 - (i) the time for payment of any levy, fees or Case Costs may be extended; and
 - (ii) the levy, fees or Case Costs may be paid by instalments.

4.5 Interest

- (a) The Company may charge interest on any amount payable by a Member to the Company, if not paid by the due date at such rate per annum as determined by the Board from time to time for the period commencing (and including) the due date for payment to (but excluding) the date those moneys are paid in full.
- (b) If interest is charged by the Company on any unpaid moneys, any accrued interest will be compounded and added to the moneys payable at such intervals as the Board may determine from time to time and is payable on demand.

5. Meetings of Members

5.1 Replaceable Rules

The following Replaceable Rules are not displaced:

Replaceable Rule	Section
Calling of meetings of members by a director	249C
Notice to joint members	249J(2)
Notice of adjourned meetings	249M
Chairing meetings of members	249U
Business at adjourned meetings	249W(2)

Proxy vote valid even if member dies, revokes appointment etc.	250C(2)
Objections to right to vote	250G
How voting is carried out	250J
When and how polls must be taken	250

5.2 Resolutions without meetings

(a) If the Company has only one Global Member, then the Company may, without a meeting convened under this Constitution, pass a resolution by the Global Member recording the resolution and signing the record.

(b) If a resolution passed pursuant to clause 5.2(a) requires information or a document relating to the resolution to be lodged with the Australian Securities and Investments Commission, that requirement is satisfied by lodging the information or document with the resolution that is passed.

5.3 APSCo Australia Rules

(c) Subject to the *Corporations Act*, the APSCo Australia Rules may set out provisions, not inconsistent with this Constitution relating to the following matters in respect of meetings of Members:

- (i) notice to be given of Members' meetings;
- (ii) quorum requirements;
- (iii) the appointment of a Chairperson;
- (iv) general conduct of meetings;
- (v) the holding of Annual General Meetings;
- (vi) arrangements about what business that may be conducted;
- (vii) the means of voting; and
- (viii) any other matter which the Directors acting in good faith and in their sole discretion, may by resolution determine to be beneficial to the better conduct of meetings of Members.

5.4 Members right to request meetings

The Directors must call, arrange and hold a meeting of Members on the request of Members who represent at least 5% of the votes that may be cast at a general meeting.

(the "**Requesting Members**").

- (a) The request for a meeting of Members must:
 - (i) state the objects of the meeting;
 - (ii) be signed by the Members making the request; and
 - (iii) be sent to the Company Secretary.
- (b) A request for a meeting of Members may consist of several documents in like form, each signed by one or more of the Members making the requisition.
- (c) The Requesting Members, may call and arrange to hold a meeting of Members if the Directors do not do so within 21 days after the request is given to the Company.

5.5 *Right to Attend Meetings*

- (a) Each Member personally or by its Member Representative and any Auditor of the Company has the right to receive notice and attend meetings of Members.
- (b) Each Director has the right to receive notice and attend and speak at any meetings of Members.

5.6 *Inadvertent failure to give notice not to invalidate*

- (a) Subject to the *Corporations Act*, nothing done (including the passing of a resolution) at a general meeting of Members is invalid if solely because (either or both):
 - (i) the Company unintentionally fails to give notice of a meeting to a person;
 - (ii) a person does not receive notice of a meeting.

5.7 *Who may vote*

- (a) Global Members have the right to one vote at all meetings of Members held pursuant to clause 5:
- (a) Full Associate Members are not eligible to vote at meetings of Members held pursuant to clause 5.
- (b) Brand Associate Members are not eligible to vote at meetings of Members held pursuant to clause 5.
- (c) Affiliate Associate Members are not eligible to vote at meetings of Members held pursuant to clause 5.

5.8 *Loss of voting entitlement*

- (a) A Member at a meeting of Members is not entitled to vote on any resolution if:
 - (i) the Member is subject to any current suspension; or
 - (ii) any amount is due and payable, in respect of membership Levies, fees or Case Costs.

