

Constitution of Australian Tourism Export Council Limited (ACN 002 941 228)



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Corporations Act 2001
A Company Limited by Guarantee

Constitution of Australian Tourism Export Council Limited
(ACN 002 941 228)

1. Interpretation

1.1 Replaceable Rules not to Apply

Each of the provisions of the sections or sub-sections of the *Corporations Act* which would but for this clause apply to the Company as a replaceable rule, are displaced and do not apply to the Company.

1.2 Definitions

In this Constitution:

ADS inbound tour operator means an Australian inbound tour operator that has been approved by the Minister under the *Migration Regulations 1994* for the Approved Destination Scheme (ADS).

ADS scheme means the China Approved Destination Status scheme as agreed by the Governments of Australia and the People's Republic of China (PRC) by an exchange of letters on 22 April 1999.

Appeal Board means the board which is constituted from time to time in accordance with clause 10.5(i).

Board means the Directors or such of them as have authority to act for the Company.

Branches Charter means the charter by which the operations of the Regional Branches are governed.

Business Day means a day that is not a Saturday, Sunday or public holiday in the State in which the Company is incorporated.

By-Laws means the by-laws made pursuant to this Constitution.

Chairman means the Chairman of both the Board and the Company as appointed from time to time.

Company means Australian Tourism Export Council Limited or any other name the Company may have from time to time.

Constitution means this Constitution and all supplementary, substituted or amending Constitutions for the time being in force.

Director means a person appointed as a director for the time being of the Company.

Foreign Company has the meaning given to that term in the *Corporations Act*.

Inbound Tour Operator means a person who facilitates the purchase of Australian tourism product by the international travel trade through activities including, but not limited to:

- (a) creating itineraries and packages;
- (b) providing a booking service to the international travel trade as a primary business;

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- (c) managing visitors when in Australia; and
- (d) marketing travel products and services.

Managing Director means a person appointed by the Board to perform the duties of a managing director of the Company and includes any person appointed to perform such duties temporarily.

Member means a member of any class of membership of the Company.

Minister means the Australian Government Minister for Immigration or Citizenship (or the successive Minister), or a delegate of that Minister.

National means conducting commercial operations in 3 or more States or Territories of Australia.

Office means the registered office for the time being of the Company.

Regional Branches Council means the council established under clause 13.

Register means the register of members kept pursuant to the *Corporations Act*.

Seal means the common seal of the Company.

Senior Representative means the Managing Director, Deputy Managing Director or the Group Director of Trade Marketing of the Australian Tourist Commission or their equivalents from time to time.

Secretary means a person appointed as a secretary of the Company from time to time.

1.3 Construction

In this Constitution unless the context otherwise requires:

- (a) words (including defined expressions) importing the singular include the plural and vice versa;
- (b) words (including defined expressions) importing any gender include the other genders;
- (c) words (including defined expressions) importing persons shall include corporations and bodies politic;
- (d) a reference to a statute, ordinance, 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 telegram, electronic mail and facsimile transmission;
- (f) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the last day of the next succeeding calendar month;
- (g) references to this Constitution include its schedules and annexures; and

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- (h) subject to the foregoing, Division 10 of the *Corporations Act* applies in relation to this Constitution as if this Constitution were an instrument referred to in section 110B thereof.

1.4 Headings

Headings do not affect the interpretation of this Constitution.

2. Constitutional Objects

The objects for which the Company is established are:

- (a) to act as an association of persons and corporations substantially engaged in undertakings to promote tourism in Australia for overseas visitors, to arrange travel for overseas visitors to Australia or to provide travel services for such visitors;
- (b) to seek methods to improve overseas marketing of Australian travel and tourism;
- (c) to initiate, create and recommend the establishment of new tourism facilities in Australia;
- (d) to provide guidelines and assistance when needed to improve standards of service to visitors;
- (e) to liaise with government and other bodies on matters related to tourism;
- (f) to promote and establish educational facilities for those involved in selling Australian tourism, and to provide services in this connection to both Australian and overseas staff of undertakings so involved, as and when required;
- (g) to subscribe to, become a member of, incorporate with or amalgamate with any other corporation, association, institute or organisation, whether incorporated or not, whose objects are altogether or in part similar to those of the Company provided that the Company shall not subscribe to or support with its funds or amalgamate with any corporation, association, institute, or organisation which does not prohibit the distribution of its income and property among its members to an extent at least as great as that imposed on the Company under or by virtue of clause 3 of this Constitution of the Company;
- (h) to open, establish, carry on, regulate and discontinue branches and agencies of the Company and to appoint attorneys and agents of the Company and to otherwise arrange for the carrying out of all or any of the objects of the Company in any part of the world;
- (i) to have the rights, the powers and the privileges of a natural person in pursuance of its objects or reasonably incidental thereto including powers to acquire or hold property real and personal, to borrow or raise money, to employ staff, experts and contractors and to undertake works and general business activities; and
- (j) to do all such things as are incidental or conducive to the attainment of the above objects.

3. Distribution and Use of Income

- (a) The income and property of the Company, however derived, shall be applied solely towards the promotion of the objects of the Company as set forth in this Constitution, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to the Members of the Company, or to any related entities of the Member as that term is defined in the *Corporations Act*.

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- (b) Provided that nothing herein shall prevent the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Company, or to any Member of the Company, in return for any services actually rendered to the Company, nor prevent the payment of interest at a rate not exceeding interest at the rate for the time being charged by bankers in Sydney for overdrawn accounts on money lent, or reasonable and proper rent for premises demised or let by any Member to the Company; but so that no member of the council of management or governing body of the Company shall be appointed to any salaried office of the Company, or any office of the Company paid by fees, and that no remuneration or other benefit in money or money's worth shall be given by the Company to any member of such council or governing body except repayment of out of pocket expenses and interest at the rate aforesaid on money lent or reasonable and proper rent for premises demised or let to the Company.
- (c) Provided that clause 3(a) shall not apply to any payment to any company of which a member of the council of management or governing body may be a member and in which such member shall not hold more than one hundredth part of the capital, and such member shall not be bound to account for any share of profits he or she may receive in respect of such payment.

4. Liability of Members

The liability of the Members is limited.

