

Constitution

Siasi Uesiliana Tauataina‘oTonga i Aositelia Limited

ACN 607 984 243

A Public Company Limited by Guarantee

MILLS OAKLEY

Level 12, 400 George Street
SYDNEY NSW 2000

Telephone: 61 2 8289 5800

Facsimile: 61 2 9247 1315

DX 13025, SYDNEY, MARKET STREET

www.millsoakley.com.au

Ref: 3185271

Table of Contents

1	Name of the Company	1
2	Type of Company	1
3	Replaceable Rules	1
4	Definitions and Interpretation	1
	4.1 Definitions.....	1
	4.2 Interpretation	3
5	Objects	4
	5.1 Objects	4
	5.2 Income and Property	5
	5.3 Remuneration of Directors	5
	MEMBERSHIP	5
6	Admission to Membership	5
	6.1 Eligibility for Membership	5
	6.2 Benefits	6
7	Classes of Membership	6
8	Applications for Membership	6
	8.1 Applications for Membership.....	6
9	Membership Entitlements Not Transferable	7
10	Entrance Fee and Subscriptions	7
11	Cessation of Membership	8
12	Disciplining of Members	8
	12.1 Disciplining of Members.....	8
	12.2 Right of Appeal of Disciplined Member	10
13	Resolution of Disputes Between Members	10
	GENERAL MEETINGS	11
14	Convening of General Meetings	11
	14.1 AGMs	11
	14.2 Convening of General Meetings.....	11
15	Notice of General Meeting	11
16	Cancellation or Postponement of General Meeting	12
	PROCEEDINGS AT GENERAL MEETINGS	12
17	Quorum	12
18	Chairperson	13
19	Adjournments	13
20	Determination of Questions	14

21	Polls	14
22	Voting Rights	14
23	Disqualification.....	14
24	Objection to Qualification to Vote	15
25	Persons of Unsound Mind and Minors	15
26	Casting Vote	15
27	Right of Non-Members to Attend General Meeting	15
	PROXIES.....	15
28	Right to Appoint Proxies	15
29	Appointing a Proxy	16
	29.1 Appointing a Proxy.....	16
	29.2 Instrument of Proxy.....	16
30	Lodgement of Proxies.....	16
31	Validity of Proxies	17
32	Rights of Proxies and Attorneys	17
	APPOINTMENT AND REMOVAL OF DIRECTORS	17
33	Number and Appointment of Directors.....	17
	33.1 Number of Directors.....	17
	33.2 Constitution of Board	18
	33.3 Initial Board.....	18
	33.4 Appointed Directors	18
	33.5 Elected Directors	19
	33.6 Co-Opted Directors.....	19
	33.7 Term.....	20
	33.8 Office Bearers.....	20
34	General Right to Appoint and Remove Directors.....	20
35	Vacation of Office.....	20
36	Filling of Vacancies on the Board	21
37	Acting Office Bearers.....	21
38	Alternate Directors	22
	POWERS AND DUTIES OF DIRECTORS.....	22
39	Duties of Directors	22
40	Powers of Directors	22
41	Negotiable Instruments.....	22
42	Conferment of Powers	22
	DIRECTORS' DISCLOSURE OF INTEREST	23
43	Contracts	23

PROCEEDINGS OF DIRECTORS.....	24
44 Meetings of Directors.....	24
45 Quorum.....	24
46 Chairperson.....	24
47 Voting.....	25
48 Resolutions by Directors.....	25
49 Committee.....	25
50 Validation of Acts of Directors.....	26
MINUTES.....	26
51 Minutes.....	26
SECRETARY.....	27
52 Appointment and Tenure.....	27
BY-LAWS.....	27
53 By-Laws.....	27
EXECUTION OF DOCUMENTS.....	27
54 Execution of Documents.....	27
ACCOUNTS AND INSPECTION OF RECORDS.....	28
55 Accounts and Inspection.....	28
NOTICES.....	28
56 Service of Notices.....	28
WINDING UP.....	29
57 Winding Up.....	29
INDEMNITY.....	29
58 Indemnity.....	29
59 Payment of Indemnity Policy Premium.....	30
60 Indemnity to Continue.....	30
Annexure A Form of Appointment of Proxy.....	31

1 Name of the Company

The name of the Company is Siasi Uesiliana Tauataina'oTonga i Aositelelia Limited.

2 Type of Company

- (a) The Company is a not-for-profit public company limited by guarantee.
- (b) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
 - (i) payment of debts and liabilities of the Company;
 - (ii) payment of the costs, charges and expenses of winding up; and
 - (iii) any adjustment of the rights of the contributories among Members.
- (c) The amount that each Member or past Member is liable to contribute is limited to \$1.00.

3 Replaceable Rules

This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

4 Definitions and Interpretation

4.1 Definitions

In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) **ACNC** means Australian Charities and Not-for-profits Commission.
- (b) **ACNC Act** means *Australian Charities and Not-for-Profits Commission Act 2012* (Cth).
- (c) **ACNC Regulation** means *Australian Charities and Not-for-profits Commission Amendment Regulation 2013* (Cth).
- (d) **Affiliate Member** means a Member in the class of Membership referred to in **clause 7(b)**.
- (e) **AGM** means annual general meeting.
- (f) **Alternate Director** means a person who sits on the Board in lieu of a Director in the event that the Director cannot attend a meeting.
- (g) **Appointed Director** means a person appointed as a Director pursuant to **clause 33.4**.
- (h) **Board** means the board of Directors of the Company.
- (i) **Business Day** means a day that is not a Saturday, Sunday or public holiday in New South Wales.