5.9 Proxies and Representatives

- (a) A Member, who is entitled to attend and cast a vote at a meeting of Members, may vote on a show of hands and on a poll:
 - (i) in person;
 - (ii) by not more than one proxy; or
 - (iii) by not more than one attorney.
- (b) A proxy or attorney of a Member need not be a Member.
- (c) A Member may appoint a proxy or attorney for:
 - (i) all meetings of Members; or
 - (ii) any one or more specified meetings of Members.
- (d) A proxy or attorney may be appointed for all meetings or for any number of meetings or for a particular purpose.
- (e) An instrument appointing a proxy or attorney must be in a form as the Directors may prescribe or accept, from time to time but should:
 - (i) be signed by the Member making the appointment; and
 - (ii) contain:
 - 1 the name and address of the Member;
 - 2 the name of the Company;
 - 3 the name of the proxy or the name of the office held by the proxy; and
 - 4 the meetings of Members at which the proxy may be used.
- (f) The Chairperson of a meeting of Members may determine that an instrument appointing a proxy is valid even if it contains only some of the information specified in clause 5.8(e).
- (g) The decision of the Chairperson of a meeting of the Members as to the validity of an instrument appointing a proxy or attorney is final and conclusive.
- (h) Unless otherwise provided in the *Corporations Act* or in the appointment, a proxy or attorney may:

- (i) agree to a meeting of Members being called by shorter notice that is required by the *Corporations Act* or this Constitution;
 - (ii) agree to a resolution being either or both proposed and passed at a meeting of Members of which notice of less than prescribed period is given;
 - (iii) speak in any resolution at a meeting of Members on which the proxy or attorney may vote;
 - (iv) vote at a meeting of Members (but only to the extent allowed by the appointment);
 - (v) demand or join in demanding a poll on any resolution at a meeting of Members on which the proxy or attorney may vote; and
 - (vi) attend and vote at any meeting of Members which is rescheduled or adjourned.
- (i) Unless otherwise provided in the *Corporations Act* or in the appointment, a proxy or attorney may vote on:
- (i) any amendment to a resolution on which the proxy or attorney may vote;
 - (ii) any motion not put to that resolution or similar motion; and
 - (iii) any procedural motion relating to that resolution, including a motion to elect the chairperson of a meeting of Members, vacate the chair, or adjourn that meeting.
- (j) The Company must only send a form of proxy to Members in respect of a meeting of Members which provides for that Member:
- (i) to appoint a proxy of the Member's choice, but may specify who is to be appointed as proxy if the Member does not choose; and
 - (ii) to vote for or against each resolution, and may also provide for the Member to abstain from voting on each resolution.
- (k) If the name of the proxy or the name of the office of the proxy in a proxy form of a Member is not filled in, the proxy of that Member is:
- (i) the person specified by the Company in the form of proxy in the case the Member does not choose; or
 - (ii) if no person is so specified, the Chairperson of that meeting.
- (l) A Member may specify the manner in which a proxy or attorney is to vote on a particular resolution at a meeting of Members but, unless specified, the proxy or attorney may vote as he or she thinks fit.
- (m) An appointment of proxy or attorney for a meeting of Members is effective only if the Company receives the appointment (and any authority under which the

appointment was signed or a certified copy of the authority) not less than 24 hours before the time scheduled for commencement of that meeting (or adjournment of that meeting).

(n) Unless the Company has received notice in writing before the time scheduled for the commencement or resumption of a meeting of Members, a vote cast at that meeting by a person appointed by a Member as a proxy or attorney is, subject to this Constitution, valid even if, before the person votes, the appointing Member:

- (i) dies;
- (ii) is mentally incapacitated;
- (iii) revokes the appointment of that person; or
- (iv) revokes the authority under which the person was appointed by a third party.

(o) The authority of a proxy or attorney for a Member to speak or vote at a meeting of Members is suspended while the Member is present in person at that meeting.

5.10 Chairperson has casting vote

In the case of an equality of votes on a resolution at a meeting of Members, the Chairperson of that meeting has a casting vote on that resolution both on a show of hands and on a poll, in addition to any vote the Chairperson has in respect of that resolution.

