



Constitution
of the
Supply Chain Sustainability School Limited

Australian Business Number (ABN) 53 652 174 760
Australian Company Number 652 174 760

A company limited by guarantee

1 January 2023

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Preliminary

1. Name of the Company

The name of the company is the Supply Chain Sustainability School Limited (the School or the company).

2. Type of company

The company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

3. Limited liability of Fellows

The liability of Fellows to contribute to the debts of the School is limited to the amount of the guarantee in clause 4.

4. The guarantee

Each Fellow must contribute an amount not more than \$10 (the guarantee) to the property of the School if the School is wound up while the Fellow is a Fellow, or within 12 months after they stop being a Fellow, and this contribution is required to pay for the:

- a) debts and liabilities of the School incurred before the Fellow stopped being a Fellow, or
- b) costs of winding up.

5. Definitions

In this document, words and phrases have the meaning set out in clauses 70 and 72.

Charitable purposes and powers

6. Object

The School's object is to pursue the following charitable purposes:

- a) advancing education aimed at developing core skills in social, economic and environmental sustainability,
- b) promoting reconciliation, harmony, mutual respect, equality and tolerance between groups of individuals that are in Australia and New Zealand.
- c) promoting human rights including but not limited to the elimination of racial discrimination, elimination of discrimination against women, the rights of the child, the rights of persons with disabilities as well as economic, social and cultural rights.
- d) advancing the natural environment through educating the community about the natural environment, the preservation of flora and fauna, protecting native animals and preserving or rehabilitating habitats

7. Powers

Subject to clause 8, the School has the following powers, which may only be used to carry out its purposes set out in clause 6:

- (a) the powers of an individual, and
- (b) all the powers of a company limited by guarantee under the Corporations Act.

8. Not-for-profit

- 8.1 The School must not distribute any income or assets directly or indirectly to its Fellows, except as provided in clauses 8.2 and 69.
- 8.2 Clause 8.1 does not stop the School from doing the following things, provided they are done in good faith:
 - (a) paying a Fellow for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the School, or
 - (b) making a payment to a Fellow in carrying out the School's charitable purposes.

9. Amending this constitution

- 9.1 Subject to clause 9.2, the Fellows may amend the constitution by passing a Special Resolution.
- 9.2 The Fellows must not pass a Special Resolution that amends this constitution if passing it causes the School to no longer be a charity.

10. Members

- 10.1 The members of the School, known as Fellows, are:
- (a) The Initial Fellows, and
 - (b) any other person that the Directors allow to be a Fellow, in accordance with this constitution.
- 10.2 The School must establish and maintain a register of Fellows. The register of Fellows must be kept by the Secretary and must contain:
- (a) for each current Fellow:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the Fellow for the service of notices, and
 - iv. date the Fellow was entered on to the register.
 - (b) for each person who stopped being a Fellow in the last 7 years:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the Fellow for the service of notices, and
 - iv. dates the Fellowship started and ended.
- 10.3 The School must give current Fellows access to the register of Fellows.
- 10.4 Information that is accessed from the register of Fellows must only be used in a manner relevant to the interests or rights of Fellows.
- 10.5 Notwithstanding the use of the term “Fellows”, this constitution is not intended to create and does not create a partnership, joint venture or agency relationship between the Fellows. No Fellow may act on behalf of or purport to bind any other Fellow. A Fellow is not liable in any way for the liabilities of another Fellow as a result of having entered into this constitution.
- 10.6 Fellows shall comply with the Fellow Code of Ethics. Fellows shall:
- (a) Support the aims and objectives of the School and act in the best interests of the School as a collaborative entity, including acknowledging that the School is an open learning environment.
 - (b) Comply with the Business Plan.
 - (c) Contribute resources either cash or in-kind or both, to the School as directed by the Board and as agreed in the Business Plan. Cash contributions shall be payable annually for the Subscription Period. Should Fellows join mid-year contributions are payable on a pro-rata basis for the remainder of that Subscription Period, and thereafter contributions shall be payable annually. In-kind contributions shall be delivered as agreed in the Business Plan.
 - (d) Promote the School as a consistent approach amongst organisations for developing the sustainability skills of the supply chain. Specifically, Fellows shall
 - (i) Promote the School to their supply chain through participation in supplier events, media and social media activities, regular supplier communications and supplier relationship management and
 - (ii) encourage and support fellow Fellows in developing their sustainability skills
 - (e) Complete all assessments and tests as accurately as possible and in good faith.
 - (f) Act with integrity and respect in dealing with other people and organisations.
 - (g) Notify the Board as soon as it becomes aware that a conflict of interest or a potential conflict of interest may arise in connection with the School.
 - (h) Discuss potential funding solutions with the Board that would then be agreed at a General Meeting, if industry or public funding is not available,
 - (i) Maintain the confidentiality of Confidential Information acquired from any Fellow or Member of the School in connection with School activities.
 - (i) Confidentiality shall be maintained for the duration of the Fellowship and for a period of three years after the termination of this Fellowship, unless it otherwise becomes public knowledge.
 - (ii) Disclosure of any Confidential Information is not permitted unless the disclosing party has obtained prior written approval of the School, or the disclosure is on a need to know basis to employees, agents, and professional advisors.
 - (iii) Notice of non-permitted disclosure or suspected disclosure of Confidential Information by any party shall be given immediately to the Board.
 - (iv) A party shall provide all necessary assistance to terminate any non-permitted disclosure or misuse of any Confidential Information.