5. Winding-up of Company

- (a) Every Member of the Company undertakes to contribute to the property of the Company in the event of the same being wound up while he or she is a Member, or within 1 year after he or she ceases to be a Member, for payment of the debts and liabilities of the Company (contracted before he or she ceases to be a Member) and of the costs, charges, and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding fifty dollars (\$50).
- (b) If upon winding-up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the Members of the Company, but shall be given or transferred to some other institute or institutions having objects similar to the objects of the Company, and which shall prohibit the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Company under or by virtue of clause 3 hereof, such institution or institutions to be determined by the Members of the Company at or before the time of dissolution, and if and so far as effect cannot be given to the aforesaid provision, then to some charitable object.

6. Membership

6.1 Qualification for Membership of the Company

Subject to this Constitution and any determinations of the Board, any individual, firm, partnership, association or corporation who or which is a participant in the tourism export industry in Australia is eligible to become a Member.

6.2 Classes of Membership

The Company is to consist of the following classes of Members:

- (a) Inbound Tour Operator Members;
- (b) Provisional Inbound Tour Operator Members;

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- (c) Major Supplier Members;
- (d) Significant Supplier Members;
- (e) Supplier Members;
- (f) Individual Members;
- (g) Honorary Life Members; and
- (h) Young ATEC Members,

and such other class or classes of Members as may be determined by the Board from time to time.

6.3 Qualifications for Membership of Classes

The categories of persons who are eligible for membership of the classes of membership specified in clause 6.2 and the qualifications which he or she must possess in order to be eligible for membership of those classes are as set out below and in clause 6.4.

(a) Inbound Tour Operator Members

Any individual, firm, partnership, association or corporation incorporated or registered in Australia (or a discrete division or branch of such an association or corporation) who or which carries on business as an Inbound Tour Operator as its primary business and has done so for not less than 1 year immediately preceding the date of lodgement of its application for membership.

(b) Provisional Inbound Tour Operator Members

Any individual, firm, partnership, association or corporation incorporated or registered in Australia (or a discrete division or branch of such an association or corporation) who or which carries on business as an Inbound Tour Operator as its primary business and has done so for less than 1 year immediately preceding the date of lodgement of its application for membership.

(c) Major Supplier Members

Any individual, firm, partnership, association or corporation incorporated or registered in Australia (or a discrete division or branch of such an association or corporation) who or which:

- (i) is actively involved in providing products and/or services to the tourism export industry in Australia and/or overseas visitors to Australia; and
- (ii) provides support services Nationally or has 50 or more full-time staff or equivalents.

(d) Significant Supplier Members

Any individual, firm, partnership, association or corporation incorporated or registered in Australia (or a discrete division or branch of such an association or corporation) who or which:

- (i) is actively involved in providing products and/or services to the tourism export industry in Australia and/or overseas visitors to Australia; and
- (ii) is a significant tourism export supplier with between 11 and 49 full time staff or equivalents.

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(e) Supplier Members

Any individual, firm, partnership, association or corporation incorporated or registered in Australia (or a discrete division or branch of such an association or corporation) who or which:

- (i) is actively involved in providing products and/or services to the tourism export industry in Australia and/or overseas visitors to Australia; and
- (ii) is a significant tourism export supplier with 10 or less full time staff or equivalents.

(f) Individual Members

Any individual, who is a product representative or individual consultant and is actively involved in the tourism export industry in Australia and/or with overseas visitors to Australia, who is invited in writing by the Board in its sole and absolute discretion to become an Individual Member.

(g) Honorary Life Member

Any individual who is declared by a resolution of the Board to be a person who has rendered outstanding or conspicuous services to the Company or to the development of the tourism export industry in Australia (through marketing, research, education, management, development of tourist facilities or otherwise) for an extended period of time may be elected by the Board as an Honorary Life Member. An Honorary Life Member shall be exempt from the payment of entrance fees and subscriptions and shall be entitled to the same rights and privileges as a Supplier Member.

(h) Young ATEC Member

Any individual under the age of 36 years as at 1 July of the relevant membership year who is an employee of a Member.

6.4 Additional Qualifications

Unless otherwise resolved by the Board either generally or in any particular case, Members of the undermentioned classes of membership must possess the additional qualifications set out below to be eligible for membership of such classes:

- (a) Inbound Tour Operator Members, Provisional Inbound Tour Operator Members, Major Supplier Members, Significant Supplier Members and Supplier Members must effect and maintain public liability insurance and professional indemnity insurance for a cover of at least \$10 million (or such other amount as the Board may determine from time to time);
- (b) Inbound Tour Operator Members and Provisional Inbound Tour Operator Members must hold a travel agent's licence issued under the *New South Wales Travel Agents Act 1986* or the equivalent legislation in any other State or Territory of Australia; and
- (c) Inbound Tour Operator Members, Provisional Inbound Tour Operator Members, Major Supplier Members, Significant Supplier Members and Supplier Members must hold such licences or additional licences, if any, as are required by any relevant law to be held in relation to the conduct of the business which entitles them to be a Member.

6.5 Compulsory Upgrading of Provisional Inbound Tour Operator Members

- (a) Subject to clause 6.5(b), all Provisional Inbound Tour Operator Members shall automatically be reclassified as Inbound Tour Operator Members with effect from the first day of July immediately following the date (**Entry Date**) on which he or she was

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admitted as a Provisional Inbound Tour Operator Member or, if that first day of July is less than 6 months after the Entry Date, the reclassification is to take effect from the first day of the next following July. The Secretary shall note such reclassifications in the Register accordingly.

- (b) The Board may in its sole and absolute discretion determine that any Member is exempted, either conditionally or unconditionally, from the provisions of clause 6.5(a). A Member shall be entitled to make representations to the Board as to the grounds on which that Member seeks an exemption.
- (c) The Board may from time to time determine:
 - (i) such other or additional qualifications and standards necessary for entry into a class of membership of the Company;
 - (ii) whether to retain a class of membership; and
 - (iii) new classes of membership and the qualifications and standards necessary for entry to any such new classes.

6.6 Application for Membership

- (a) Application for membership of the Company shall be made in writing, signed by the applicant and be in such form and disclose such information as the Board from time to time prescribes including, without limitation, evidence of the applicable qualifications specified in clauses 6.3 and 6.4.
- (b) Upon receipt by the Company of an application for membership in the proper form, such application is to be referred to the Board, which is to determine upon the admission or rejection of the applicant or otherwise deal with the application in such manner as the Board in its sole and absolute discretion thinks fit. In no case is the Company or the Board required to give any reason for the way in which the Board deals with such an application.
- (c) Where an applicant has been accepted as a Member, the Secretary shall as soon as practicable, send to the applicant written notice of acceptance.
- (d) A business or person who applies for membership in accordance with this clause 6.6, shall become a Member, subject to this Constitution, upon that person's or business' name being entered in the Register and shall remain a Member until removed in accordance with this Constitution.
- (e) The procedure for dealing with applications for membership is to be determined by the Board from time to time.

