

# **CORPORATIONS LAW**

## **CONSTITUTION**

### **OF**

## **ELECTRONICS & ICT ASSOCIATION**

### **A Company Limited by Guarantee**

#### **1. DEFINITIONS AND INTERPRETATION**

##### **1.1 DEFINITIONS:**

**Act** means the Corporations Act, 2001;

**Annual General Meeting** means an annual general meeting as defined in **Clause 6**;

**Associate Member** means a person who has applied for and been granted associate membership pursuant to **Clause 3.2** and who has paid the fee associated with associate membership as determined by the Board from time to time;

**Board** means the Board of Directors of the Company;

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

**Core Industry Member** means a person who has applied for and been granted core industry membership pursuant to **Clause 3.2** and who has paid the fee associated with core industry membership as determined by the Board from time to time;

**President** means the President of the Board elected in accordance with **Clause 11** of this Constitution;

**Company** means ELECTRONICS & ICT ASSOCIATION ACN 081 177 326;

**Director** means any person appointed or elected to the Board;

**Financial Year** means the period from 1 July in one year to 30 June in the next, or other dates agreed by the Board;

**General Meeting** means a general meeting as defined in **Clause 6**;

**ICT** means Information and Communications Technology;

**Members** means all Core Industry Members and Associate Members and Member means any one of them;

**Membership Fees** means that sum payable by Core Industry Members and Associate Members as determined by the Board from time to time and includes the Company's yearly subscription fees and such other fees as may be determined by the Board;

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

**Returning Officer** means the returning officer for the purposes of meetings of the Board or Members (as the case may be) appointed by the Board from time to time;

**Regulations** means the regulations of the Company as determined by the Board from time to time;

**Secretary** means any person appointed by the Board to perform the duties of a secretary of the Company;

**SolutionCity Brand** means the brand name "*SolutionCity* – Adelaide Australia" registered under the Trade Marks Act 1995 as Trade Mark Number 946454.;

**SolutionCity Fee** means an amount payable by a Member for access to and use of the SolutionCity Brand as determined by the Board from time to time;

**SolutionCity Member** means a [**Member**] who has current access and rights to utilise the SolutionCity Brand through the payment of the SolutionCity Fee.

## 1.2 INTERPRETATION

1.1.1 Words which are given a special meaning by the Act shall have the same meaning in this Constitution.

1.1.2 A reference to the Act or any section thereof shall be read as though the words or any statutory modification thereof or any statutory provisions substituted therefore were added to such reference.

1.1.3 Expressions referred to in writing will unless the contrary intention appears be construed as including reference to printing, lithography, photography and other modes of representing or reproducing words in a visible form including the reproduction of words onto a computer screen via the Internet or otherwise.

1.1.4 Words importing the singular include the plural and vice versa and words importing a gender shall include the other genders.

1.1.5 The headings contained in this Constitution are included for convenience of reference only and shall in no way affect or be taken into account in connection with the construction of this Constitution.

## 2. OBJECTS AND APPLICATION OF INCOME

### 2.1 Objects

The objects for which the Company is established are:

- (a) to promote the ongoing development and growth of the electronics and ICT industries in South Australia primarily, and in Australia and overseas by facilitating education, training, business clustering, partnering and mentoring;
- (b) to maintain a high level of liaison and cooperation with various State Government Departments and authorities and local governments, relevant electronics and ICT industry organizations and, as appropriate, the Federal Government and international organizations;
- (c) to consider all questions pertaining to the electronics and ICT industries and, where appropriate, public discussion thereof;
- (d) to promote or oppose legislation or other measures affecting the electronics and ICT industries;
- (e) to collect and publish as necessary statistics and other information relating to the electronics and ICT industries;
- (f) to enter into any amalgamation, affiliation, fusion or alliance with another corporation as defined in the Act, the objects of which, as stated in its constitution, are restricted to one or more of those specified in the Act and to objects incidental or conducive to those so specified and which by its constitution is required to apply its profits (if any) or other income in promoting its objects and is prohibited from paying any dividend to its members;
- (g) to monitor developments in industrial matters and to advise and assist Members in any action which may be required to protect their interests;
- (h) to establish and maintain libraries and museums of models, specimens, samples, drawings and other articles of interest in connection with the electronics and ICT industries for the use of Members, and where appropriate, the public;
- (i) to print, publish and distribute lectures, papers, films and other means of communication, including electronic publishing, for public information, where necessary, on the electronics and ICT industries;
- (j) to assist Members in matters relating to employment within the electronics and ICT industries;
- (k) to promote and facilitate the provision of scholarships, prizes or trophies in education, work achievement, or other activity contributing to the well being of the electronics and ICT industries;
- (l) to support research at approved institutions, either alone or in association with other bodies, into problems of interest or significance to the electronics and ICT industries; and
- (m) generally to do any such other things as may contribute to the attainment of the above objects or any of them.

## **2.2 Income**

- (a) The income and property of the Company 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 or to any Director except as detailed below.
- (b) The foregoing shall not prevent the payment in good faith of remuneration to any Member or Director in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business nor prevent the payment of interest at a rate not exceeding the rate for the time being payable by the Company's bankers for commercial overdrafts on money borrowed from any Member or Director or reasonable and proper rent for premises leased by any Member or Director.

## **3. MEMBERS**

### **3.1 Membership**

The Directors may from time to time admit additional Members to the Company in accordance with this Constitution. The subscribers to the Constitution, and such other persons as the Directors may admit to membership in accordance with this Constitution, shall be Members of the Company. The Directors may resolve to create classes of Members and assign rights to each such class.