- (j) **By-Laws** means the by-laws adopted and amended by the Board from time to time in accordance with **clause 53**.
- (k) **Chair** means a person appointed to that position pursuant to **clause 33.8** and includes any assistant or acting Chair under this Constitution.
- (l) **Chairperson** means the person holding that office under **clause 18** and **clause 46**, and includes any assistant or acting Chairperson under this Constitution.
- (m) **Committee** means a committee established in accordance with **clause 49**.
- (n) **Company** means Siasi Uesiliana Tauataina'oTonga i Aositelelia Limited.
- (o) **Connexial & Public Officer** means the person elected to that position pursuant to **clause 33.5(a)(ii)**, having such duties as are determined by the Board from time to time.
- (p) **Constitution** means this constitution as amended or supplemented from time to time.
- (q) **Co-opted Director** means a person appointed as a Director pursuant to **clause 33.6**.
- (r) **Corporations Act** means *Corporations Act 2001 (Cth)*.
- (s) **Council Committee** means the Committee formed pursuant to **clause 49(a)(ii)**.
- (t) **Director** means any person holding the position of a director of the Company (and includes Appointed Directors, Co-opted Directors and Elected Directors) and **Directors** means the directors for the time being of the Company or, as the context permits, such number of them as has authority to act for the Company.
- (u) **Director Present** means in connection with a Board meeting, a Director being present in person or pursuant to **clause 44(d)**.
- (v) **Disciplinary Committee** means the committee established under **clause 12.2(a)**.
- (w) **District Church** means a district church of the Free Wesleyan Church situated within Australia.
- (x) **District Secretary** means the person elected to that position pursuant to **clause 33.5(a)(i)**, having such duties as are determined by the Board from time to time.
- (y) **District Steward** means the person elected to that position pursuant to **clause 33.5(a)(iii)**, having such duties as are determined by the Board from time to time.
- (z) **Elected Director** means a person elected as a Director pursuant to **clause 33.5**.
- (aa) **Entrance Fee** means the entrance fee payable by Members pursuant to **clause 10**.
- (bb) **Executive Committee** means the Committee formed pursuant to **clause 49(a)(i)**.
- (cc) **Financial Committee** means the Committee formed pursuant to **clause 49(a)(iii)**.
- (dd) **Financial Secretary** means the person elected to that position pursuant to **clause 33.5(a)(iv)**, having such duties as are determined by the Board from time to time.

- (ee) **Member** means a member of the Company pursuant to **clause 6** and **clause 7** (and includes both Voting Members and Affiliate Members), and **Membership** has the corresponding meaning.
- (ff) **Member Present** means in connection with a meeting of Members, a Voting Member being present in person or by proxy or attorney.
- (gg) **Member's Guarantee Amount** means the amount referred to in **clause 2(c)**.
- (hh) **Objects** mean the objects of the Company as set out in **clause 5.1**.
- (ii) **Office** means the registered office for the time being of the Company.
- (jj) **Office Bearer** means a person holding any of the offices specified in **clause 33.8**.
- (kk) **Officer** has the same meaning as given to that term in section 9 of the Corporations Act.
- (ll) **Public Fund** means the public fund established for the principal purpose of the promotion of Tongan music, performing art and visual art.
- (mm) **Register** means the register of Members to be kept pursuant to the Corporations Act.
- (nn) **Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act.
- (oo) **Secretary** means the person appointed as the secretary of the Company and includes any assistant or acting secretary.
- (pp) **Special Resolution** has the meaning given to it by the Corporations Act.
- (qq) **Subscription** means the subscription fees payable by Members pursuant to **clause 10**.
- (rr) **Trust Deed** means the trust deed setting up a Public Fund.
- (ss) **Voting Member** means a Member in the class of Membership referred to in **clause 7(a)**.

4.2 Interpretation

In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes the other two genders;
- (c) the word **person** means a natural person and any partnership, association, body or entity whether incorporated or not;
- (d) the words **writing** and **written** include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (f) a reference to any clause or schedule is to a clause or schedule of this Constitution;

- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (h) an expression used in a particular Part or Division of the Corporations Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division; and
- (i) headings do not form part of or affect the construction or interpretation of this Constitution.

5 Objects

5.1 Objects

- (a) The Company is a charitable institution established for the advancement of religion and Tongan culture. The Company will achieve its object by:
 - (i) promoting religion and upholding Christianity and Christian teaching of the Holy Bible or the Scriptures;
 - (ii) establishing congregations of, and conducting the affairs of, the Free Wesleyan Church of Tonga within Australia;
 - (iii) providing a place for worship, facilities, spiritual and pastoral leadership for members of the Free Wesleyan Church of Tonga who reside in Australia, and for the community generally, and to enable and support other Christian Churches;
 - (iv) facilitating educational, spiritual and cultural programs for the promotion and inclusion of the continuance of traditional family, religious and social customs, beliefs and practices of the Free Wesleyan Church of Tonga;
 - (v) acting as a cultural centre for the Tongan migrant community and the community at large, ensuring provision of religious services, funeral services, marriages, meetings, baptisms, family issues or any relevant forum to facilitate the need for the practice of religious beliefs, social customs, practices and cultural norms;
 - (vi) acting as trustee of a Public Fund;
 - (vii) fostering productive relationships with the wider community, be it local, State, national or international level; and
 - (viii) anything ancillary to the Objects referred to in **clauses 5.1(a)(i) to 5.1(a)(vi)**.
- (b) The Company can only exercise the powers in section 124(1) of the Corporations Act to:
 - (i) carry out the Objects of the Company; and
 - (ii) do all things incidental or convenient in relation to the exercise of power under **clause 5.1(b)(i)**.

5.2 Income and Property

- (a) This **clause 5.2** is subject to any further requirements imposed by the Trust Deed regarding the income and property of the Public Fund.
- (b) The income and property of the Company will only be applied towards the promotion of the Objects of the Company.
- (c) No income or property of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company. However nothing in this Constitution will prevent payment in good faith to a Member:
 - (i) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
 - (ii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
 - (iii) of reasonable and proper rent for premises leased by any Member to the Company.

5.3 Remuneration of Directors

No payment shall be made to any Director (except any executive Director in their capacity as an employee of the Company) other than the payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; and
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as 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 for the service.

MEMBERSHIP

6 Admission to Membership

6.1 Eligibility for Membership

Any individual person is entitled to become a Member if the person:

- (a) agrees to assume the liability to pay the Member's Guarantee Amount;
- (b) satisfies the criteria for the relevant class of Membership in accordance with **clause 7**;
- (c) supports the Objects of the Company and agrees to comply with the terms of:
 - (i) this Constitution;
 - (ii) **the Konisitutone 'o e Siasi Uesiliana Tauataina 'o Tonga**; and
 - (iii) and any code of conduct which the Board may produce from time to time;
- (d) is, in the Board's opinion, of good character;

- (e) lodges an application form in accordance with **clause 8**; and
- (f) subject to **clause 10(d)**, pays the Entrance Fee in accordance with **clause 10**.

6.2 Benefits

- (a) Each Voting Member will be entitled to vote at all general meetings.
- (b) In addition to each Voting Member being entitled to vote at all general meetings, the Board will determine from time to time what additional benefits shall attach to Membership.