6.7 Notification of Cessation of Business

A Member who ceases to carry on the business the conduct of which entitles him to be a Member, whether as a consequence of the sale of that business or for any other reason whatsoever, must notify the Secretary within 14 days after the date on which he or she ceases to carry on that business (**Cessation Date**). The membership of that Member shall not transfer to the purchaser of that business and shall cease on the Cessation Date. The purchaser of that business may, if he or she is eligible to do so, apply for membership in accordance with this Constitution.

7. Re-classification of Membership

A Member shall only be permitted to change its class of membership otherwise than in accordance with clause 6.5 if that Member applies in writing to the Board to change its class of membership and the Board approves the change of membership and directs the Member to:

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- (a) pay the amount of any difference between the entrance fee paid by the Member in respect of the class of membership held at the time of admission to membership in that class and the amount of the entrance fee then prevailing in respect of the class of membership to which the Member now seeks admission; and
- (b) pay the amount of any difference between the annual membership fee actually paid by the Member less one twelfth thereof for each complete past month of the then current year as at the date of re-classification and the annual membership fee then prevailing in respect of the class of membership to which the Member now seeks admission less one twelfth thereof for each complete past month of the then current year as at the date of re-classification.

8. Representation of Members and Voting Entitlements

- (a) Each Inbound Tour Operator Member, Provisional Inbound Tour Operator Member, Major Supplier Member, Significant Supplier Member and Supplier Member which is a firm, partnership, association or corporation is entitled to nominate 1 representative.
- (b) The representative so nominated shall be entitled to attend and to be heard at all general meetings of the Company and to receive notices and other documentation sent by the Company. Each representative of a Member referred to in clause 8(a) (other than a Member whose membership has lapsed in accordance with clause 10.2) shall be entitled to cast 1 vote at general meetings of the Company. The representative shall otherwise be entitled to exercise all the rights of that Member on behalf of that Member.
- (c) A Member who is a body corporate can only be represented by a representative provided for or authorised by a resolution of the board of the Member passed in accordance with that body corporate's constitution.
- (d) A Member shall, as soon as practicable, notify the Secretary in writing of the individual or individuals nominated by that Member to fill the position of representative as provided by this Constitution.

9. Register of Members

The Secretary shall keep at the Office the Register, and shall enter in it the full names, addresses and occupations (if any) of Members, the date upon which Members became Members, the class of membership of each Member, and the date upon which any Member ceased to be a Member.

10. Cessation of Membership

10.1 Resignation

A Member may at any time by giving 3 months prior written notice to the Secretary, resign as a Member but shall continue to be liable for any fees and levies due and unpaid at the date his or her resignation takes effect and for any other moneys due by the Member to the Company.

10.2 Unpaid Membership Fees

If the entrance fee, annual membership fees, or any other levies due and payable by a Member remain unpaid for a period of 2 months after such fee or levy has become due, then that Member's membership of the Company shall be deemed to have lapsed so that the Member shall no longer be entitled to receive notices of meetings of the Company or to vote thereat. If any such fee or levy shall remain unpaid for 3 calendar months after the date the fees or levy became due, then the Member shall be deemed to have resigned on that date being 3 calendar months after the fee or levy was due. The Board may, if it thinks fit, reinstate the Member on payment of all fees or levies in arrears or otherwise.

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10.3 Cessation of Membership

A Member shall cease to be a Member:

- (a) in the case of a Member being an individual person, immediately upon the Member becoming bankrupt, becoming of unsound mind or being in a position where his or her estate is liable to be dealt with under any law relating to mental health;
- (b) immediately upon the expiry of a notice of resignation;
- (c) in the case of a Member being a body corporate, upon the appointment of an administrator, receiver, manager or liquidator in respect of that Member;
- (d) if the Member is deemed to have resigned (and the Member's membership is not reinstated) in accordance with clause 10.2;
- (e) if the Member is expelled from the Company in accordance with clauses 10.4 and 10.5; or
- (f) unless the Board otherwise resolves, if the Member ceases to satisfy the eligibility criteria prescribed for that Member's class of membership as specified in this Constitution. A Member must provide evidence that it satisfies the eligibility criteria prescribed for that Member's class of membership as soon as practicable after being requested to do so in writing by the Secretary.

10.4 Disciplining of Members

A Member may, by resolution of the Board, be censured, suspended or expelled from the Company if, in the opinion of the Board, the Member has:

- (a) failed to observe or comply with this Constitution or any By-Law (including any code of ethics as adopted by the Company from time to time) of the Company;
- (b) had any licence or permission necessary for the conduct of the Member's business in the tourism export industry or as an Inbound Tour Operator cancelled, withdrawn or non-renewed;
- (c) had their ADS Scheme approval as an ADS inbound tour operator either suspended or revoked under the ADS Code of Business Standards and Ethics by the Minister;
- (d) been convicted of any offence carrying a minimum penalty of 6 months' imprisonment or a fine of not less than \$5,000; or
- (e) failed to maintain the standards or requirements for the relevant category of membership specified in this Constitution or previously determined by the Board in accordance with this Constitution.