### **3.2 Membership Classes**

3.2.1 The two initial classes of membership within the Company, according to which membership fee is payable by the Member, shall be:

3.2.1.1 Core Industry Membership; and

3.2.1.2 Associate Membership.

3.2.2 The rights and privileges of Core Industry Members and Associate Members shall be the same.

### **3.3 Application for and admission to membership**

Every applicant for membership of the Company must complete and sign a written application in the form prescribed by the Directors from time to time. At the next meeting of the Directors after the receipt of any application for membership, the Directors shall consider such application and determine whether the applicant is to be admitted to membership and, if so, which class of membership, or rejected. The Directors may accept or reject any application for membership in their discretion and shall in no case be required to give any reason for the rejection of an application for membership. It shall be a condition of any admission to membership that upon admission any applicable membership fee or contribution levied in respect of the then current Financial Year be paid on a *pro rata* basis.

### **3.4 Registration of Members**

When the Directors determine to accept an application for membership the Secretary shall send to the applicant written notice of his or her acceptance and shall record such details of the

applicant as the Act requires in the Register as either a Core Industry Member or an Associate Member.

### **3.5 Resignation of Members**

A Member may at any time by giving notice in writing to the Secretary resign its membership of the Company, but shall continue to be liable for any sum not exceeding \$20.00 for which he or she is liable under **Clause 21**.

### **3.6 Expulsion of Members**

The Directors may resolve to expel a Member from the Company and remove that Member from the Register if:

- 3.6.1 that Member fails to pay any part of the Membership Fee as required by **Clause 5.3**;
- 3.6.2 that Member wilfully refuses or neglects to comply with any other provision of this Constitution; or
- 3.6.3 that Member engages in any conduct which in the opinion of the Directors is unbecoming of a Member or prejudicial to the interests of the Company.

### **3.7 Method of expulsion of Members**

The Directors shall exercise the power conferred by **Clause 3.6** in the following way:

- 3.7.1 at least 1 week before the Directors meet to consider the resolution to expel a Member, notice must be sent to that Member setting out the intended Member resolution for expulsion and the reasons for the proposed expulsion;
- 3.7.2 if a Directors meeting considers a resolution to expel a Member, that Member may appear at such meeting and, before the resolution is passed, give any oral or written explanation or defence that he or she thinks fit.

### **3.8 Election to have expulsion considered by Company in general meeting**

A Member who is the subject of a resolution for expulsion to be considered by the Directors may, by notice in writing delivered to the Secretary at least 24 hours before the time for the holding of the meeting at which the Directors will consider the resolution for his or her expulsion, elect to have the resolution for expulsion dealt with by the Company in general meeting. If such an election is made an extraordinary meeting of the Company shall be called to consider the Member's expulsion. If at such a meeting a special resolution for expulsion of the Member is passed, the Member shall be expelled and his or her name removed from the Register.

## **4. OFFICE**

The registered office of the Company will be at such premises as the Board determines from time to time.

## **5. MEMBERSHIP FEE AND CONTRIBUTIONS**

### **5.1 Membership Fee**

In each Financial Year of the Company the Directors shall fix an amount payable by each Member as the Membership Fee for that Financial Year. In fixing the Membership Fee for a Financial Year the Directors may have regard to the funds of the Company, any reasonably foreseeable expenses and any other matter they think fit.

### **5.2 Notice of Payment**

At any time after the Membership Fee has been fixed as required by **Clause 5.1**, the Directors may send written notice to Members requiring payment of the Membership Fee in full or in such instalments as the Directors think fit. The requirements as to payment set out in each notice under this clause must be identical as between each class of Members and the Directors must send any notice under this clause to every Member of the Company.

### **5.3 Payment**

Each Member must pay the Membership Fee (or, if applicable, the instalments of the Membership Fee) within 1 month of the date specified for payment on a notice sent by the Directors under **Clause 5.2** provided that no Membership Fee is payable if the Member resigns before the due date for payment.

### **5.4 Interest**

The Board may require any Member that has not paid the moneys due to the Company by way of Membership Fee to pay interest at a rate determined by the Board. The rate will be not less than 10% per annum upon such unpaid Membership Fee from the date from which the amount was due until the actual date of payment.

### **5.5 No Refund**

Except at the discretion of the Directors, no refund of the Membership Fee for a financial year is payable to a Member who is expelled or resigns from membership during the course of that financial year.

## **6. GENERAL MEETINGS**

### **6.1 Annual general meetings and general meetings**

An Annual General Meeting of the Company must be held within 5 months of the end of each Financial Year. All meetings of the Company other than the Annual General Meeting shall be called general meetings.

### **6.2 Requisition of meeting**

The Board may, by giving appropriate notice, call a general meeting. Every notice shall specify the purpose for which a meeting is called. No other business shall be considered at such a meeting.

### **6.3 Notice of meeting**

Subject to the provisions of the Act relating to the special resolutions and agreements for shorter notice, at least twenty one (21) days notice (exclusive of the date on which the notice is served or deemed to be served and exclusive of the day for which notice is given) specifying the place the day and the hour of meeting and in case of special business the general nature of that business and where a resolution is being put to the members and/or where an election of Directors is to be conducted the notice shall also contain the matters referred to in **Clause 8.4.1**.

### **6.4 Special business**

All business shall be special that is transacted at a general meeting and all that is transacted at an Annual General Meeting shall be special with the exception of the consideration of the accounts, balance sheets and the report of the Board and auditors and the appointment of the auditors, if necessary.

## **7. PROCEEDINGS AT GENERAL MEETINGS**

### **7.1 Quorum**

No business shall be transacted at any general meeting unless a quorum of Members present in persons at the time when the meeting proceeds to business. The quorum for a general meeting is ten percent (10%) of the total number of Members entered in the Register at the date of the particular meeting.