7 Classes of Membership

There shall be the following classes of Membership:

(a) Voting Members

Voting Members shall:

- (i) be natural persons;
- (ii) hold a leadership role within a District Church;
- (iii) support the Objects; and
- (iv) be entitled to vote.

(b) Affiliate (**Memipa Fekau'aki**) Members

Affiliate Members shall:

- (i) be natural persons;
- (ii) be participants in the Free Wesleyan Church;
- (iii) support the Objects; and
- (iv) not be entitled to vote.

- (c) The Board may determine from time to time additional qualifications for admission to each Membership class and the rights attached to each Membership class.

8 Applications for Membership

8.1 Applications for Membership

- (a) An application for Membership of the Company shall:
 - (i) be made in writing in the form prescribed by the Board from time to time;
 - (ii) specify the category of Membership being applied for by the applicant;
 - (iii) include a signature, or equivalent acknowledgement by the applicant acknowledging that the applicant agrees to be bound by the Constitution of the Company as amended from time to time;
 - (iv) be accompanied by any Entrance Fee and annual Subscription payable pursuant to **clause 10(a)**; and
 - (v) be lodged with the Secretary.

- (b) As soon as practicable after receiving an application for Membership, the Secretary shall refer the application to the Board which is to determine whether to approve or reject the application.
- (c) As soon as practicable after the Board makes that determination the Secretary shall:
 - (i) notify the applicant, in writing, that the Board approved or rejected the application (whichever is applicable); and
 - (ii) if the Board approved the application, enter the applicant's name and class of Membership in the Register and, subject to the Corporations Act, the person becomes a Member on the name being so entered; or
 - (iii) if the Board rejected the application, comply with the notification requirements in **clause 8.1(d)** and within twenty eight (28) days of the Board's decision, refund the applicant any annual Subscription paid pursuant to **clause 8.1(a)(iv)** but not any Entrance Fee.
- (d) If the Board determines under **clause 8.1(b)** to reject an application for Membership, the Secretary shall serve the applicant with a notice in writing setting out the determination of the Board. The Board is not required to provide any reasons for its decision.

9 Membership Entitlements Not Transferable

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

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of the person's Membership.

10 Entrance Fee and Subscriptions

- (a) There shall be an Entrance Fee and annual Subscription payable by each applicant for Membership and Member to the Company, unless the Board determines otherwise.
- (b) Subject to **clause 10(d)**, the amount of the Entrance Fee and annual Subscription shall be payable by Members at such times and in such manner as determined by the Board from time to time.
- (c) The Board may charge different classes of Membership different Entrance Fees and Annual Subscriptions.
- (d) The Board may in its discretion:
 - (i) determine that no Entrance Fee or annual Subscription is payable by a Member or Members (in whole or in part) in a given year; and
 - (ii) extend the time for payment of the Entrance Fee or annual Subscription by any Member.
- (e) No part of any Entrance Fee or annual Subscription shall be refunded to a Member who ceases to be a Member in accordance with **clause 11**.

11 Cessation of Membership

- (a) A Member's Membership will cease:
- (i) on the date that the Secretary receives written notice of resignation from that Member;
 - (ii) upon that Member dying;
 - (iii) upon that Member no longer satisfying the criteria for its respective class of Membership (unless transferred to another class of Membership by the Board);
 - (iv) upon that Member becoming bankrupt or making an arrangement or composition with creditors of the person's joint or separate estate generally;
 - (v) subject to **clause 10(d)**, if that Member fails to pay an Entrance Fee or annual Subscription:
 - (A) within thirty (30) days after it falls due; and
 - (B) then fails to rectify this default within thirty (30) days of being notified of the default by the Company;
 - (vi) if the Member is expelled from the Company pursuant to **clause 12**;
 - (vii) if the Company in general meeting resolves by Special Resolution to terminate the Membership of a Member whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company. The Member shall be given at least twenty one (21) days' notice of the proposed resolution and shall be given the opportunity to be heard at the meeting at which the resolution is proposed.
- (b) A Member may at any time, pursuant to **clause 11(a)(i)**, resign as a Member but shall continue to be liable for:
- (i) any monies due by the Member to the Company;
 - (ii) any sum for which the Member is liable as a Member of the Company under **clause 2(b)**.
- (c) In the event that there is only one Voting Member of the Company and that Voting Member ceases to be a Voting Member pursuant to **clause 11(a)**, the Board may appoint a new Voting Member to the Company, the choice of that new Voting Member being within the full and unfettered discretion of the Board.

12 Disciplining of Members

12.1 Disciplining of Members

- (a) Where the Board is of the opinion that a Member has:
- (i) persistently refused or neglected to comply with a provision or provisions of this Constitution or any code of conduct;
 - (ii) persistently refused or neglected to comply with the [Konisitutone oe Siasi Uesiliana Tauataina o Tonga](#); or

- (iii) persistently and wilfully acted in a manner prejudicial to the interests of the Company,

the Board may:

 - (iv) expel the Member from the Company; or
 - (v) suspend the Member from Membership of the Company for a specified period.
- (b) A resolution of the Board pursuant to **clause 12.1(a)** is of no effect unless the Board confirms the resolution in accordance with this **clause 12.1(b)** at a Board meeting held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service on the Member of a notice pursuant to **clause 12.1(c)**.
- (c) If the Board resolves under **clause 12.1** to expel or suspend any Member, the Secretary shall serve the Member with a notice in writing:
 - (i) setting out the resolution of the Board and the grounds upon which it is based;
 - (ii) stating that the Member may address the Board at a Board meeting to be held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service of the notice;
 - (iii) stating the date, place and time of that meeting; and
 - (iv) informing the Member that the Member may do either or both of the following:
 - (A) attend and speak at that meeting;
 - (B) submit to the Board at or prior to the date of the meeting, written representations relating to the resolution.
- (d) At a meeting of the Board held as referred to in **clause 12.1(c)**, the Board shall:
 - (i) give the Member an opportunity to make oral representations;
 - (ii) give due consideration to any written representations submitted to the Board by the Member at or prior to the Board meeting; and
 - (iii) by a resolution of at least seventy-five per cent (75%) of the Directors participating in the Board meeting, determine whether to confirm or to revoke the resolution.
- (e) The Member shall be notified in writing of the decision of the Board within seven (7) days. If the Board resolves to confirm the expulsion or suspension, the Member shall also be notified of the right of appeal available under **clause 12.2**.
- (f) A resolution confirmed by the Board under **clause 12.1(d)** does not take effect:
 - (i) until the expiration of the period within which the Member is entitled to appeal against the resolution where the Member does not exercise the right of appeal within that period; and
 - (ii) where, within that period, the Member exercises the right of appeal, unless and until the Disciplinary Committee confirms the resolution pursuant to **clause 12.2(d)(ii)**.