10.5 Expulsion Procedure

- (a) Where the Board is of the opinion that 1 or more of the events specified in clause 10.4 has occurred in relation to a Member, then the Board may, by resolution, expel the Member from the Company or suspend the Member from membership of the Company for a specified period at a meeting held not earlier than 14 days after service on the Member of a notice under 10.5(b).
- (b) A Member whose membership is under consideration shall be entitled to receive 14 days notice of the meeting of the Board referred to in clause 10.5(a). This notice shall state in writing the full particulars of the alleged conduct to be considered by the Board including:

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- (i) identification of the specific breach;
 - (ii) the time and place of the alleged breach; and
 - (iii) the acts which allegedly constituted the breach,
- but need not identify by name the Member whose conduct is under consideration.
- (c) A Member who receives a notice under clause 10.5(b), shall be entitled to be heard at the meeting of the Board in person or by its agent, solicitor or counsel, provided that the Member notifies the Board 24 hours prior to the time of the meeting that it shall attend or be represented at that meeting.
 - (d) A resolution to suspend or expel a Member must be passed by a majority of the Board present and voting at the relevant meeting.
 - (e) Notice of a resolution of the Board whereby a Member is suspended or expelled is to be served on the Member by registered post. The Member shall have 21 days calculated from the date of posting of the notice of the resolution in which to lodge with the Company an appeal (**Notice of Appeal**).
 - (f) If a Notice of Appeal is not received by the Company within the time specified in clause 10.5(e), the resolution is to then become effective and all Members shall be informed by such means as the Board shall determine.
 - (g) Any Notice of Appeal may be in any reasonable written form and is to set out the grounds upon which the Member proposes to appeal.
 - (h) The Notice of Appeal is to be considered by the Appeal Board by way of a complete re hearing.
 - (i) The Appeal Board shall consist of the representatives of 5 Members appointed by the Board, at least 2 of whom shall be members of the Board.
 - (j) The Appeal Board is to give the appellant and the Company not less than 14 days notice of the date, time and place of a meeting at which the Appeal Board will consider the appeal. Such meeting is to commence no later than 28 days from the receipt of the Notice of Appeal by the Company. The appellant shall be entitled to appear in person, or by its agent, solicitor or counsel at such meeting provided that the appellant notifies the Appeal Board at least 5 working days prior to the time of the meeting that it shall appear or be represented at the appeal. The Company shall not be entitled to be represented by a solicitor or counsel unless the appellant is so represented.
 - (k) Within 10 working days of the completion of the hearing of the appeal, the Appeal Board shall deliver its written finding to the Board. Such finding is to be released to the appellant within 7 days and to the Members within 14 days of receipt by the Board.
 - (l) The decision of the Appeal Board is final and binding on all parties.

11. Board

11.1 Composition of Board

- (a) Subject to clause 11.4, and with immediate effect from the conclusion of the Annual General Meeting for 2013, and for the period expiring at the conclusion of the Annual General Meeting for 2014, the Company shall have a Board of 11 persons (or up to 14 persons if any Directors are appointed pursuant to clause 11.4):
 - (i) 1 of whom shall be the Managing Director (if any) appointed pursuant to this Constitution;

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- (ii) 4 of whom shall be representatives of Inbound Tour Operator Members;
 - (iii) 4 of whom shall be representatives of Major Supplier Members, Significant Supplier Members or Supplier Members;
 - (iv) 1 of whom shall be the Chairman of the Regional Branches Council, who must be a representative of an Inbound Tour Operator, Major Supplier Member, Significant Supplier Member or Supplier Member;
 - (v) 1 of whom shall be the National Chairman of Young ATEC;
 - (vi) up to a further 3 appointed by the Board, if any Directors are appointed pursuant to clause 11.4.
- (b) Subject to clause 11.4, and with effect from the conclusion of the Annual General Meeting for 2014, the Company shall have a Board of 9 persons (or up to 12 persons if any Directors are appointed pursuant to clause 11.4):
- (i) 1 of whom shall be the Managing Director (if any) appointed pursuant to this Constitution;
 - (ii) 3 of whom shall be representatives of Inbound Tour Operator Members;
 - (iii) 3 of whom shall be representatives of Major Supplier Members, Significant Supplier Members or Supplier Members;
 - (iv) 1 of whom shall be the Chairman of the State Branch Committees, who must be a representative of an Inbound Tour Operator, Major Supplier Member, Significant Supplier Member or Supplier Member;
 - (v) 1 of whom shall be the National Chairman of Young ATEC;
 - (vi) up to a further 3 appointed by the Board, if any Directors are appointed pursuant to clause 11.4.

11.2 Eligibility

The Directors appointed under clause [] shall hold office, unless sooner determined in accordance with clause 11.12, until the conclusion of the next Annual General Meeting after the date of their appointment. Those Directors are eligible for re-appointment, subject to approval by the Board.

11.3 Authority to Continue to Act

The continuing Directors may act notwithstanding that the composition of the Board is at any time other than as required by clause 11.1.

11.4 Additional Board Members

- (a) The Board may if it considers it appropriate to do so having regard to the skills and experience of the Directors from time to time, appoint 3 additional persons as members of the Board (**Appointed Board Member**). Clauses 11.7, 11.8, 11.9, and 11.13 shall not apply to the Appointed Board Members.
- (b) Subject to clause 11.4(c), the Appointed Board Members shall hold office, unless sooner determined in accordance with clause 11.12, until the expiration of any fixed term specified by the Board at the time of their appointment, they are removed by the Board, or at the conclusion of the next Annual General Meeting after the date of their appointment, whichever first occurs.

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- (c) Any Chairman appointed as Chairman to fill a casual vacancy in that position who is simultaneously appointed as a Director under clauses 11.11(a) and 11.4, will hold office as Director, unless sooner determined in accordance with clause 11.12, until the expiration of the term of office as Director that was applicable to the previous Chairman who that person is replacing.

11.5 Term of Office

Subject to clause 11.13, each Director (other than the Managing Director, the Directors appointed under clause [] and the Appointed Board Members (if any)) shall hold office, unless sooner determined in accordance with clause 11.12, for a term of 2 years from the date of his or her election. For the purposes of this Constitution, a reference to "term of 2 years" shall be deemed to be until the conclusion of the second Annual General Meeting of the Company held after the Annual General Meeting at which the person was elected or appointed.

11.6 Retiring Directors

Retiring Directors are to be eligible for re-election to the Board. Any Board member is entitled to serve as a Director for a maximum of 3 consecutive terms of 2 years. This restriction on re-election applies to Directors who are elected from December 2000.

11.7 Election at Annual General Meeting

At each Annual General Meeting elections are to be held as provided in this Constitution to fill vacancies on the Board caused by retirement and any casual or other vacancies not previously filled.

11.8 Nominations

Nominations for election to the Board shall:

- (a) be made in writing in such form as the Board may from time to time prescribe or accept;
- (b) be signed by the candidate;
- (c) be signed by a proposer and seconder, each of whom shall be eligible for election to the category of membership of the Board to which the nomination relates;
- (d) state which category of membership of the Board the candidate is nominating for; and
- (e) be lodged with the Company at least 14 days before the Annual General Meeting at which the election is to take place.