7.1.1 Where ten percent (10%) of the Members, referred to in this **Clause 7.1** is less than three Members the quorum will be three Members.

7.1.2 Such Members must be present in person within half an hour from the time appointed for the meeting.

7.1.3 No business, except the adjournment of the meeting, shall be transacted unless a quorum is present.

### **7.2 Quorum not present**

If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to no earlier than the same day in the next week at the same time and place, or to such other day and at such other time and place as the Board may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present (being not less than three) shall be a quorum.

### **7.3 President of general meeting**

The President shall preside as President at every general meeting of the Company or if there is no President or if he is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act, then the Members present shall elect one of their number to be the President of the meeting.

## **7.4 Adjournment**

The President may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty (30) days or more notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.

## **7.5 Resolution**

At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands or an equivalent indication via computer unless a poll is demanded before or on the declaration of a result of a show of hands provided always that any postal votes cast by a Member in accordance with **Clause 8.4** shall be included on both a show of hands and on a poll as provided for in **Clause 8.1**. Unless a poll is so demanded, a declaration by the President that a resolution has on show of hands been carried or carried unanimously or by a particular majority or lost, an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

## **7.6 Poll**

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

# **8. VOTES OF MEMBERS**

## **8.1 Votes of Members**

Each Member may vote in person (through the attendance at the meeting by directors or secretary of the Member or other recognised representative of the Member), by post or by proxy. On a show of hands every person present in person or by proxy who is eligible to vote shall have one (1) vote. On a poll every Member present in person or by proxy shall have one (1) vote. A Member's vote received by post in accordance with **Clause 8.4** shall be treated on both a show of hands and on a poll in respect of the resolutions in the notice of meeting as if the Member were there in person and had cast their vote according to their postal vote.

## **8.2 Equality of votes**

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

## **8.3 Entitlement to vote**

Unless all sums payable by any Member of the Company have been paid such Member shall not, unless the Board otherwise determines, be entitled to vote at a general meeting either personally, or by post or by representative, proxy or attorney or as representative, proxy or attorney for another Member or to exercise any privilege as a Member.

### 8.3A Returning Officer

The Returning Officer shall be appointed by the Board from time to time for such term and upon such conditions as the Board thinks fit and any Returning Officer so appointed may be removed by the Board. Nothing herein shall prevent the Board from appointing a representative of a Member as the Returning Officer.

### 8.4 Postal Votes

- 8.4.1 Accompanying every notice of meeting pursuant to **Clause 6.3** at which a resolution is to be put to the Members of the Company shall be a ballot paper on which shall be printed the resolutions to be put to the Members at the meeting to which the notice relates. Where an election of Directors is to be held pursuant to **Clause 9.5** a ballot paper containing the names of the nominees for which an election of Directors is to be held, shall be included.
- 8.4.2 If a Member wishes to vote by post on the resolutions contained in the notice then voting shall be by ticking or otherwise marking the box indicating whether the Member is in favour of or against each of the resolutions being put at the meeting. Where the voting includes the election of directors pursuant to **Clause 9.5** voting shall be by ticking or otherwise marking the box alongside the name of the candidate for whom the Member wishes to vote for in each particular directorship as set out in **Clause 9.5**.
- 8.4.3 A Member voting by post shall sign the Member's name (in the case of a Member who is a corporation the ballot paper shall be signed by a recognised representative of that corporation) and print the full name of the Member in block letters on the top of the ballot paper where indicated. Failure to print the name shall not invalidate a vote. The Member shall place the ballot paper in an envelope addressed to "The Returning Officer" at the address or by facsimile specified by the Returning Officer.
- 8.4.4 A postal vote cast by a Member shall be irrevocable upon the determination by the Returning Officer of the eligibility of the vote.
- 8.4.5 Only those ballot papers received by the Returning Officer by the time designated in the notice of meeting shall be rated.
- 8.4.6 The Returning Officer shall:
- (i) open all envelopes which were received at the time specified in **Clause 8.4.5** and shall open and subsequently hand to the President all envelopes received after due time after marking the date and time that it was received and marking it as invalid;
  - (ii) examine or cause to be examined the Register; and
  - (iii) hand to the President all envelopes received together with a report on the eligibility to vote of Members submitting a vote by post.
- 8.4.7 The ballot papers which are received in due time and which the Returning Officer allows as being from Members able to vote shall be placed in the ballot box immediately upon being extracted from the enclosing envelope.

8.4.8 The Returning Officer shall count these votes any time after the time designated for votes to be received by the Returning Officer pursuant to **Clause 8.4.5** and in any event before the meeting.

## **8.5 Decision of the Returning Officer**

8.5.1 The decision of the Returning Officer shall be final as to:

- (i) who is not entitled to vote; and
- (ii) what votes shall or shall not be placed in the ballot box.

8.5.2 In order to determine whether a particular resolution has been carried or lost for the purposes of **Clause 7.5** the Returning Officer shall certify to the Chairman at the meeting the number of votes received by post in favour of and against each resolution being put to the Members at that particular meeting. Where Directors are being elected the Returning Officer shall certify to the Chairman at the meeting the number of votes received by post by each candidate for the purposes of **Clause 9.6.8**.

## **8.6 Instrument appointing proxy to be in writing**

Any instrument appointing a proxy shall be in writing under the hand of the Member or of his or its attorney duly authorised in writing. A Member shall be entitled to instruct one proxy in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may vote as he thinks fit. The most recent instrument appointing a proxy received by the Company prior to the time specified in the Form of General Proxy set out in clause 8.7 shall be the applicable form and accepted by the Company.