12.2 Right of Appeal of Disciplined Member

- (a) The Board will establish a committee for the purpose of conducting disciplinary proceedings against a Member. The Disciplinary Committee will comprise of an independent panel of three experts, all chosen by the Board. The experts will be chosen based upon the nature of the alleged misconduct by the Member. The Disciplinary Committee may seek advice from any relevant source.
- (b) A Member may appeal to the Disciplinary Committee against a resolution of the Board, which is confirmed under **clause 12.1(d)**. Written notice of such an appeal shall be lodged with the Secretary within seven (7) days of service of the notice required under **clause 12.1(e)**.
- (c) Within thirty-five (35) days after receipt of a notice of appeal from the Member pursuant to **clause 12.2(b)**, the Disciplinary Committee shall convene a meeting.
- (d) At the Disciplinary Committee meeting convened under **clause 12.2(c)**:
 - (i) the Member shall be given the opportunity to state their case orally or in writing, or both using any technology (reasonably available to the Board) that gives the Member a reasonable opportunity to do so; and
 - (ii) the Disciplinary Committee shall vote by ballot on the question of whether the resolution will be confirmed.
- (e) The Disciplinary Committee's decision pursuant to **clause 12.2(d)(ii)** is final. The Member is not entitled to appeal the Disciplinary Committee's decision.
- (f) The Member the subject of these disciplinary procedures is entitled to:
 - (i) subject to **clause 12.2(f)(ii)**, bring a support person to any meeting with the Disciplinary Committee or the Board, which meetings are being held pursuant to this **clause 12**; and
 - (ii) if the support person is legally qualified, the Member shall notify the Disciplinary Committee or the Board (as the case may be) at least five (5) Business Days before the meeting that the support person attending the meeting will be legally qualified.
- (g) Natural justice will be applied during every disciplinary process under this **clause 12**, requiring the Board and Disciplinary Committee to act fairly, in good faith and without bias or conflict of interest when making its decision.

13 Resolution of Disputes Between Members

- (a) Disputes between Members (in their capacity as Members), including disputes relating to fundraising issues, shall be referred to the Board which shall take steps to resolve the dispute.
- (b) If a dispute so referred is not resolved to the satisfaction of any party to the dispute within thirty (30) days of its being referred, then that party may refer the dispute to mediation before a mediator appointed by mutual agreement of the parties.
- (c) Failing agreement by the parties to the appointment of a mediator within fourteen (14) days of a party notifying the other party of its intention to refer the dispute to mediation, the appointment of the mediator shall be made by the President of the Law Society of New South Wales.

- (d) The costs of the mediator appointed pursuant to **clause 13(b)** or **clause 13(c)** (as the case may be) shall be shared equally between the Members party to the dispute.
- (e) At least seven (7) days before a mediation session established by a mediator appointed pursuant to **clause 13(b)** or **clause 13(c)** (as the case may be) is to commence, the parties to the dispute are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

GENERAL MEETINGS

14 Convening of General Meetings

14.1 AGMs

Notwithstanding section 111L of the Corporations Act:

- (a) in the event that the Board wishes to do so, it may convene an AGM; and
- (b) any AGM which is convened must be done so in accordance with the requirements of the Corporations Act.

14.2 Convening of General Meetings

- (a) Any two (2) Directors may, whenever those Directors think fit, convene a general meeting of the Company.
- (b) Notwithstanding section 111L of the Corporations Act:
 - (i) the Members may call a general meeting; and
 - (ii) the Company will do so,in accordance with the provisions of Part 2G.2 of the Corporations Act pertaining to the rights of Members to call a general meeting.
- (c) A general meeting of the Company may be convened at two (2) or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting.

15 Notice of General Meeting

- (a) Notwithstanding section 111L of the Corporations Act:
 - (i) subject to **clause 15(a)(ii)**, at least twenty-one (21) days' notice of any general meeting must be given specifying:
 - (A) the place, day and hour of the meeting;
 - (B) the general nature of any business to be transacted at the meeting;
 - (C) if a Special Resolution is to be proposed, the details of and intention to propose it;
 - (D) if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
 - (E) any other information required by the Corporations Act; and

- (ii) fewer than twenty-one (21) days' notice may be given of a general meeting in accordance with section 249H of the Corporations Act.
- (b) The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.
- (c) Subject to **clause 15(b)**, notice of every general meeting shall be given in any manner authorised by this Constitution to:
 - (i) every Member;
 - (ii) every Director; and
 - (iii) the auditor for the time being of the Company (if any).

16 Cancellation or Postponement of General Meeting

- (a) Subject to the provisions of the Corporations Act and this Constitution the Board may cancel a general meeting of the Company:
 - (i) convened by the Board; or
 - (ii) which has been convened by a Member or Members pursuant to **clause 14.2(b)** upon receipt by the Company of a written notice withdrawing the requisition signed by that Member or those Members.
- (b) The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.
- (c) Where any general meeting is cancelled or postponed or the venue for a general meeting is changed:
 - (i) the Board shall endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
 - (ii) any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

PROCEEDINGS AT GENERAL MEETINGS

17 Quorum

- (a) No business may be transacted at any general meeting unless there is a quorum of Members Present at all times during the meeting.
- (b) Members Present who represent at least one third (1/3rd) of all Voting Members shall constitute a quorum for all general meetings.
- (c) If within thirty (30) minutes after the time appointed for holding a general meeting a quorum is not present:

- (i) the meeting, if convened upon the requisition of Members, shall be dissolved;
- (ii) in any other case:
 - (A) it will stand adjourned to such other day time and place as the Board may by notice to the Members appoint; and
 - (B) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.