11.9 Nominations not Exceeding Vacancies

If the number of candidates nominated for election and apparently eligible does not exceed the number of vacancies in respect of a category of membership of the Board, no ballot is to be held in respect of that category and the Chairman shall declare all such candidates to be duly elected.

11.10 Ballot where Nominations Exceed Vacancies

- (a) If the number of candidates duly nominated for election to the Board and apparently eligible exceeds the number of vacancies to be filled, a ballot or ballots shall be taken at the Annual General Meeting. Each Member present in person, by representative or proxy and entitled to vote shall be handed a ballot paper containing in alphabetical order the names of candidates. Each ballot paper is to be initialled by the Secretary or other officer of the Company. A Member's vote shall be recorded by leaving on such list the names of the candidates for whom the Member wishes to vote and by striking out all other names but such votes shall not be valid unless the Member votes for the

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same number of candidates as there are vacancies to be filled. The Chairman shall declare elected the candidate or candidates for whom the greatest number of votes is or are cast until all vacancies in the category are filled. In the case of candidates for whom the same number of votes is cast the Chairman shall have a second or casting vote.

- (b) If a ballot is to be held pursuant to this clause, the Chairman shall appoint 1 or more scrutineers to conduct the ballot. The scrutineers shall count the votes cast for each candidate and notify the same to the Chairman. The decision of a single scrutineer or, if applicable, a majority of scrutineers as to the formality or otherwise of any ballot paper shall be final.
- (c) No objection shall be made as to any irregularity in the determination of the Directors to retire, in the nomination of candidates or in any other matter concerning the holding or conduct of a ballot, or any failure to hold or properly conduct the same except at the meeting at which the result of the ballot is to be declared. In the case of any such objection being so made, the Chairman may declare the ballot or any aspect thereof invalid and may give such directions with respect to the holding and conduct of a further ballot (whether at the meeting or after adjournment or otherwise) as he or she may think fit and the determination of such objection by the Chairman made in good faith shall be final and conclusive.

11.11 Chairman

- (a) The new Board shall, as soon as practicable following its election, appoint a Chairman and 1 Vice-Chairman who shall preside as Chairman and Vice-Chairman of both the Board and the Company. The Vice-Chairman must be appointed from the constituents of the Board. If the new Board so decides, it may appoint a person as its Chairman from outside its constituents, which will have the effect of being a simultaneous appointment of that person as a Director under clause 11.4.
- (b) Unless the Chairman ceases to be a member of the Board, resigns as Chairman or is removed as provided in clause 11.11(e), the Chairman may hold office for an initial term of a maximum of 3 years after the date of his or her appointment or succession to office whereupon he or she shall cease to hold such office.
- (c) At the end of the Chairman's first term of office, he or she is eligible for reappointment by the Board for a maximum of an additional 2 consecutive terms in accordance with subclause 11.11(b). After the third consecutive term as Chairman, he or she shall cease to hold such office and shall not be eligible for reappointment as the next Chairman.
- (d) Despite clauses 11.5 and 11.6, the Chairman may serve as a Director for a maximum of 9 years whilever he or she remains as a duly appointed Director and as the duly appointed Chairman for the duration of his or her appointment as Chairman.
- (e) The Board may at any time remove the Chairman from office and appoint in his or her place another Chairman, and the provisions of the rest of this clause 11.11 apply to any new appointment of Chairman.

11.12 Vacation of Office of Director

The office of a Director is to become vacant if that Director:

- (a) resigns;
- (b) ceases to be a Director for any reason;
- (c) is declared a bankrupt;
- (d) is of unsound mind or is in a position where the Director is subject to a mental health order;

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- (e) ceases to be a Member of the Company or an employee or officer of a Member of the Company;
- (f) is absent from 3 consecutive meetings of the Board without leave of absence granted by the Board;
- (g) the Member that they represent changes its class of membership for which they were appointed to the Board under clause 11.1; or
- (h) is no longer employed by the same employer by whom they were employed at the time of their original appointment to the Board and their new employer is not a Member in the same class of membership for which that Director was originally appointed to the Board.

11.13 Casual Vacancies

- (a) The Board may appoint any person eligible to be elected as a Director to fill any casual vacancy, including a vacancy arising as a consequence of insufficient nominations being received for election to the Board, or as an addition to the existing Board. Subject to subclause 11.13(c), any person appointed to fill any casual vacancy shall be a Member or a representative of a Member of the same category of membership of the Board to which the vacancy relates.
- (b) Where a casual vacancy occurs as a result of either of the effect of clauses 11.12(g) or 11.12(h), the Board may elect to re-appoint that person as a Director to fill that casual vacancy despite that person being not otherwise qualified to hold the position under clause 11.1.
- (c) Any person appointed pursuant to this clause shall hold office until the conclusion of the next following Annual General Meeting after the date of his or her appointment.

11.14 Observer

Nothing in this Constitution prevents the Board from inviting a person to be an observer at any meeting of the Board. Any person invited to be an observer shall not have a right to vote at any meeting of the Board.

12. Regional Branches

- (a) The Board may from time to time establish branches of the Company in the regions in which the Members carry on business (**specified regions**) as Inbound Tour Operators, Major Supplier Members, Significant Supplier Members or Supplier Members to the tourism export industry (**Regional Branches**).
- (b) In their operations, the Regional Branches must comply with the provisions of this Constitution and any By-Laws governing their operations (including any code of ethics as adopted by the Company from time to time and the Branches Charter) determined and altered from time to time by the Board.

13. Regional Branches Council

- (a) The Chairman of each of the Regional Branches, shall be entitled to a seat at a branch council of the Regional Branches (**Regional Branches Council**). The Regional Branches Council must elect a Chairman and Vice-Chairman. Each councillor shall hold office for a term of 2 years from the date of his or her election. Retiring councillors are eligible for re-election to the Regional Branches Council. The maximum number of consecutive times a retiring councillor is eligible for re-election is 2.

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- (b) The Regional Branches Council in its operations shall comply with the provisions of this Constitution and with such By-Laws governing its operations as may be determined and altered from time to time by the Board.
- (c) The Chairman of the Regional Branches Council shall also hold a seat on the Board.

14. Fees, Subscriptions and Levies

The Board shall have the power to determine an entrance fee, annual subscriptions and levies payable in respect of each class of membership.