## **8.7 Proxy**

The instrument appointing a proxy may be in the following form or in a common seal or usual form:

### **Form of General Proxy**

I,

of

being a Member of Electronics & ICT Association hereby  
appoint

of

or failing him the President of the meeting as my proxy to vote for me on my behalf at the  
general meeting of the Company, to be held on the

day of

and at any adjournment thereof. My proxy is hereby authorised to vote \* in favour of/against  
the following resolution/s:

Signed this                      day of

.....  
(Signature of recognised representative of Member)

NOTE: If the Member desires to vote for or against any resolution the Member shall instruct the proxy accordingly. Unless otherwise instructed, the proxy may vote as he thinks fit. This form must be received no less than 48 hours before the time scheduled for the AGM to occur and only one instrument appointing a proxy may be lodged by a Member. This form must be delivered to the offices of the Company or faxed to (08) 8272 5277 and the most recent form received by the Company within the time specified shall be the applicable form.

## **8.8 Proxies to be lodged at office**

- 8.8.1 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notorially certified copy of that power or authority shall be deposited at the registered office of the Company not less than forty-eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or in the case of a poll, not less than forty-eight (48) hours, or such other time as the Board may determine, before the time appointed for the taking of the poll and in default this instrument of proxy shall not be valid.
- 8.8.2 Any Member who is eligible to vote and is or intends to be absent or resident abroad may deposit in the office an instrument duly stamped (if necessary) appointing a proxy which will be valid for all meetings whatsoever during such absence or resident or until revocation.
- 8.8.3 No instrument appointing a proxy shall be valid after the expiration of 12 months from the date of its execution.

## **8.9 Vote of proxy valid notwithstanding death etc**

A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed provided that no notification in writing of such death, unsoundness of mind, winding up or revocation as aforesaid has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

## **9. THE BOARD**

### **9.1 Transitional Directors**

The Transitional Directors, comprising the Board that will oversee the running of the Company post merger with ICT Council for South Australia until the Annual General Meeting of the Company to be held in 2008, will be:

- 9.1.1 The Chief Executive Officer, appointed in accordance with **Clause 9.2** below;

- 9.1.2 An Independent Chairperson, appointed by the Board and who shall sit on the board of Transitional Directors until the Annual General Meeting of the Company to be held in 2008;
- 9.1.3 Dean Littlefield as joint deputy chairperson of Transitional Directors;
- 9.1.4 Che Metcalf;
- 9.1.5 Scott Hicks;
- 9.1.6 Geoff Rohrschein;
- 9.1.7 Anthony Kittel;
- 9.1.8 Joanne Pucetti;
- 9.1.9 Ian Wallis; and
- 9.1.10 Peter Charlesworth as joint deputy chairperson;

("Transitional Directors") and these Transitional Directors, with the exception of the Chief Executive Officer, shall all retire at the Annual General Meeting to be held in 2008, but shall all be eligible for re-election at that Annual General Meeting.

## **9.2 Chief Executive Officer**

The Board shall appoint and procure that the Company employs a Chief Executive Officer of the Company upon such terms as it thinks fit. The Chief Executive Officer shall be entitled to attend and speak at meetings of the Board, however, the Chief Executive Officer shall not be entitled to a vote at meetings of the Board.

## **9.3 Number and qualification of Consultants**

A Ministerial nominee representing the Government will be entitled to be present during meetings of the Board as a consultant to the Board only and shall not be entitled to vote at meetings of the Board. The Board must ensure that a copy of each notice of meeting sent to the Directors is contemporaneously sent to such representative's offices.

## **9.4 Number and qualification of Directors**

The Company may from time to time by ordinary resolution passed at a general meeting increase or reduce the number of the Directors, provided that the number of Directors of the Company must not be less than 8. The minimum number and sector of the electronics and ICT industries and membership classes which the Directors must represent out of the eight (8) Directors are listed below (subject to clause 9.6.1 below):

- 9.4.1 One (1) Director who must be employed in the position of chief executive officer, general manager or equivalent by a Core Industry Member with staff numbers in Australia between 1 and 50 who will represent Core Industry Members with staff numbers in Australia between 1 and 50 and, for the purposes of this Constitution such Director holding this office shall be known as Director A;

- 9.4.2 One (1) Director who must be employed in the position of chief executive officer, general manager or equivalent by a Core Industry Member with staff numbers in Australia between 51 and 200 who will represent Core Industry Members with staff numbers in Australia between 51 and 200 and, for the purposes of this Constitution, the Director holding such office shall be known as Director B;
- 9.4.3 One (1) Director who must be employed in the position of chief executive officer, general manager or equivalent by a Core Industry Member with staff numbers in Australia greater than 200 who will represent Core Industry Members having staff numbers in Australia greater than 200 and, for the purposes of this Constitution, the Director holding such office shall be known as Director C;
- 9.4.4 One (1) Director who must be employed in any position by a Core Industry Member having staff numbers in Australia between 1 and 50 who will represent Core Industry Members having staff numbers in Australia between 1 and 50 and, for the purposes of this Constitution the Director holding this office shall be known as Director D;
- 9.4.5 One (1) Director who must be employed in any position by a Core Industry Member staff levels of between 51 and 200 who will represent Core Industry Members having staff levels of between 51 and 200 and, for the purposes of this Constitution the Director holding this office shall be known as Director E;
- 9.4.6 One (1) Director who must be employed in any position by a Core Industry Member having staff levels of greater than 201 who will represent Core Industry Members having staff levels of greater than 201 and, for the purposes of this Constitution the Director holding this office shall be known as Director F;
- 9.4.7 One (1) Director who must be employed by an Associate Member in the position of Vice Chancellor, Pro Vice Chancellor or the equivalent, or their appointed representative, representing education with the electronics or ICT industries at paraprofessional or professional level and, for the purposes of this Constitution the Director holding this office shall be known as Director G; and
- 9.4.8 One (1) Director representing the Community who shall be nominated by the President from time to time and elected by the other members of the Board in accordance with **Clause 9.6.10** and, for the purposes of this Constitution the Director holding this office shall be known as Director H.