18 Chairperson

- (a) The Chair shall preside as Chairperson at each general meeting.
- (b) Where a general meeting is held and:
 - (i) there is no Chair; or:
 - (ii) the Chair is not present within thirty (30) minutes after the time appointed for the holding of the meeting or, if present, is unwilling to act as Chairperson of the meeting,then the following person shall be Chairperson in lieu of the Chair in the order of availability set out below:
 - (iii) another Director chosen by the Chair;
 - (iv) another Director chosen by a majority of the Directors present at the meeting; and
 - (v) a Voting Member chosen by a majority of the Members Present.
- (c) The rulings of the Chairperson of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

19 Adjournments

- (a) The Chairperson of a general meeting at which a quorum is present:
 - (i) may adjourn a meeting with the consent of the meeting; and
 - (ii) shall adjourn the meeting if the meeting so directs;to a time and place as determined.
- (b) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (d) It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for thirty (30) days or more in which case notice of the adjourned meeting shall be given as in the case of an original meeting.

20 Determination of Questions

- (a) At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
 - (i) the Chairperson; or
 - (ii) at least two (2) Members Present.
- (b) Before a vote on a resolution is taken, the Chairperson shall inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) A declaration by the Chairperson of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company which has been signed by the Chairperson of the meeting or the next succeeding meeting 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.

21 Polls

- (a) A poll may be demanded:
 - (i) before a vote on a resolution is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (b) If a poll is demanded, it shall be taken in such manner and at such time and place as the Chairperson directs subject to **clause 21(e)**.
- (c) The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- (e) A poll demanded on the election of a Chairperson or any question of adjournment of the meeting shall be taken immediately.
- (f) The demand for a poll may be withdrawn.

22 Voting Rights

A Voting Member has one (1) vote, both on a show of hands and a poll.

23 Disqualification

No person other than:

- (a) a Voting Member; or
 - (b) a proxy of a Voting Member,
- shall be entitled to a vote at a general meeting.

24 Objection to Qualification to Vote

Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and shall be determined by the Chairperson whose decision shall be final and conclusive and a vote allowed by the Chairperson shall be valid for all purposes.

25 Persons of Unsound Mind and Minors

- (a) A Voting Member:
- (i) of unsound mind; or
 - (ii) whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
 - (iii) who is a minor;
- may vote whether on a show of hands or on a poll by that Voting Member's committee or by such other person as properly has the management or guardianship of that Voting Member's estate or by the public trustee (as the case may be) and the committee or other person or trustee may vote by proxy or representative.
- (b) Any person having the right of management or guardianship of the person or estate in respect of a Voting Member as referred to in **clause 25(a)** shall not exercise any of the rights conferred under that clause unless and until the person has provided to the Board satisfactory evidence of the appointment of the person accordingly.

26 Casting Vote

In the case of an equality of votes whether on a show of hands or on a poll the Chairperson of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote in addition to a deliberative vote.

27 Right of Non-Members to Attend General Meeting

- (a) The Chairperson of a general meeting may invite any person who is not a Member to attend and address a meeting.
- (b) Any auditor and any Director of the Company shall be entitled to attend and address a general meeting.

PROXIES

28 Right to Appoint Proxies (Fakafongga pe Fetongi)

- (a) A Voting Member who is entitled to attend and vote at a general meeting of the Company may appoint a person as the Voting Member's proxy to attend and vote for the Voting Member at the meeting.
- (b) If a Voting Member appoints a proxy, the proxy is entitled to vote on a show of hands and on a poll.

29 Appointing a Proxy

29.1 Appointing a Proxy

The instrument appointing a proxy shall be in writing signed by the appointor or the appointor's attorney duly authorised in writing or, if the appointor is a corporation, signed by an authorised officer or attorney of the corporation.

29.2 Instrument of Proxy

- (a) The instrument of proxy is valid if it contains the following information, and any additional information required by the Corporations Act:
 - (i) the name and address of the Voting Member;
 - (ii) the name of the Company;
 - (iii) the proxy's name or the name of the office of the proxy; and
 - (iv) the meetings at which the instrument of proxy may be used.
- (b) An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- (c) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 29.2(a)**.
- (d) An instrument of proxy may be revoked at any time by notice in writing to the Company.

30 Lodgement of Proxies

- (a) An instrument appointing:
 - (i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
 - (ii) an attorney to exercise a Voting Member's voting rights at a general meeting or a certified copy of that power of attorney,shall be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than twenty-four (24) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote. In default, the instrument of proxy or the power of attorney will not be treated as valid.
- (b) For the purposes of this **clause 30** it will be sufficient that any document required to be lodged by a Voting Member be received in legible form by facsimile at the place at which the document is required to be delivered by the Voting Member and the document shall be regarded as received at the time the facsimile was received at that place.
- (c) For the purposes of this **clause 30** it will be sufficient that any document required to be lodged by a Voting Member be received in legible form by email if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the email or other electronic transmission by the Company.

31 Validity of Proxies (Ko e fakalao 'o e Fetongi)

- (a) A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
- (i) the death or unsoundness of mind of the Voting Member;
 - (ii) the bankruptcy of the Voting Member;
 - (iii) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,
- if the Company has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, or revocation at least forty-eight (48) hours (or such shorter period as the Board may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.
- (b) A proxy who is not entitled to vote on a resolution as a Voting Member may vote as a proxy for another Voting Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.
- (c) Except on a show of hands, a proxy may vote as more than one Voting Member if the proxy holds appointments for those Voting Members which specify the way the proxy is to vote on the resolution and the proxy votes that way.

32 Rights of Proxies and Attorneys

- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (b) Subject to **clause 32(c)**, unless a Voting Member by the instrument of proxy directs the proxy to vote in a certain manner the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.
- (c) A proxy will not be revoked by the appointor attending and taking part in any general 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 the appointor shall not be entitled to vote in that capacity in respect of the resolution.
- (d) The Chairperson of a general meeting may require any person acting as a proxy to establish to the satisfaction of the Chairperson that he or she is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his or her identity he or she may be excluded from voting either upon a show of hands or upon a poll.

APPOINTMENT AND REMOVAL OF DIRECTORS

33 Number and Appointment of Directors

33.1 Number of Directors

- (a) The Board of Directors shall consist of not fewer than seven (7) and not more than nine (9) persons.

- (b) Subject to section 201P of the Corporations Act, the Board may by resolution vary the number of Directors holding office from that referred to in **clause 33.1(a)**.

33.2 Constitution of Board

Subject to **clause 33.3**, the Board shall consist of:

- (a) three (3) Appointed Directors (subject to **clause 33.4(c)**);
- (b) up to four (4) Elected Directors; and
- (c) up to two (2) Co-opted Directors appointed by the Board from time to time (the number to be determined by the Board from time to time);

provided that the total number of Directors does not exceed the maximum fixed by **clause 33.1**.