- (a) Annual membership subscriptions shall be payable on 1 July in each year in respect of the period from 1 July to the following 30 June.
- (b) The first annual subscription payable by a new Member shall be reduced by one twelfth for each complete past month of the then current year.

15. General Meetings

15.1 Annual General Meetings

An Annual General Meeting of the Company must be held in accordance with the *Corporations Act*.

15.2 Holding of General Meetings

General meetings are to be held at such times and places as are determined by the Board.

15.3 Convening of General Meetings

The Board may whenever it thinks fit and must upon a requisition made in accordance with s249D of the *Corporations Act* convene a general meeting of the Company. The right of Members to convene a meeting under s249F of the *Corporations Act* is expressly abrogated.

15.4 Notice of Meetings

Subject to the *Corporations Act*, unless the Members consent to shorter notice, the Company must give 21 days written notice of any general meeting. The notice must specify the place, day and hour of meeting and, in the case of special business, the general nature of that business and, in the case of an election of Directors, the names of the candidates for election.

15.5 Omission to Give Notice

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

15.6 Special Business

All business will be special that is transacted at:

- (a) a general meeting not being an annual general meeting; or
- (b) an annual general meeting with the exception of:
 - (i) the confirmation of the minutes of the preceding meeting;
 - (ii) the receipt and consideration of the balance sheet, the profit and loss statement and the reports of the Board and the auditors;

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- (iii) the election of Directors; and
- (iv) the transaction of any business which under the *Corporations Act* or this Constitution is required to be transacted.

15.7 Resolutions from Members

Where a Member wishes a matter to be included as an item of special business at an Annual General Meeting of the Company, the Member must, at least 30 days prior to the Annual General Meeting, deliver to the Secretary (either by post, courier or by facsimile or electronic mail) the text of any proposed resolution and any background material that the Member wishes to be dispatched with the notice of the Annual General Meeting.

16. Proceedings at General Meetings

16.1 Quorum

50 Members (present in person or by proxy or representative and entitled to vote) is a quorum for a general meeting. No business is to be transacted at any general meeting unless a quorum is present at the time the meeting proceeds to business.

16.2 Lack of Quorum

If within 30 minutes after the time appointed for the meeting a quorum is not present and the meeting is convened upon the requisition of the Members, the meeting shall be dissolved and in any other case, the meeting will stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the Directors determine. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting 20 Members present in person, by proxy or representative will be a quorum and if such reduced quorum is not then present the meeting will be dissolved.

16.3 Chairman

The Chairman of the Board, or in his or her absence the Vice-Chairman of the Board, may preside as chairman at every general meeting. If there is no Chairman or Vice Chairman present within 15 minutes after the time appointed for the meeting or if he or she is unwilling to act as chairman of the meeting, the Directors must choose another Director as chairman. If no Director is so chosen or if all the Directors present decline to take the chair, the Members present must choose 1 of their own number to be chairman.

16.4 Adjournment

The Chairman of a general meeting may, with the consent of a meeting 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.

16.5 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.

16.6 Decision of Resolutions

At a general meeting a resolution put to the vote of the meeting is to be decided 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 chairman (other than on the election of the chairman of a meeting or the adjournment of a meeting) or by not less than 5 Members having the right to vote at the meeting present in person, by representative or proxy.

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16.7 Minutes as Evidence of Result

Unless a poll is duly demanded, a declaration by the chairman that a resolution has on a show of hands been carried, carried unanimously, carried by a particular majority, 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 chairman 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.

16.8 Taking of Poll

If a poll is duly demanded it must be taken in the manner and at the time and place as the chairman 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, provided that a poll on the election of a chairman 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 chairman shall determine the dispute and the determination made in good faith will be final and conclusive.

17. Votes of Members

17.1 Entitlement to Vote

Subject to this Constitution including, without limitation, clause 10.2, each Inbound Tour Operator Member, Provisional Inbound Tour Operator Member, Major Supplier Member, Significant Supplier Member, Supplier Member, Honorary Life Member and Individual Member present in person, represented by proxy or representative at a general meeting of the Company is entitled to vote at that meeting and has 1 vote, whether on a show of hands or on a poll. Each Young ATEC Member shall be entitled to attend and be heard, but not to vote, at a general meeting of the Company.

17.2 Casting Vote

In the case of an equality of votes, whether on a show of hands or on a poll, the chairman 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 he or she may be entitled as a Member.

18. Proxies

18.1 Appointment of Proxy

A Member entitled to attend and vote at a general meeting may appoint 1 proxy only, who must be another Member or representative of another Member, and that proxy is entitled to vote on a show of hands or on a poll.

18.2 Instrument of Proxy

The instrument appointing a proxy must be in writing signed by the appointor or his or her attorney duly authorised in writing.

18.3 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 notarially certified copy of that power or authority (or a copy certified in another manner acceptable to the Board), must be deposited at the Office (or other place specified for that purpose in the notice convening the meeting) not less than 48 hours before the time for holding the meeting or adjourned meeting or taking of the poll at which the

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person named in the instrument proposes to vote, and in default the instrument of proxy will not be treated as valid.

18.4 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 the following form:

I/We

of

being a Member/Members of the Company appoint

of

as my/our proxy to vote for me/us and on my/our behalf at the general meeting of the Company to be held on the day of 20 and at any adjournment thereof.

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

*Strike out whichever is not desired. Unless otherwise instructed the proxy may vote as he or she thinks fit.

As witness my/our hand/s this day of 20

Signed by the said

in the presence of:

or in such other form as the Directors from time to time prescribe or in a particular case accept. 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 chairman of the meeting to which it relates.

18.5 Power to Demand Poll

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

18.6 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 appointor 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 appointor attending and taking part in any meeting, but if the appointor votes on a resolution either on a show of hands or on a poll the person acting as proxy for that appointor has no vote as proxy on that resolution.

18.7 Identification of Proxy

The chairman of a meeting may require a person acting as a proxy to establish to the satisfaction of the chairman that he or she is 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.

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18.8 Power of Attorney

If a Member executes or proposes to execute an instrument or to act by or through an attorney he must:

- (a) produce to the Company for noting, the instrument appointing the attorney;
- (b) pay the prescribed fee (if any) for that noting; and
- (c) (if required) file with the Company a certified copy of the last-mentioned instrument which is to be retained by the Company.

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.