- (v) A party shall be entitled to seek an injunction, specific performance or other equitable relief for any threatened or actual breach of confidentiality without requirement to show proof of special damages.
- (j) Not engage in in any anti-competitive behaviour, including but not limited to any behaviour which breaches any anti-competitive legislation. Any behaviour deemed inappropriate by the Board will result in disciplinary action in accordance with this constitution. In particular, the following activities will be deemed to be of an anti-competitive nature:
 - (i) any discussion as to actual tenders or projects, business intent, systems or marketing;
 - (ii) recommending or agreeing upon any contractual language or terms and conditions for use by or with suppliers;
 - (iii) recommending or agreeing upon any pricing guidelines or prices, including but not limited to how to assess or price risk or any other matter;
 - (iv) participating with any other party or otherwise using the School to facilitate any coordinated action, policy or practice which could affect competition in the industry;
 - (v) soliciting, obtaining, communicating or disclosing commercially sensitive information to or from any other party which might affect competition in the industry.

11. Who can be a Fellow

- 11.1 A person who supports the purposes of the School is eligible to apply to be a Fellow of the School under clause 12.
- 11.2 In this clause, 'person' means an individual or incorporated body.

12. How to apply to become a Fellow

A person (as defined in clause 11.2) may apply to become a Fellow of the School by writing to the secretary stating that they:

- (a) want to become a Fellow
- (b) support the purpose(s) of the School, and
- (c) agree to comply with the School's constitution, including paying the guarantee under clause 4 if required.

13. Directors decide whether to approve Fellowship

- 13.1 The Directors must consider an application for Fellowship within a reasonable time after the secretary receives the application.
- 13.2 If the Directors approve an application, the secretary must as soon as possible:
 - (a) enter the new Fellow on the register of Fellows, and
 - (b) write to the applicant to tell them that their application was approved, and the date that their Fellowship started (see clause 14).
- 13.3 If the Directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected but does not have to give reasons.
- 13.4 For the avoidance of doubt, the Directors may approve an application even if the application does not state the matters listed in clauses 12(a), 12(b) or 12(c). In that case, by applying to be a Fellow, the applicant agrees to those three matters.

14. When a person becomes a Fellow

An applicant will become a Fellow on the earliest date when they were either:

- (a) entered on the register of Fellows,
- (b) entered on to the register of Fellows of the Net Balance Foundation Limited trading as the Supply Chain Sustainability School (ABN 86 122 436 042), or
- (c) entered on to the register of Partners of the Net Balance Foundation Limited trading as the Supply Chain Sustainability School (ABN 86 122 436 042).