33.3 Initial Board

- (a) The Directors to hold office at the adoption of this Constitution shall be:
- (i) President of the Free Wesleyan Church of Tonga – Rev. Dr Finau Ahio;
 - (ii) General Secretary of the Free Wesleyan Church of Tonga – Rev. Dr Tevita Havea;
 - (iii) Superintendent Minister of the Free Wesleyan Church of Tonga – Rev. Dr Siotame Havea;
 - (iv) General Secretary of the FWC of Tonga in Australia: Rev. Sione Ale;
 - (v) Secretary of Finance: Fredrick Vi;
 - (vi) Public Officer: Ekileti Moala; and
 - (vii) Head Steward: Fetaiaki Namoa.
- (b) The initial Directors set out in **clauses 33.3(a) to 33.3(a)(iii)** shall be deemed to be Appointed Directors.
- (c) The initial Directors set out in **clauses 33.3(a)(iv) to 33.3(a)(vii)** shall be deemed to be Elected Directors.
- (d) The initial Elected Directors shall serve an initial term of one (1) year, following which they shall be eligible for election pursuant to **clause 33.5**, so long as they are Voting Members at the time.

33.4 Appointed Directors (Kau Talekita Fakanofu)

- (a) The individuals holding the following three (3) offices shall be the Appointed Directors:
- (i) President of the Free Wesleyan Church of Tonga;
 - (ii) Secretary of the Free Wesleyan Church of Tonga; and
 - (iii) Superintendent Minister of the Free Wesleyan Church of Tonga.
- (b) An Appointed Director may be, but need not be, a Member.
- (c) If an Appointed Director is removed pursuant to clause 203D of the Corporations Act, that position shall remain vacant until a new individual is appointed to the

relevant office as referred to in **clause 33.4(a)(i)**, **clause 33.4(a)(ii)** or **clause 33.4(a)(iii)**, as the case may be.

- (d) If an Appointed Director no longer holds the relevant position as referred to in **clause 33.4(a)(i)**, **clause 33.4(a)(ii)** or **clause 33.4(a)(iii)**, that person shall immediately cease to be an Appointed Director and the new person holding the relevant position referred to in **clause 33.4(a)(i)**, **clause 33.4(a)(ii)** or **clause 33.4(a)(iii)** shall become the Appointed Director in lieu of the Appointed Director who vacated.

33.5 Elected Directors (Kau Talekita Fili)

- (a) Each of the four (4) Elected Directors shall hold one of the following positions:
- (i) District Secretary; (Sekelitali 'a e Vahefonua)
 - (ii) Connexial & Public Officer; (Sekelitali Fetu'utaki)
 - (iii) District Steward; and (Setuata Lahi 'a e Vahefonua)
 - (iv) Financial Secretary. (Sekelitali Pa'anga)
- (b) Nominations of candidates for election as Elected Directors:
- (i) shall be in writing in a form prescribed by the Board signed by two (2) Voting Members, specifying for which of the four (4) offices set out in **clause 33.5(a)** the person is being nominated and be accompanied by the written consent of the nominee (which may be endorsed on the nomination); and
 - (ii) shall be delivered to the Secretary (or other person authorised by the Board for the purpose) not later than close of business two (2) Business Days before the day fixed for the holding of the AGM or other general meeting at which the election is to take place.
- (c) If insufficient nominations are received to fill all positions set out in **clause 33.5(a)** on the Board which are to be filled at the election, further nominations shall be received at the meeting at which the election is to take place.
- (d) If insufficient further nominations are received, any unfilled positions remaining on the Board shall be deemed to be casual vacancies.
- (e) If only one nomination is received for a particular position set out in **clause 33.5(a)**, the person nominated shall be taken to be elected.
- (f) If the number of nominations received for a particular position set out in **clause 33.5(a)**, exceeds one (1), a ballot shall be held.
- (g) An Elected Director needs to be a Voting Member at all times that he or she is holding office as an Elected Director.

33.6 Co-Opted Directors (Talekita Fakakau mai pe)

- (a) The Board may appoint Co-Opted Directors to the Board at any time to fill the positions provided for in **clause 33.2(c)**.
- (b) A Co-Opted Director shall be a person who will bring skills and experience to the Board to enable the Board to advance the Objects.
- (c) A Co-Opted Director may be, but need not be, a Member.

33.7 Term

- (a) Elected Directors shall hold office for a term of one (1) year, but shall be eligible for re-election subject to **clause 33.7(c)**.
- (b) Co-opted Directors shall hold office for a term of up to two (2) years, but shall be eligible for reappointment for a further term of up to two (2) years.
- (c) Elected Directors shall not hold office for more than five (5) consecutive years, and Co-opted Directors shall not hold office for more than four (4) consecutive years.
- (d) For the avoidance of doubt, time served by the initial Elected Directors pursuant to **clause 33.3(d)** counts towards the maximum consecutive term set out by **clause 33.7(c)**.
- (e) Once an Elected or Co-opted Director has served the maximum term set out in **clause 33.7(c)**, the Director is only eligible for reappointment or re-election to the Board after a period of at least two (2) years has expired since the expiry of the Director's previous term on the Board.
- (f) Appointed Directors shall hold office for as long as they are in the relevant position set out in **clause 33.4(a)**.
- (g) Any term served by a Director prior to the adoption of this Constitution shall not count towards the maximum terms specified in this **clause 33.7**.

33.8 Office Bearers

The Appointed Director who is the President of the Free Wesleyan Church of Tonga shall hold the office of Chair for as long as he or she is the President of the Free Wesleyan Church of Tonga.

34 General Right to Appoint and Remove Directors

The Board may act despite any vacancy in their body but if the number falls below the minimum fixed in accordance with **clause 33.1** the Board may act:

- (a) for the purpose of:
 - (i) increasing the number of Directors to the minimum; or
 - (ii) convening a general meeting; or
- (b) in emergencies,
but for no other purpose.