19. Powers and Duties of Board

19.1 Management of the Company

- (a) The management of the business and affairs of the Company is to be vested in the Directors 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.
- (b) The powers of the Directors are subject to the *Corporations Act*, this Constitution and to any regulations (not being inconsistent with this Constitution) from time to time made by the Company in general meeting. No regulation made by the Company in general meeting will invalidate any prior act of a Director which would have been valid if that regulation had not been made.

19.2 Cheques, Bills, etc

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed by the persons and in the manner as the Directors determine.

20. Directors' Contracts

20.1 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; or
 - (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

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- (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 his or her being interested or being an Director of the other company.

20.2 Declaration of Interest

The nature of a Director's interest in any contract, agreement or arrangement must be declared by that Director at a meeting of the Directors in accordance with the *Corporations Act* as soon as practicable after the relevant facts have come to his or her knowledge. A general notice that a Director is a member of any specified firm or corporation and is to be regarded as interested in all transactions with that firm or corporation is a sufficient declaration under this clause as regards the Director and the transactions. After giving the general notice it is not necessary for the Director to give any special notice relating to any particular transaction with that firm or corporation. It is the duty of the Secretary to record in the minutes any declaration made or any general notice given by a Director in pursuance of this clause.

20.3 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 paragraph (b)(ii) of this clause); and
- (b) must not be present while the matter (or a proposed resolution of that kind) is being considered at the meeting, unless:
 - (i) the matter applies to an interest that the Director has as a Member in common with the other Members; or
 - (ii) the Directors have passed a resolution in accordance with s195(2) of the *Corporations Act* that specifies the Director, the 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.

21. Proceedings of Directors' Meetings

21.1 Procedure Generally

The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit and may from time to time determine the quorum necessary for the transaction of business. Until otherwise determined 6 Directors constitute a quorum.

21.2 Calling of Meetings

A Director may at any time, and the Secretary must upon the request of a Director, convene a meeting of Directors.

21.3 Notice of Meetings

Notice of a meeting of Directors 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.

21.4 Chairman of Meetings

The Chairman is to chair all meetings. If at any meeting the Chairman is not present within 10 minutes after the time appointed for holding that meeting or is unwilling to act as chairman of the meeting, the Vice-Chairman shall be entitled to take the chair but if the Vice-Chairman is

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not present within 10 minutes after the time appointed for holding that meeting or is unwilling to act as chairman of the meeting, the Directors present must elect 1 of their number to be chairman of that meeting.

21.5 Decision of Questions

Subject to clause 21.9, questions arising at any meeting of Directors are to be decided by a majority of votes. Each Director has 1 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 2 Directors are present the chairman has a second or casting vote.

21.6 Delegation to Committees

The Directors may delegate any of their powers to committees consisting of Directors or other persons as the Directors think fit. Any committee formed, which shall include an ethics committee, must in exercise of the powers delegated, comply with the regulations that may be imposed on it by the Directors.

21.7 Procedure of Committees

The meetings and proceedings of committees are to be governed by the clauses 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.

21.8 Validation of Irregular Acts

All acts done by any meeting of the Directors, 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, had vacated their 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.

21.9 Written Resolutions

- (a) If all members of the Board have signed a document containing a statement that they are in favour of a resolution of the Board in the terms set out in that document, a resolution in those terms shall be deemed to have been passed at a meeting of the Board held on the day on which the document was signed and at the time at which the document was last signed by a member or, if the members signed the document on different days, on the day on which, and at the time at which, the document was last signed by a member.
- (b) For the purposes of this clause, 2 or more separate documents containing statements in identical terms each of which is signed by 1 or more members shall together be deemed to constitute 1 document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents.
- (c) A reference in this clause to all the members does not include a reference to a member who, at a meeting of the Board, would not be entitled to vote on the resolution.

21.10 Meetings by Other Means

- (a) Where the Chairman is of the view that any item of business of the Board should be concluded conveniently or expeditiously without a meeting of the Directors in person, then the Directors may conduct their proceedings:

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- (i) by contemporaneous linkage by telephone, closed circuit television or other means of communication which must enable each person so linked to continuously hear all the others present;
- (ii) by individual communication between the Secretary or the Chairman and each member of the Board, in writing or by facsimile transmission, electronic mail or any other written means of communication; or
- (iii) where each member is given not less than 1 hour's notice of such proceedings, by individual communication between the Secretary or the Managing Director and a majority of members of the Board, in writing or by facsimile transmission, electronic mail or any other written means of communication,

except in cases where there is a legal requirement that a resolution of the Board must be a resolution of the members of the Board by meeting in person.

- (b) Subject to compliance with the provisions of those clauses concerning proceedings of the Board and except where there is a requirement under the *Corporations Act* that a resolution of the Board must be a resolution of the members of the Board by meeting in person:
 - (i) proceedings pursuant to clause 21.9 and this clause are to be deemed to be meetings of the Board;
 - (ii) members of the Board who participate in proceedings pursuant to clause 21.9 and this clause are to be considered to have attended a meeting of the Board; and
 - (iii) until a Director makes it known to the Chairman that he or she is ceasing to take part in such proceedings, he or she shall be deemed to continue to be present and to continue to form part of the quorum.

22. Remuneration of Directors

No Director may receive any remuneration for his services whether as an officer or as a Member other than:

- (a) for the payment of out-of-pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Board;
- (b) for payment of 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 has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service; and
- (c) for payment of 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.

22.2 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.

23. Managing Director

- (a) The Board may appoint a Managing Director of the Company on such terms and conditions as the Board may determine, subject to the terms of any agreement entered into in any particular case, and the Board may revoke any such appointment.
- (b) The Managing Director shall be the principal executive officer of the Company and shall by virtue of his or her office be a member of the Board.
- (c) The Board may, on such terms as it thinks fit, delegate any of its powers or functions to the Managing Director.
- (d) The appointment of a Managing Director shall be automatically determined:
 - (i) if the Managing Director ceases from any cause to be a Director of the Company; or
 - (ii) his or her appointment is terminated by a majority resolution of the Board.
- (e) The remuneration of the Managing Director shall, subject to any resolution of the Board, be fixed from time to time by the Board.

24. Minutes

The Directors shall cause minutes 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.

The minutes are to be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting.