## 9.5 Election of Directors

- 9.5.1 At the first Annual General Meeting of the Company to be held in 2008:
- (a) The Transitional Directors shall all retire but shall be eligible for re-election in accordance with **Clause 9.6**,
  - (b) Members' representatives shall be elected to Directorships B, D and F in accordance with the procedures for election of Directors set out in **Clause 9.6** and shall be appointed for a term of one year (the “**First Group of Directors**”). The First Group of Directors shall all retire at the end of their term at the next Annual General Meeting held in 2009 and shall be eligible for re-election;

(c) Members' representatives shall also be elected to Directorships A, C, E and G in accordance with the procedures for election of Directors set out in **Clause 9.6** but shall be appointed for a term of two years (the "**Second Group of Directors**");

9.5.2 After the retirement of the First Group of Directors at the Annual General Meeting held in 2009 in accordance with **Clause 9.5.1(b)** all Directors thereafter shall be appointed for a term of two years, with the exception of Director H who shall be appointed and removed by the Board at its discretion in accordance with **Clause 9.6.10**;

9.5.3 At all Annual General Meetings held after 2008 either the First Group of Directors or the Second Group of Directors then in office shall retire according to which of the groups has at the date of the Annual General Meeting been in office the longest and is at the end of their respective term in accordance with this Constitution. The length of time a Director has been in office shall be calculated from the date of his or her last election. In the case of a Director being appointed to fill a casual vacancy pursuant to **Clause 9.10** the length of time that that director has been in office shall be taken to include the time in office spent by the person whom they are replacing.

9.5.4 The Annual General Meeting shall elect new Directors to the Board to replace those retiring according to which sector of the electronics and ICT industry the retiring Directors represented. Any retiring Director shall be eligible for re-election and shall remain in office until new Directors are appointed.

## **9.6 Procedure for election of Directors**

The election of Directors shall take place in the following manner:

9.6.1 a Member, eligible to nominate a representative to serve as a Director under **Clause 9.4**, may nominate such representative provided however that at the Annual General Meetings to be held in 2008 AND 2009 only, a SolutionCity Member may nominate a representative to act as a director in the position of Director B, Director D or Director F as set out in clause 9.4 and may not nominate representatives to be elected to the other positions (Director A, Director C or Director E), after which all Members shall be entitled to nominate representatives to any position as set out in clause 9.4;

9.6.2 the nomination must be in writing and signed by the Member nominating and another Member of the relevant member class. The nomination must be lodged with the Returning Officer by the time designated in the notice of meeting and in any event 3 days prior to the date on which the balloting lists are to be sent to the Members pursuant to **Clause 9.6.3**;

9.6.3 balloting lists shall be prepared containing the names of the candidates only, dividing the candidates into each specific Member class as set out in **Clause 9.4** and into alphabetical order. The balloting lists shall be sent to all Members entitled to vote at least 21 days prior to the date on which the postal ballot papers are due to be received by the Returning Officer pursuant to **Clause 8.4.4**;

9.6.4 each Member present at the Annual General Meeting either in person, or by post or by proxy is entitled to vote for one candidate for each directorship as set out in **Clause 9.4**;

9.6.5 if there is an insufficient number of candidates nominated, the Directors shall appoint a qualified person to fill the vacancy or vacancies as provided in **Clause 9.10**.

9.6.6 the decision of the President shall be final as to:

- (i) which candidates are validly nominated; and
- (ii) the eligibility of a candidate.

9.6.7 The President in declaring the elected candidates pursuant to **Clause 9.6.8** shall take into account the postal votes cast as certified by the Secretary pursuant to **Clause 8.5.3**.

9.6.8 The candidates for each directorship as set out in **Clause 9.4** receiving the greatest number of votes shall be declared elected.

9.6.9 In the case of an equality of votes the President shall decide by lot which of them shall be declared elected.

9.6.10 The President, elected by the Board at the first meeting of Directors held after the 2008 Annual General Meeting, shall within one month of election, nominate a representative from the community to be elected by the Board at the next meeting of Directors to fill the position of Director H for such term as the Board from time to time sees fit and if the position of Director H becomes vacant, the Board shall endeavour to elect a representative from the community to fill the vacancy as soon as possible. For the avoidance of doubt, Director H shall not be entitled to vote on any resolution associated with Director H's appointment to or removal from the Board. Any new President elected by the Board from time to time in accordance with **Clause 11** shall be entitled to nominate a new representative to fill the position of Director H, such nomination to be considered and put to the Board for resolution from time to time.

## **9.7 Remuneration of Directors**

The Directors shall be paid out of the funds of the Company as remuneration for their services such reasonable sum as the Company in general meeting may from time to time determine and such remuneration shall be divided among them in such proportion and manner as the Directors may determine and in default of determination equally.

## **9.8 Special remuneration**

If any Director being willing shall be called upon to perform extra services or to make any special exertions for any of the purposes of the Company, the Company shall remunerate such Director by such fixed sum as may be determined by the Directors and such remuneration may be either in addition to or in substitution for any other remuneration to which he or she may be entitled as a Director.