6. Directors & Members of Local Representative Committee

6.1 Replaceable Rules

The following Replaceable Rules are not displaced:

Replaceable Rule	Section
Powers of directors	198A
Negotiable instruments	198B
Company may appoint a director	201G
Directors may appoint other directors	201H
Alternate directors	201K

Remuneration of directors	202A
Director may resign by giving written notice to company	203A
Terms and conditions of office for secretaries	204F

6.2 Management of the Company

(a) The management of the Company shall vest in the Board as constituted from time to time in accordance with this Constitution.

(b) The Board shall appoint and authorise the members of the Local Representative Committee to manage the day-to-day operations of the Company subject to clause 6.2(c).

(c) The Company shall not undertake any of the following actions unless the action has been approved by the Board in writing:

(i) any action which may adversely affect the reputation of the APSCo brand anywhere in the world;

(ii) any action proposed by the Local Representative Committee which the GM Nominee considers, acting reasonably, is likely to have a materially adverse effect on the Company;

(iii) incur any expenditure, indebtedness or contractual commitment in excess of \$20,000 other than any such expenditure, indebtedness or commitment which has been approved in the Company's annual budget; or

(iv) launch any new initiative, program or enterprise.

(d) The APSCo Australia Rules may set out provisions, not inconsistent with this Constitution, relating to the following matters in respect of the Local Representative Committee:

(i) the nomination or recommendation of persons to act as members of the Local Representative Committee;

(ii) the filling of casual Local Representative Committee vacancies;

(iii) the confirmation and termination of appointments to fill casual vacancies;

(iv) the rotation of members of the Local Representative Committee;

(v) the resignation of members of the Local Representative Committee; and

(vi) any other matter which the Local Representative Committee acting in good faith and in their sole discretion, may by resolution determine to

be beneficial to the effectiveness of the Local Representative Committee.

6.3 *Number of members and composition of the Local Representative Committee*

- (a) The Local Representative Committee must have not less than six and not more than eight members, unless determined otherwise by Special Resolution of the Local Representative Committee.
- (b) The Global Members shall be entitled to appoint one member of the Local Representative Committee (**GM Nominee**).
- (c) Clauses 6.5 to 6.7 inclusive apply to the election, ineligibility, term and removal of members of the Local Representative Committee in accordance with the Articles.

6.4 *Number and Appointment of Directors*

- (a) The Board must consist of up to five Directors appointed under this clause 6.4.
- (b) The Global Members shall be entitled to appoint three Directors (each a **GM Director**) to the Board.
- (c) The Local Representative Committee, as constituted from time to time, shall be entitled to appoint two Directors (each an **LRC Director**) to the Board.
- (d) The Global Members and the Local Representative Committee may remove and replace any Director appointed by them and must promptly provide the Company with notice of any such removal or replacement.

6.5 *Election of the members of the Local Representative Committee*

Subject to clause 6.3(b), Full Associate Members may nominate their Member Representatives to stand for election to the Local Representative Committee in accordance with the Articles.

6.6 *Ineligibility*

- (a) A person (the “**first person**”) who:
 - (i) is a Full Associate Member Representative of;
 - (ii) is employed or engaged by; or
 - (iii) holds any office with, or proprietary interest ina Member (or one of its related entities) whose Full Associate Member Representative (the “**second person**”) is a member of the Local Representative Committee, shall be ineligible for appointment or election as a member of the Local Representative Committee except as an alternate for the second person.
- (b) Any member of the Local Representative Committee who has served two

consecutive full terms of two years will be ineligible for re-election or nomination as a member of the Local Representative Committee, except where the member of the Local Representative Committee is an Office Bearer. They will, in this case, be eligible to be re-elected for a further term provided they retain their position as an Office Bearer.

(c) Any member of the Local Representative Committee who has retired in accordance with clause 6.6(c) shall, after a period of five years, be eligible for re-election.

6.7 Term of Office of members of the Local Representative Committee

A single term of office for a member of the Local Representative Committee is a maximum period of two years from the date of appointment.