15. When a person stops being a Fellow

- 15.1 A person immediately stops being a Fellow if they:
 - (a) die
 - (b) are wound up or otherwise dissolved or deregistered (for an incorporated Fellow)
 - (c) resign, by writing to the Secretary
 - (d) are expelled under clause 17, or

- (e) have not responded within three months to a written request from the Secretary that they confirm in writing that they want to remain a Fellow.

Dispute resolution and disciplinary procedures

16. Dispute resolution

- 16.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a Fellow or Director and:
- (a) one or more Fellows
 - (b) one or more Directors, or
 - (c) the **School**.
- 16.2 A Fellow must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 until the disciplinary procedure is completed.
- 16.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 16.4 If those involved in the dispute do not resolve it under clause 16.3, they must within 10 days:
- (a) tell the Directors about the dispute in writing
 - (b) agree or request that a mediator be appointed, and
 - (c) attempt in good faith to settle the dispute by mediation.
- 16.5 The mediator must:
- (a) be chosen by agreement of those involved, or
 - (b) where those involved do not agree:
 - i. for disputes between Fellows, a person chosen by the Directors, (other than those persons who were nominated to be elected to the Board by any of the Fellows involved in the dispute), or
 - ii. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in New South Wales or another mutually agreed person or company.
- 16.6 A mediator chosen by the Directors under clause 16.5(b)(i):
- (a) may be a Fellow or former Fellow of the **School**,
 - (b) **must be an accredited mediator**
 - (c) must not have a personal interest in the dispute, and
 - (d) must not be biased towards or against anyone involved in the dispute.
- 16.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard
 - (b) allow those involved a reasonable chance to review any written statements
 - (c) ensure that those involved are given natural justice, and
 - (d) not make a decision on the dispute.
- 16.8 This constitution and associated schedules are governed by the laws of New South Wales, whose courts shall have sole jurisdiction in relation to all matters arising.

17. Disciplining Fellows

- 17.1 In accordance with this clause, the Directors may resolve to warn, suspend or expel a Fellow from the School if the Directors consider that:
- (a) the Fellow has breached this constitution, or
 - (b) the Fellow's behaviour is causing, has caused, or is likely to cause harm to the School.
- 17.2 At least 14 days before the Directors' meeting at which a resolution under clause 17.1 will be considered, the Secretary must notify the Fellow in writing:
- (a) that the Directors are considering a resolution to warn, suspend or expel the Fellow
 - (b) that this resolution will be considered at a Directors' meeting and the date of that meeting
 - (c) what the Fellow is said to have done or not done
 - (d) the nature of the resolution that has been proposed, and
 - (e) that the Fellow may provide an explanation to the Directors, and details of how to do so.
- 17.3 Before the Directors pass any resolution under clause 17.1, the Fellow must be given a chance to explain or defend themselves by:
- (a) sending the Directors a written explanation before that Directors' meeting, and/or
 - (b) speaking at the meeting.
- 17.4 After considering any explanation under clause 17.3, the Directors may:
- (a) take no further action

- (b) warn the Fellow
- (c) suspend the Fellow's rights as a Fellow for a period of no more than 12 months
- (d) expel the Fellow
- (e) refer the decision to an unbiased, independent person on conditions that they consider appropriate (however, the person can only make a decision that the Directors could have made under this clause), or
- (f) require the matter to be determined at a General Meeting.

17.5 The Directors cannot fine a Fellow.

17.6 The Secretary must give written notice to the Fellow of the decision under clause 17.4 as soon as possible.

17.7 Disciplinary procedures must be completed as soon as reasonably practical.

17.8 There will be no liability for any loss or injury suffered by the Fellow as a result of any decision made in good faith under this clause.

General Meetings of Fellows

18. General Meetings called by Directors

18.1 A majority of the Directors may call a General Meeting.

18.2 If Fellows with at least 5% of the votes that may be cast at a General Meeting make a written request to the School for a General Meeting to be held, the Directors must:

- (a) within 21 days of the Fellows' request, give all Fellows notice of a General Meeting, and
- (b) hold the General Meeting within 2 months of the Fellows' request.