## **9.9 When office of Director to be vacated**

The office of a Director shall ipso facto be vacated:

9.9.1 if he resigns;

9.9.2 on retirement and the Director is not re-elected;

- 9.9.3 if he becomes bankrupt or insolvent or makes any assignment for the benefit of his creditors or takes or attempts to take the benefit of any statutory provisions for liquidation of his affairs and fails to satisfy the Board when required that his inability to pay his debts arose from misfortune and that no discreditable conduct can be imputed to him in connection therewith;
- 9.9.4 if he becomes of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- 9.9.5 if he is convicted of a felony;
- 9.9.6 if he is removed from office by a resolution of the Company in general meeting;
- 9.9.7 if he is removed from office under the provisions hereof;
- 9.9.8 if he becomes prohibited from being a director of a company by reason of any order made under the Act or other law;
- 9.9.9 if he holds any undeclared office of profit of the Company;
- 9.9.10 if he holds any undeclared direct or indirect interest in any contract or proposed contract with the Company;
- 9.9.11 if he dies; or
- 9.9.12 if he leaves his current employer and does not find alternative employment with a Member of the sector that he represents within four (4) months.

## **9.10 Vacancies and additional Directors**

- 9.10.1 The Directors shall have power at any time and from time to time to appoint up to an additional 3 qualified persons as Directors, who shall all be entitled to vote, either to fill casual vacancies or as additions to the Board.
- 9.10.2 The Directors shall have power at any time and from time to time to appoint additional qualified persons as Directors in order to fill casual vacancies on the Board.
- 9.10.3 Any Director appointed pursuant to **Clause 9.10.1 and 9.10.2** shall hold office only until the next general meeting of the Company. Any Director appointed pursuant to clause 9.10.2 shall be eligible for re-appointment at that general meeting and whoever is elected at that general meeting to fill that vacancy shall only be appointed for the balance of the term remaining of the Director who they are replacing PROVIDED that if the term of the Director who they are replacing ends at that next general meeting then that Member may stand for election as a Director under **Clause 9.5**.

## **9.11 Retirement of Directors**

Until new Directors are appointed under **Clause 9.6** in place of those retiring, the Directors or such of them as have not had their places filled shall continue in office in every respect as though they had been duly appointed at the due time.

## **10. POWERS AND DUTIES OF THE BOARD**

### **10.1 General powers of the Board**

Unless otherwise provided in this Constitution, the management and control of the Company and of its funds shall be vested in the Board which in addition to the powers and authorities expressly conferred on it may exercise all such powers and do all such acts and things as may be exercised and done by the Company and which are not hereby expressed directed or required to be exercised or done by the Company in general meeting.

### **10.2 Specific powers of the Board**

Without prejudice to the general powers conferred by the last preceding Clause and the other powers conferred by this Constitution, the Board shall have the following powers:

- 10.2.1 It may determine from time to time the Company's fees and charges as may be appropriate.
- 10.2.2 It may make vary or repeal Regulations in the manner set out in **Clause 14**.
- 10.2.3 It may publish or approve and supervise the publication of journals books and papers and utilise any other means of communication, especially via the Internet.
- 10.2.4 It may at its discretion appoint remove or suspend such secretaries officers clerks agent servants and contractors for permanent temporary or special services as it may from time to time think fit and may determine their duties and fix their salaries or emoluments and may require security in such instances and to such amounts as it shall think fit. It may also appoint from time to time the bankers and legal advisers of the Company.
- 10.2.5 It may purchase rent or otherwise acquire and furnish suitable premises for the use of the Company.
- 10.2.6 It may take cognisance of anything affecting the Company and shall have power to bring before it or its Committees or before general meetings of the Company any matters which it considers material to the Company and may make any recommendation in relation thereto. It may initiate or superintend an investigation under the Constitution or Regulations of the Company.
- 10.2.7 It must each year print a report of the proceedings of the Company during the preceding year including a report of the proceedings of the Annual General Meeting of the Company, a list of Members of the Company and such other information as it may deem of interest and it may circulate the same among the Members of the Company.
- 10.2.8 So far as it may concern the Company it may institute conduct defend or abandon any legal proceedings by and against the Company or its officers or otherwise concerning the affairs of the Company and also may compound and allow time for payment or satisfaction of any debts due or of any claims or demands by or against the Company.
- 10.2.9 It may make and give receipts releases and other discharges for moneys payable to the Company and for the claims and demands of the Company.

- 10.2.10 It may invest and deal with any moneys of the Company upon such security and in such manner as it may be determined from time to time.
- 10.2.11 It may adopt and give effect to a scheme for the payment of pensions or other retiring allowances to employees of the Company.
- 10.2.12 It may engage such officers and servants of the Company which it considers necessary and shall regulate their duties and determine their salaries.
- 10.2.13 It may establish State Chapters and regulations to such State Chapters of the Company which will operate in accordance with this Constitution and regulations made by the Board.
- 10.2.14 It may make such other Regulations as it may determine from time to time.

## **11 PROCEEDINGS OF THE BOARD**

### **11.1 Determination of questions**

Questions arising at any meeting of the Board shall be decided by a vote, each Director being entitled to one vote. In the case of equality of votes the President shall have a second or casting vote.

### **11.2 President**

The Board shall elect from among its members a President who shall hold office for a maximum term of two (2) years but shall be eligible for re-election PROVIDED THAT no President shall hold office for more than three (3) terms in succession without the approval of the Members at a general meeting.

### **11.3 Vice President**

The Board may elect from its members a Vice President or more than one Vice President who shall be eligible for re-election PROVIDED THAT no Vice President shall hold office for more than three (3) terms in succession without the approval of the Members in general meeting.