25. Secretary

- (a) One or more Secretaries must in accordance with the *Corporations Act* be appointed by the Directors for such term and upon such remuneration and other conditions as the Directors think fit. Any Secretary so appointed may be removed by the Directors.
- (b) The Board may vest in the Secretary such powers, duties and authorities as the Board may from time to time determine and the Secretary must accept all such powers and authorities at all times subject to the control of the Board.
- (c) The Secretary is entitled to attend all meetings of the Board and all general meetings of the Company and may be heard on any matter but may not vote.

26. Seal

The Directors must provide for the safe custody of the Seal which may only be used by the authority of the Directors or of a committee authorised by the Directors in that behalf. Every instrument to which the Seal is affixed must be signed by a Director and countersigned by the Secretary or by a second Director, or by some other person appointed by the Directors for that purpose.

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27. Accounts

27.1 Preparation of Accounts

- (a) The Board shall cause proper accounting and other records to be kept and shall distribute to Members a copy of each profit and loss account and balance-sheet (including every document required by law to be attached thereto) accompanied by a copy of the auditors report as required by the *Corporations Act*.
- (b) The Board shall cause to be made out and laid before each Annual General Meeting of the Company a balance sheet and profit and loss account made up to date not more than 6 months before the date of the meeting.
- (c) The financial year of the Company shall be the period of twelve months commencing on 1 July and expiring on 30 June in each year.

27.2 Inspection of Accounts and Other Records

Except as otherwise required by the *Corporations Act*, the Board may determine whether, and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be opened to the inspection of Members other than members of the Board, and a Member of the Company does not have the right to inspect any document of the Company except as provided by law or authorised by the Board or the Company in general meeting.

28. No Distribution to Members

The income and property of the Company shall be applied solely toward the objects of the Company as set forth in this Constitution and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the Members, provided that nothing contained in this clause shall prevent the payment in good faith of reasonable and proper remuneration to any officer or employee of the Company or to any other person in return for any services actually rendered to the Company or for goods supplied in the ordinary course of business.

29. Notice

29.1 Service of Notices

Any notice or other communication given under or in relation to this Constitution may be delivered:

- (a) in person by writing;
- (b) by telephone, in which case the notice shall be confirmed in writing by electronic mail, facsimile transmission or letter despatched not later than the next business day;
- (c) by electronic media transfer (including electronic mail and facsimile transmission) in which event notice shall be deemed to have been given immediately upon the dispatch of the transfer; or
- (d) by posting of pre-paid letter to the person at the address furnished in writing by the addressee for the purposes of this Constitution, if any, in which event notice shall be deemed to have been given 4 days after the posting of the letter.

29.2 Notice of General Meeting

- (a) Notice of every general meeting shall be given in any manner authorised by this Constitution to:

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- (i) every Member except those Members who have not supplied to the Company an address within the State for the giving of notices to them; and
- (ii) every member of the Board.
- (b) Notice of every Annual General Meeting shall also be given to the auditor or auditors for the time being of the Company.
- (c) No other person shall be entitled to receive notice of a general meeting.

30. Dissolution of the Company

The Company may be dissolved if agreed to in writing by three quarters of the total number of Inbound Tour Operator Members, Provisional Inbound Tour Operator Members, Major Supplier Members, Significant Supplier Members, Supplier Members, Honorary Life Members and Individual Members.

31. Indemnity

- (a) Every person who is or has been a Director, Secretary or executive officer or auditor of the Company is indemnified, to the maximum extent permitted by law, out of the property of the Company against any liabilities for costs and expenses incurred by that person:
 - (i) in defending any proceedings (or in anticipation of defending any proceedings), relating to that person's position with the Company, whether civil or criminal, in which judgment is given in that person's favour or in which that person is acquitted or which are settled or discontinued;
 - (ii) in connection with any administrative proceedings relating to that person's position with the Company, except proceedings which give rise to civil or criminal proceedings against that person in which judgment is not given in that person's favour or in which that person is not acquitted or which arise out of conduct involving a lack of good faith or where the officer is subject to a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the *Corporations Act*;
 - (iii) in connection with any application in relation to any proceedings relating to that person's position with the Company whether civil or criminal, in which relief is granted to that person under the law by the court; and
 - (iv) with regard to GST:
 - (A) the amount of any indemnity payable under this clause 32 will include an amount (**GST Amount**) equal to any GST payable by the officer or auditor being indemnified (**Indemnified Officer**) in connection with the indemnity;
 - (B) payment of the GST Amount of any indemnity is conditional upon the Indemnified Officer providing to the Company a copy of the tax invoice for the GST Amount issued to the Indemnified Officer; and
 - (C) in this clause 32, "GST" refers to the Goods and Services Tax under A *New Tax System (Goods and Services Tax) Act 1999* and the terms used have the same meaning as in that Act.
- (b) Every person who is or has been a Director, Secretary or executive officer or auditor of the Company is indemnified, to the maximum extent permitted by law, out of the property of the Company against any liability to another person (other than the

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Company) as such an officer or auditor unless the liability arises out of conduct involving a lack of good faith.

32. Insurance

To the extent permitted by law, the Company may pay, or agree to pay, a premium in respect of the contract insuring a person who is or has been an officer or auditor of the Company against the liability:

- (a) incurred by the person in his or her capacity as an officer or auditor of the Company provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the *Corporations Act*; or
- (b) for costs and expenses incurred by that person in defending proceedings, or engaging in settlement negotiations, whatever their outcome.

33. Power to make By-Laws

- (a) The Board shall have power from time to time to make and alter and to repeal all or any of such By-Laws as they may deem necessary or expedient or convenient for the proper conduct, control and management of the Company and the admission of Members, and in particular and without prejudice to the generality of the powers conferred by clause 19.1 they may by such By Laws regulate:
 - (i) the information required to accompany any application for membership including details of the applicant's financial position, operational structure, experience as an Inbound Tour Operator or involvement with the tourism export industry and the range of services offered in relation to its business;
 - (ii) the supply by Members of statistical information on a confidential basis for the purposes of the Company's research projects; and
 - (iii) the use by Members of the Company's logo.
- (b) The Board shall adopt such means as it deems sufficient to bring to the notice of Members all such By-Laws, amendments and repeals, and all such By-Laws so long as they shall be in force shall be binding upon all Members provided that no By-Laws shall be inconsistent with or shall affect or repeal anything contained in this Constitution and that any By-Laws may be set aside by a resolution of a general meeting of the Company.