35 Vacation of Office

- (a) Any Director may retire from office on giving written notice to the Company at the Office of his intention to retire and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).
- (b) The office of a Director shall become vacant if the Director:
 - (i) dies;
 - (ii) in the case of an Elected Director, ceases to be a Voting Member;

- (iii) in the case of an Appointed Director, ceases to hold the relevant office referred to in **clause 33.4(a)**;
- (iv) becomes bankrupt or makes any arrangement or composition with creditors generally;
- (v) becomes prohibited from being a director of, or managing, a company by reason of any order made under the Corporations Act;
- (vi) has been disqualified by the Australian Charities and Not-for-Profits Commissioner, at any time during the preceding twelve (12) months, from being a responsible entity of a registered entity under section 45.20(4) of the ACNC Regulation;
- (vii) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
- (viii) is removed from office by the Company in general meeting;
- (ix) resigns by notice in writing to the Company; or
- (x) is absent without permission of the Board from three (3) consecutive meetings of the Board, unless the Board resolves that the Director shall not vacate from office.

36 Filling of Vacancies on the Board

- (a) In the event of a casual vacancy occurring on the Board:
 - (i) in relation to an Appointed Director vacancy, the position shall remain vacant until a new individual is appointed to the relevant position referred to in **clause 33.4(a)**;
 - (ii) in relation to an Elected Director vacancy, the Board shall:
 - (A) appoint a Voting Member; or
 - (B) convene a general meeting to elect a Voting Member to fill the vacancy; and
 - (iii) in relation to a Co-opted Director vacancy, the Board may appoint any person in accordance with **clause 33.6(a)**.
- (b)
 - (i) Any Director appointed or elected pursuant to **clause 36(a)(ii)** shall hold office for the balance of the term of the vacating Director.
 - (ii) Any Director appointed pursuant to **clause 36(a)(iii)** shall hold office for a full new term pursuant to **clause 33.7(b)**.
 - (iii) Time served under this **clause 36(b)** does not count towards the maximum term set out in **clause 33.7(c)**.

37 Acting Office Bearers

- (a) In the event of a vacancy occurring in the position of Chair, another Appointed Director (elected by the Directors at the next meeting of the Board) who is not Chair, determined by the Board, shall assume office as acting Chair until a new Appointed Director is appointed pursuant to **clause 33.4(a)(i)**.

- (b) If the Chair is temporarily absent or temporarily unable to perform his or her duties, the Board may authorise another Director to act in the vacant position during the absence or inability of the Chair.

38 Alternate Directors

Alternate Directors shall not be permitted.

POWERS AND DUTIES OF DIRECTORS

39 Duties of Directors

- (a) Each Director is subject to, and must comply at all times with, the duties set out in Governance Standard 5 in section 45.25 of the ACNC Regulation.
- (b) In accordance with section 45.20 of the ACNC Regulation, the Board will take reasonable steps to ensure that the Board does not at any time include a Director who is disqualified from managing a corporation under the Corporations Act or from being a responsible entity under subsection 45.20(4) of the ACNC Regulation.

40 Powers of Directors

- (a) Apart from those matters set out in **clause 40(b)**, all control, management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not by the Corporations Act or by this Constitution required to be exercised in any other manner.
- (b) All Board decisions on matters relating to selling, renting or acquiring land and/or real property are required to be ratified by Special Resolution of Voting Members at a validly constituted general meeting of the Company in order to be effective.
- (c) The consent of all Directors is required before the Board seeks Member ratification as set out in **clause 40(b)**.

41 Negotiable Instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, all requests or arrangements for electronic fund transfers and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be by two (2) people authorised by resolution of the Board. The Board may authorise:

- (a) a Director(s);
- (b) the Secretary; or
- (c) another staff member of the Company,

to sign such instruments.

42 Conferment of Powers

- (a) The Board may from time to time confer upon any Director for the time being or any other person as they may select such of the powers exercisable under this

Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.

- (b) Powers conferred under this **clause 42** may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

DIRECTORS' DISCLOSURE OF INTEREST

43 Contracts

- (a) The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions which apply to such contracts or arrangements.
- (b) Any interest of a Director shall be dealt with in accordance with the relevant legislation, being either:
- (i) the Corporations Act; or
 - (ii) the ACNC Regulation,
- which shall include disclosing an interest and having the Secretary record all declarations in the minutes of the relevant meeting.
- (c) Subject to **clause 43(b)**, a Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board may:
- (i) not be present while the matter is being considered at a meeting;
 - (ii) not vote on the matter;
 - (iii) not be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (iv) not sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (v) not vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- (d) A Director's failure to make disclosure under this **clause 43** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
- (e) A general notice given to the Board by a Director that the Director is an Officer, a member of, or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

PROCEEDINGS OF DIRECTORS

44 Meetings of Directors

- (a) The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as it thinks fit, provided that the Board shall meet not less than four (4) times each calendar year.
- (b) A Director may at any time, and the Secretary upon the request of a Director shall, convene a meeting of the Board by giving at least twenty-four (24) hours' notice of the meeting to all Directors, provided that the Director or Secretary shall have used their best endeavours to ensure that the notice was properly served and received.
- (c) Notice of a meeting of the Board need not be in writing.
- (d) Subject to **clause 44(e)**, a Board meeting may be convened or held using any technology consented to by a majority of Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (e) The particular technology used to convene or hold a Board meeting, pursuant to **clause 44(d)**, shall be available and accessible to all Directors who wish to attend the Board meeting.
- (f) All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors. Attendance by a Director at a meeting of Directors waives any objection which that Director may have to a failure to give notice of the meeting.

45 Quorum

- (a) The quorum necessary for the transaction of the Board's business is Directors Present who represent a majority of the total number of Directors.
- (b) A quorum shall be present at all times during the meeting.

46 Chairperson

- (a) The Chair shall be the Chairperson.
- (b) The Chairperson shall, if present, preside as Chairperson of every meeting of the Board.
- (c) If a meeting of Board is held and the Chairperson is:
 - (i) not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
 - (ii) if present, does not wish to chair the meeting,then the following Director shall be Chairperson in lieu of the Chair in the order of availability set out below:

- (iii) another Director chosen by the Chair; and
- (iv) another Director elected by the other Directors Present.

47 Voting

- (a) A resolution of the Board shall be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- (b) Each Director shall have one (1) vote.
- (c) In case of an equality of votes at a meeting of the Board, the Chairperson is entitled to a casting vote in addition to a deliberative vote.

48 Resolutions by Directors

- (a) The Board may pass a resolution without a Board meeting being held if all of the total number of Directors sign a document containing a statement that they are in favour of the resolution set out in that document. For this purpose, signatures can be contained in more than one document.
- (b) A facsimile transmission which is received by the Company and which purports to have been signed by a Director shall for the purposes of this **clause 48** be taken to be in writing and signed by that Director at the time of the receipt of the facsimile transmission by the Company in legible form.
- (c) An email transmission which is received by the Company and which purports to have been sent by a Director shall for the purposes of this **clause 48** be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Company.
- (d) A vote made by a Director using an online voting platform operated or commissioned by the Company shall for the purposes of this **clause 48** be taken to be in writing and signed by that Director at the time the vote was received by the online voting platform.