7. Proceedings of Directors

7.1 Replaceable Rules

The following Replaceable Rules are not displaced:

Replaceable Rule	Section
Circulating resolutions of companies with more than 1 director	248A
Calling directors' meetings	248C
Chairing directors' meetings	248E
Quorum at directors' meetings	248F
Passing of directors' resolutions	248G

7.2 APSCo Australia Rules

(a) Subject to the *Corporations Act* the APSCo Australia Rules may set out provisions, not inconsistent with this Constitution, relating to the following matters in respect of Directors' proceedings:

- (i) the holding of Directors' meetings;
- (ii) the appointment of a Chairperson;
- (iii) the manner in which resolutions may be made;
- (iv) the delegation of Directors' powers; or

(v) any other matter which the Directors acting in good faith,
and in their sole discretion, may by resolution determine to be beneficial to the better conduct of meetings of Directors.

7.3 Meetings of the Directors

(a) The Directors may meet, adjourn and otherwise regulate their meetings as they think fit but must meet no less than four times per year.

(b) A meeting of the Directors may be held using any technology consented to by all Directors.

7.4 Resolutions of the Directors

In the case of an equality of votes on a resolution at a Board meeting the Chairperson of that meeting does not have a casting vote on that resolution, in addition to any vote that the Chairperson has in his/her capacity as a Director.

7.5 Board may delegate

(a) The Directors may delegate any of their powers to:

- (i) the Local Representative Committee;
- (ii) a committee of Directors;
- (iii) a Director;
- (iv) an employee of the Company;
- (v) a committee formed under the Committee Rules; or
- (vi) any other person or persons.

(b) The delegation must be recorded in the Company's minute book.

(c) The delegate must exercise the powers delegated in accordance with any directions of the Directors.

(d) The exercise of the power by the delegate is as effective as if the Directors had exercised it.

7.6 Validity of acts of Directors

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

8. Officers, auditors and bankers

8.1 *Managing Director*

The Directors may appoint a person as a Managing Director for any period and on any terms (including as to remuneration) as the Directors resolve.

8.2 *Company Secretary*

(a) The Directors must appoint a Company Secretary in accordance with the *Corporations Act*.

(b) Where a Managing Director has been appointed, the Managing Director shall be the Company Secretary.

8.3 *Auditors*

At its first Annual General Meeting the Company shall appoint a person or persons or a firm as Auditor or Auditors of the Company and the Auditor so appointed shall hold office until death or removal or resignation from office in accordance with the *Corporations Act*.

8.4 *Bankers*

The bankers of the Company shall be appointed by the Board and may be changed from time to time at its discretion.

9. Indemnity & insurance

9.1 *Indemnity*

(a) The Company will indemnify any current or former Director, Secretary or executive officer of the Company, or any member of the Local Representative Committee, or any person exercising a power or discretion or making a decision regarding a conduct complaint, conduct appeal, or dispute under any Applicable APSCo Australia Dispute Resolution Procedures out of the property of the Company against:

(i) every liability incurred by the person in that capacity (except a liability for legal costs); and

(ii) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

except to the extent that:

- (iii) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (iv) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

9.2 Insurance

(a) The Company must pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of the Company or any person exercising a power or discretion or making a decision regarding a conduct complaint, conduct appeal, or dispute under the Applicable APSCo Australia Dispute Resolution Procedures, against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (i) the Company is forbidden by statute to pay or agree to pay the premium; or
- (ii) the contract would, if the Company paid the premium, be made void by statute.

9.3 Contract

The Company may enter into an agreement with a person referred to in clauses 9.1 and 9.2 with respect to the matters covered by those clauses. An agreement entered into pursuant to this clause may include provisions relating to rights of access to the books of the Company conferred by the *Corporations Act* or otherwise by law.

10. Rules

10.1 General power to make and publish rules

(a) Subject to the provisions of the *Corporations Act* and this Constitution, the Directors acting in good faith and in their sole discretion, may make rules to give effect to the provisions of this Constitution, which they shall designate as either:

- (i) contractually binding rules; or
- (ii) guidelines.