### **11.4 Removal of President**

The President may be removed from that office if three-quarters of the Directors agree. Otherwise, the President shall hold office until his successor is appointed and any casual vacancy occurring in this office may be filled by a resolution of the Board of which notice shall have been given to all members of the Board. Any successor so appointed to fill a casual vacancy shall hold office only as long as the person in whose place he is appointed would have held office if the casual vacancy had not occurred.

### **11.5 Powers of quorum**

A meeting of the Board for the time being at which a quorum is present shall be competent to exercise all or any of the authorities powers and discretions vested in it by any means whatsoever.

## **11.6 Delegation of power – Board sub-committee**

The Board as elected from time to time must, at the first meeting of the Board after each Annual General Meeting, form a sub-committee consisting of 3 Directors, to be nominated and elected by the Board, and the Chief Executive Officer ("**Board Sub-Committee**") and the Board may delegate any of its powers and/or functions (not being duties imposed on such Board as the Directors of the Company by the Act or the general law) to the Board Sub-Committee for the purposes of discussing and overseeing the operations of the Company . The Board Sub-Committee shall conform to any Regulation that may be imposed by the Board and all members of such committee shall have one vote.

## **11.7 Committee meeting**

The Board Sub-Committee shall meet not less than 5 times per Financial Year and shall intersperse its meetings with the meetings of the full Board and proceedings of every such committee consisting of two or more members shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Board so far as the same are applicable thereto, but in the case of an equality of votes, the President of a meeting of a committee shall not have a second or casting vote.

## **11.8 Resolution of committee**

No resolution of the Board Sub Committee shall bind the Board until adopted by the Board.

## **11.9 Minutes**

The Board shall cause minutes to be regularly kept for the purpose of recording the proceedings of its meetings or of meetings of its committees and of the name of all those present thereat and of all general meetings of the Company. The minutes of any meeting signed by the President of that meeting or of the next succeeding meeting of the Board or of any committee thereof or the company as the case may be shall be conclusive evidence of the transactions recorded in such minutes.

## **11.10 Resolution**

A resolution of the Board shall be a resolution passed at a meeting of the Board and shall be passed by a majority of the votes as hereinbefore provided.

## **11.11 Meeting of the Board**

The Board must meet not less than 5 times in any Financial Year and must meet together, either in person or by telephone, facsimile, Internet “chat” or any other form of instantaneous communication, for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.

## **11.12 Convening of meetings**

A meeting of the Board shall be convened at any time upon the request of two (2) Directors or the President or the Secretary.

### **11.13 Quorum**

A quorum shall consist of three (3) members of the Board present in person or via instantaneous communication as contemplated in **Clause 11.11**.

### **11.14 Directors may act notwithstanding vacancy**

If there is a vacancy in the office of a Director or offices of Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors, in accordance with **Clause 9.10**, to a number sufficient to constitute such a quorum or of convening a general meeting of the Company.

### **11.15 Absence of President**

The President shall preside as President at every meeting of the Board or if there is no President or if at any meeting he is not present within fifteen (15) minutes after the time appointed for holding the meeting the Directors may choose one of their number to be President of the meeting.

### **11.16 Advisory Committees/Councils**

The Board may appoint one or more Advisory Committees and/or Councils which shall act in an advisory capacity only. They shall conform to any Regulations that may be imposed by the Board and subject thereto shall have power to co-opt any Member or non Member of the Company and all Members of such Advisory Committees and/or Councils shall have one (1) vote.

### **11.17 Proceedings at Advisory Committees/Councils**

An Advisory Committee and/or Council may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present and in the case of an equality of votes the President shall not have a second or casting vote.

### **11.18 Validity of acts of Board or Directors or Committee**

All acts done by any meeting of the Board or of the committee or by any person acting as a Director shall notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Director or person acting as aforesaid or that the Director or any of them were disqualified, be as valid as if every person had been duly appointed and was qualified to be a member of the Board or Committee.

### **11.19 Effect of resolution signed by Directors**

A resolution in writing signed by all of the Directors for the time being entitled to receive notice of a meeting of the Board shall be as valid and effectual as if it has been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more directors.

## **12. DIRECTORS MAY CONTRACT WITH COMPANY**

### **12.1 Contracts with Company**

No Director shall be disqualified by his office from contracting or entering into any arrangement with the Company either as vendor, purchaser or otherwise, nor shall any such contract or arrangement or any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way interested be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement, by reason of such Director holding that office or of the fiduciary relationship thereby established, but every Director shall as soon as practicable after the relevant facts come to the Directors knowledge, disclose at a meeting of the Board any interest in contracts or proposed contracts with the Company or of any office or property held by the Directors which may create duties or interests in conflict with their duties or interests as Directors.

### **12.2 Interest in Contract**

A Director who has a material personal interest in any contract or arrangements may not vote on the matter and must not be present while the matter is being considered by the Board. A Director who is interested in any contract or arrangement or proposed contract or agreement may notwithstanding such interest attest the affixing of the seal to any document evidencing or otherwise connected with such contract or arrangement.

## **13. ALTERNATE DIRECTORS**

### **13.1 Appointment**

A Director may, with the approval of the other Directors, appoint a person to be an alternate Director in his place during such period as he thinks fit.

### **13.2 Notice of meetings**

An alternate Director is entitled to notice of meetings of the Directors and, if the appointer is not present at such a meeting, is entitled to attend and vote in his stead.

### **13.3 Powers**

An alternate Director may exercise any powers that the appointer may exercise and the exercise of any such power by the alternate Director shall be deemed to be the exercise of the power by the appointer.

### **13.4 Membership classification**

An alternate Director shall not be of a lesser membership classification than the appointer.