18.3 The percentage of votes that Fellows have (in clause 18.2) is to be worked out as at midnight before the Fellows request the meeting.

18.4 The Fellows who make the request for a General Meeting must:

- (a) state in the request any resolution to be proposed at the meeting
- (b) sign the request, and
- (c) give the request to the Secretary.

18.5 Separate copies of a document setting out the request may be signed by Fellows if the wording of the request is the same in each copy.

19. General Meetings called by Fellows

19.1 If the Directors do not call the meeting within 21 days of being requested under clause 18.2, 50% or more of the Fellows who made the request may call and arrange to hold a General Meeting.

19.2 To call and hold a meeting under clause 19.1 the Fellows must:

- (a) as far as possible, follow the procedures for General Meetings set out in this constitution
- (b) call the meeting using the list of Fellows on the School's Fellow register, which the School must provide to the Fellows making the request at no cost, and
- (c) hold the General Meeting within three months after the request was given to the School.

19.3 The School must pay the Fellows who request the General Meeting any reasonable expenses they incur because the Directors did not call and hold the meeting.

20. Annual General Meeting

20.1 A General Meeting, called the Annual General Meeting, must be held at least once in every calendar year.

20.2 Even if these items are not set out in the notice of meeting, the business of an Annual General Meeting may include:

- (a) a review of the School's activities
- (b) a review of the School's finances
- (c) the auditor's report, if any
- (d) the election of Directors, and
- (e) the appointment and payment of auditors, if any.

20.3 Before or at the Annual General Meeting, the Directors must give information to the Fellows on the School's activities and finances during the period since the last Annual General Meeting.

20.4 The chairperson of the Annual General Meeting must give Fellows as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the School.

21. Notice of General Meetings

21.1 Notice of a General Meeting must be given to:

- (a) each Fellow entitled to vote at the meeting

- (b) each Director, and
 - (c) the auditor (if any).
- 21.2 Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- 21.3 Subject to clause 21.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual General Meeting, all the Fellows entitled to attend and vote at the annual General Meeting agree beforehand, or
 - (b) for any other General Meeting, Fellows with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 21.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a Director
 - (b) appoint a Director in order to replace a Director who was removed, or
 - (c) remove an auditor.
- 21.5 Notice of a General Meeting must include:
- (a) the date and time for the meeting and, if the meeting is to be held in any one or more places physical locations, details of the place/s at which the meeting will be held
 - (b) any technology that will be used to facilitate the meeting and how that technology may be accessed by Fellows
 - (c) the general nature of the meeting's business
 - (d) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution
 - (e) a statement that Fellows have the right to appoint proxies and that, if a Fellow appoints a proxy:
 - i. the proxy does not need to be a Fellow
 - ii. the proxy form must be delivered to the Secretary the address (including an electronic address) specified in the notice of the meeting, and
 - iii. the proxy form must be received by the Secretary at least 48 hours before the meeting.
- 21.6 If a General Meeting is adjourned (put off) for one month or more, the Fellows must be given new notice of the resumed meeting.

22. Quorum at General Meetings

- 22.1 For a General Meeting to be held, at least two Fellows (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one Fellow).
- 22.2 No business may be conducted at a General Meeting if a quorum is not present.
- 22.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified - the same day in the next week
 - (b) if the time is not specified - the same time, and
 - (c) if the place is not specified - the same place.
- 22.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

23. Auditor's right to attend meetings

- 23.1 The auditor (if any) is entitled to attend any General Meeting and to be heard by the Fellows on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 23.2 The School must give the auditor (if any) any communications relating to the General Meeting that a Fellow of the School is entitled to receive.

24. Representatives of Fellows

- 24.1 An incorporated Fellow may appoint as a representative:
- (a) one individual to represent the Fellow at meetings and to sign circular resolutions under clause 31, and
 - (b) the same individual or another individual for the purpose of being appointed or elected as a Director.
- 24.2 The appointment of a representative by a Fellow must:
- (a) be in writing
 - (b) include the name of the representative
 - (c) be signed on behalf of the Fellow, and
 - (d) be given to the **Secretary** or, for representation at a meeting, be given to the chairperson before the meeting starts.