(b) Rules made in accordance with clause 10.1(a), or proposed to be made as provided by clause 10.2(b), may be published separately, by chapter, or as a compendium of some or all APSCo Australia Rules, together with any other document, commentary or explanatory statement which the Directors consider it helpful to include.

(c) The Company shall maintain a copy of any rules made under clause 10 as

the authorised text of the rules, approved by the Directors, being the only text to which regard may be had with respect to any question concerning their interpretation, application or enforcement.

10.2 APSCo Australia Rules at Adoption Date

(a) The authorised text of the APSCo Australia Rules applicable at the Adoption Date is attached to this Constitution.

(b) The APSCo Australia Rules shall apply until the Directors approve one or more new APSCo Australia Rules in accordance with the following process:

(i) the Directors shall make available a copy of the proposed new APSCo Australia Rules on the Company's website and send a notice in writing to all Members. The notice shall state that unless a submission is received by the Company requesting a change to the proposed new APSCo Australia Rules within 30 days, the Directors shall meet to consider approving the proposed new APSCo Australia Rules;

(ii) any submission received pursuant to clause 10.2(b)(i) shall specify in detail any amendments to the proposed new APSCo Australia Rules and provide reasons why the amendment is requested;

(iii) the Directors shall consider the submissions and, if they are unable to resolve any outstanding issues, they shall refer the submissions to an appropriately qualified independent person appointed by the Directors;

(iv) within 30 days of the referral, the independent person shall consider the submissions and make a recommendation to the Directors as to whether the proposed new APSCo Australia Rules should be amended (the "**Recommendation**");

(v) upon receiving the Recommendation, the Directors shall meet to consider whether or not they approve the proposed new APSCo Australia Rules or whether the proposed new APSCo Australia Rules should be amended in accordance with the Recommendation; and

(vi) if the Directors resolve to approve the proposed new APSCo Australia Rules they shall thereupon become APSCo Australia Rules.

10.3 APSCo Australia Code of Conduct at Adoption Date

The authorised text of the APSCo Australia Code of Conduct applicable as a guideline at the Adoption Date is attached to this Constitution.

11. Winding Up

11.1 Transfer of Surplus

(a) On a winding up of the Company the Members must determine one or more companies, associations or institutions not carried on for the profit or gain of its individual members and whose Constitutions:

- (i) require them to pursue only objects similar to those in clause 2.2 and to apply their income in promoting those objects;
- (ii) prohibit them from making distributions to their Members to at least the same extent as in clause 2.3.

11.2 Application to the Supreme Court

If the Members fail to make a determination under clause 11.1 within 20 business days of the winding up of the Company the liquidator must make an application to the Supreme Court of Victoria to make that determination.

12. Dispute Resolution

(a) Whenever any difference or dispute which cannot be readily settled by the parties arises, between the Company and the Board on the one hand and any of the Members or their representatives on the other hand or between any Members with regard to the true construction of this Constitution or with regard to anything done or executed omitted or suffered in pursuance of this Constitution or the *Corporations Act* or the APSCo Australia Rules or with regard to any breach or alleged breach or otherwise, every such difference shall be firstly dealt with in accordance with the APSCo Australia Dispute Resolution Procedures.

(b) Failing the parties being able to settle the difference or dispute, it shall be referred to the decision of an arbitrator to be appointed by the parties to difference or dispute or if they cannot agree upon an arbitrator to an arbitrator appointed by the President for the time being of the Victorian Bar.

13. Immunity from liability

Each Member agrees not to take legal action, and not suffer or permit any of its employees, agents, servants or contractors to take legal action, against the Company, its officers or employees or persons exercising a power or discretion or making a decision regarding a conduct complaint, conduct appeal, or dispute under an Applicable APSCo Australia Dispute Resolution Procedure for anything done in accordance with any requirement of this Constitution, the APSCo Australia Rules, or an Applicable APSCo Australia Dispute Resolution Procedure (including the publication of information or data to or any relevant regulator).