### **13.5 Termination**

The appointment of an alternate Director may be terminated at any time by the appointer notwithstanding that the period of appointment of the alternate Director has not expired and terminates in any event if the appointer vacates office as a Director.

## **13.6 Notice of Termination**

An appointment, or termination of an appointment, shall be effected by a notice in writing signed by the Director who makes or made the appointment and served on the Company.

## **14. REGULATIONS**

### **14.1 Power**

Without limiting the powers in **Clause 10**, the Board may from time to time make, amend and repeal Regulations (subject to the Act and to this Constitution) in respect of any matter authorised by this Constitution and in respect of any subject or matter for the general order of the Company and the management and conduct of its affairs and whether or not such subject and matter is expressly referred to in this Constitution or one concerning which Regulations may be made.

### **14.2 Binding**

Every Regulation when enforced shall be binding upon all Members of the Company and shall have the same effect as this Constitution. The decision of the Board on the construction or interpretation of any Regulation shall be conclusive and shall bind all Members.

### **14.3 Amendment**

Notwithstanding the foregoing provisions of this Constitution, the Company by resolution may amend or repeal Regulations made by the Board provided however that no such amendment or repeal of any Regulation made by the Board shall affect the validity of any act, matter or thing done or permitted to be done by the Board or by any Member of the Board under the Regulations then in force.

## **15. SECRETARY**

The Secretary shall, in accordance with the Act, be appointed by the Board for such term upon such conditions as it thinks fit and any Secretary so appointed may be removed by it. Nothing herein shall prevent the Board from appointing a representative of a Member as Secretary.

## **16. SEAL**

The Board shall provide for the safe custody of the seal which shall only be used by the authority of the Board or of the committee of Directors authorised by the Board on its behalf and every instrument to which the seal is affixed shall be signed by a Member of the Board and shall be countersigned by the Secretary or by a second Director or by some other person appointed by the Board for that purpose.

## **17. ACCOUNTS**

### **17.1 Proper accounts and other records**

The Board shall cause proper accounts and other records to be kept and shall distribute copies of every Profit and Loss Account and Balance Sheet (including every document required by law to be attached thereto) accompanied by a copy of the Auditor's report thereon as required by the Act PROVIDED HOWEVER that the Board shall cause to be made out and laid before

each Annual General Meeting a Balance Sheet and Profit and Loss Account made up to a date not more than five (5) months before the date of the meeting.

## **17.2 Copies**

A copy of each balance sheet (including every document required by law to be annexed hereto) which is laid before the Company in annual general meeting, together with a copy of the Auditor's report, shall not less than fourteen days before the date of the general meeting be sent to the all persons entitled to receive notice of the general meeting.

## **17.3 Financial year**

The financial year for the Company shall end on 30 June.

## **17.4 Inspection**

The Board shall from time to time determine at what times and places under what conditions or Regulations the accounting and other records of the Company shall be open to inspection by the Members.

## **18. EXPENSES OF DIRECTORS**

Every Director may be paid from Company funds all reasonable travel, accommodation and other expenses incurred by the Director in attending meetings of the Company or of the Board or of any committees of the Board or while engaged on business of the Company, such payment to have been previously approved by the Board.

## **19. AUDIT**

A qualified Auditor or qualified Auditors shall be appointed and his or their duties will be regulated in accordance with the Act.

## **20. NOTICES**

### **20.1 Service of notices**

Any notice required by law of by or under this Constitution to be given to any Member shall be given by sending it by post or electronically to the address given to the Company by that Member.

### **20.2 Notices of general meetings**

Notice of every general meeting of the Company shall be given to:

20.2.1 every Member except those Members who have not supplied to the Company an address for the giving of notices to them;

20.2.2 the Auditor or Auditors for the time being of the Company; and

20.2.3 each Director.

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

## **21. PROFITS AND WINDING UP**

- 21.1 Every Member of the Company undertakes to contribute to the assets of the Company if the Company is wound up during the time it is a Member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which it ceases to be a Member and the costs charges and expenses of winding up the same and for the adjustment of the rights and contributories amongst themselves such amount as may be required not exceeding twenty dollars (\$20.00).
- 21.2 If upon the winding up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever the same shall not be paid to or distributed among the Members but shall be given or transferred to some other body or body corporate or bodies or bodies corporate having objects similar to the objects of the Company and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of Clause 2.2(a), such body or body corporate or bodies or bodies corporate to be determined by the Members at or before the time of dissolution or in default thereof by application to a court of competent jurisdiction for determination.

## **22. INDEMNITY**

### **22.1 Indemnity by Company**

The Company shall indemnify each officer of the Company out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer unless the liability was incurred by the officer through his own dishonesty, negligence, lack of good faith or breach of duty.

### **22.2 Indemnity of officer of Company**

An officer of the Company and any Member of a committee established under this Constitution may be indemnified to the relevant extent out of the assets of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or of such subsidiary (as the case may be) or in or arising out of the discharge of the duties of the officer where the Directors consider it appropriate to do so.

### **22.3 Meanings**

In this **Clause 22**:

#### **22.3.1 “officer” means**

- (A) (1) a director, secretary, executive officer, lecturer or employee;

or

- (2) a person appointed as a trustee by, or acting as a trustee at the express request of the Company or any Member of a committee established under this Constitution; and

(B) includes a former officer.

“duties of the officer” includes duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company or any Member of a committee established under this Constitution to any other corporation.

22.3.2 “to the relevant extent” means:

- (A) to the extent the Company is not precluded by law from doing so;
- (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, in particular, an insurer under any insurance policy); and
- (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.

22.3.3 “liability” means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or otherwise.