49 Committee

- (a) The Board shall form and delegate any of its powers to the following Committees consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation:
 - (i) Executive Committee;
 - (ii) Council Committee;
 - (iii) Financial Committee; and
 - (iv) any other Committees that the Board wishes to form and delegate its powers to from time to time.
- (b) The Executive Committee shall consider and make recommendations to the Board on all land and property matters for the Company.

- (c) The Council Committee shall consider and make recommendations to the Board regarding the general upkeep of any churches that are operated by the Company.
- (d) The Financial Committee shall consider and make recommendations to the Board regarding the expenditure of the Company.
- (e) The Board has the power to require any Committee to have all decisions made by that Committee ratified by the Board.
- (f) A Committee shall in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- (g) The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- (h) A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Corporations Act and this Constitution to be made entered and signed. A copy of such Committee minutes shall be tabled at the next Board meeting.

50 Validation of Acts of Directors

All acts done:

- (a) at any meeting of the Board; or
- (b) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

MINUTES

51 Minutes

- (a) Notwithstanding section 111L of the Corporations Act, the Board shall cause minutes to be kept in such a manner as is required by the Corporations Act for the purposes of recording:
 - (i) the names of the Directors present at each meeting of the Board and of Directors present at each meeting of any Committee;
 - (ii) all orders, resolutions and proceedings of general meetings and of meetings of the Board and of Committees; and
 - (iii) such matters as are required by the Corporations Act to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of his interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.

- (b) Such minutes shall be signed by the Chairperson of the meeting, or the Chairperson of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

SECRETARY

52 Appointment and Tenure

- (a) There shall be at least one Secretary appointed by the Board for a term and on conditions determined by the Board.
- (b) For the avoidance of doubt, the Secretary may simultaneously be a Director.
- (c) The Board may remove any Secretary so appointed.

BY-LAWS

53 By-Laws

- (a) The Board may from time to time make such By-Laws as are in its opinion necessary and desirable for the proper control, administration and management of the Company's affairs, operations, finances, interests, effects and property and to amend and repeal those By-Laws from time to time.
- (b) A By-Law shall be subject to this Constitution and shall not be inconsistent with any provision contained in this Constitution.
- (c) When in force, a By-Law is binding on all Members and has the same effect as this Constitution.
- (d) The Board will adopt such measures as it deems appropriate to bring to the notice of Members all By-Laws, amendments and repeals.

EXECUTION OF DOCUMENTS

54 Execution of Documents

- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Corporations Act, the Company may execute any agreement, deed or other document by:
- (i) two (2) Directors signing the same; or
 - (ii) one (1) Director and one (1) Secretary signing the same.
- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

ACCOUNTS AND INSPECTION OF RECORDS

55 Accounts and Inspection

The Board shall:

- (a) cause proper financial records to be kept and shall, if required by the ACNC Act or the ACNC Regulation, prepare and distribute copies of the financial reports of the Company and a Directors' report;
- (b) where required by the ACNC Act, cause the financial records to be audited or reviewed by a properly qualified auditor or other entity authorised by the ACNC Act; and
- (c) from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of Members.

NOTICES

56 Service of Notices

- (a) A notice may be given by the Company to any Member by:
 - (i) serving it on the Member personally;
 - (ii) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Company for the giving of notices;
 - (iii) facsimile to the facsimile number supplied by the Member to the Company for the giving of notices; or
 - (iv) sending it to the electronic address supplied by the Member to the Company for the giving of notices.
- (b) Any Member who has not left at or sent to the Office his or her place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.
- (c) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the second day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.
- (d) Where a notice is sent by facsimile or other electronic means, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the Business Day after it is sent.
- (e) A notice may be given by the Company to the persons entitled to a share in consequence of the death, lunacy or bankruptcy of a Member by:
 - (i) service on the Member personally;

- (ii) sending it by post addressed to the person by name or by the title of the representative of the deceased or lunatic or the assignee of the bankrupt or by any like description at the address, if any, within Australia, supplied for the purpose by the person claiming to be entitled;
 - (iii) by giving the notice in any manner in which the same might have been given if the death, lunacy or bankruptcy had not occurred.
- (f) Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Company to that effect shall be conclusive evidence of service.

WINDING UP

57 Winding Up

- (a) This **clause 57** is subject to any further requirements imposed by the Trust Deed regarding the property of the Public Fund.
- (b) If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another institution(s) or corporation(s) which has:
 - (i) objects which are similar to the Objects;
 - (ii) a constitution which requires its income and property to be applied in promoting its objects; and
 - (iii) a constitution which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Company by **clause 5.2(c)**.
- (c) The identity of the corporation(s) or institution(s) referred to in **clause 57(a)** is to be determined by the Members in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of New South Wales for determination.

INDEMNITY

58 Indemnity

To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this clause unless:

- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:

- (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
- (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the the Corporations Act.

59 Payment of Indemnity Policy Premium

- (a) To the extent permitted by law the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:
 - (i) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
 - (ii) a contravention of governance standard 5 in section 45.25 of the ACNC Regulation.
- (b) The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- (c) Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his or her actions or omissions then the Company shall not be required to indemnify the Officer under **clause 58** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

60 Indemnity to Continue

The indemnity granted by the Company contained in **clauses 58** and **59** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.

Annexure A Form of Appointment of Proxy

Siasi Uesiliana Tau'ataina'oTonga i Aositelelia Limited
(incorporated under the Corporations Act)

PROXY FORM

1. Your details

(Please print your name and address)

Name of Member/Representative: _____

ACN/ABN: _____

Address: _____

City: _____

State: _____

Postcode: _____

Telephone: _____

2. Appoints

Name: _____

(Please print name of proxy)

or failing the person so named, or if no person is named, the **Chairperson of the Meeting** to vote in accordance with the following directions or, if no directions have been given, as the proxy or the Chairperson sees fit at the (Annual) General Meeting of Siasi Uesiliana Tau'ataina 'o Tonga i Aositelelia Limited to be held on *[insert date]* commencing at *[insert time]* and at any adjournment thereof.

3. Directions

4. Signature

5. Date