- 24.3 A representative has all the rights of a Fellow relevant to the meeting in respect of which the representative is appointed.
- 24.4 The appointment may be standing (ongoing).

25. Using technology to hold meetings

- 25.1 The School may hold a General Meeting using any technology that gives the Fellows as a whole a reasonable opportunity to participate, including where the Fellow is not physically present at a location at which the meeting is held.
- 25.2 Anyone using this technology is taken to be present in person at the meeting irrespective of whether they are physically present.

26. Chairperson for General Meetings

- 26.1 The Elected Chairperson is entitled to chair General Meetings.
- 26.2 The Fellows present and entitled to vote at a General Meeting may choose a Director or Fellow to be the chairperson for that meeting if:
- (a) there is no Elected Chairperson, or
 - (b) the Elected Chairperson is not present within 30 minutes after the starting time set for the meeting, or
 - (c) the Elected Chairperson is present but says they do not wish to act as chairperson of the meeting.

27. Role of the chairperson

- 27.1 The chairperson is responsible for the conduct of the General Meeting, and for this purpose must give Fellows a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 27.2 The chairperson does not have a casting vote.

28. Adjournment of meetings

- 28.1 If a quorum is present, a General Meeting must be adjourned if a majority of Fellows Present direct the chairperson to adjourn it.
- 28.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Fellows' resolutions and statements

29. Fellows' resolutions and statements

- 29.1 Fellows with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the Secretary of a resolution they propose to move at a General Meeting (Fellows' resolution), and/or
 - (b) a written request to the Secretary that the School give all of its Fellows a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (Fellows' statement).
- 29.2 A notice of a Fellows' resolution must set out the wording of the proposed resolution and be signed by the Fellows proposing the resolution.
- 29.3 A request to distribute a Fellows' statement must set out the statement to be distributed and be signed by the Fellows making the request.
- 29.4 Separate copies of a document setting out the notice or request may be signed by Fellows if the wording is the same in each copy.
- 29.5 The percentage of votes that Fellows have (as described in clause 29.1) is to be worked out as at midnight before the request or notice is given to the School.
- 29.6 If the School has been given notice of a Fellows' resolution under clause 29.1(a), the resolution must be considered at the next General Meeting held more than one month after the notice is given.
- 29.7 This clause does not limit any other right that a Fellow has to propose a resolution at a General Meeting.

30. School must give notice of proposed resolution or distribute statement

- 30.1 If a notice or request has been given:
- (a) in time to send the notice of proposed Fellows' resolution or a copy of the Fellows' statement to Fellows with a notice of meeting, it must do so at the School's cost, or
 - (b) too late to send the notice of proposed Fellows' resolution or a copy of the Fellows' statement to Fellows with a notice of meeting, then the Fellows who proposed the resolution or made the request must pay the expenses reasonably incurred by the School in giving Fellows notice of the proposed

Fellows' resolution or a copy of the Fellows' statement. However, at a General Meeting, the Fellows may pass a resolution that the School will pay these expenses.

- 30.2 The School does not need to send the notice of proposed Fellows' resolution or a copy of the Fellows' statement to Fellows if:
- (a) it is more than 1 000 words long
 - (b) the Directors (excluding any member appointed by the Fellow who proposed the resolution or made the request) consider it may be defamatory
 - (c) clause 30.1(b) applies, and the Fellows who proposed the resolution or made the request have not paid the School enough money to cover the cost of sending the notice of the proposed Fellows' resolution or a copy of the Fellows' statement to Fellows, or
 - (d) in the case of a proposed Fellows' resolution, the resolution does not relate to a matter that may be properly considered at a General Meeting or is otherwise not a valid resolution able to be put to the Fellows.

31. Circular resolutions of Fellows

- 31.1 Subject to clause 31.3, the Directors may put a resolution to the Fellows to pass a resolution without a General Meeting being held (a circular resolution).
- 31.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 31.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a Director or remove a Director
 - (b) for passing a Special Resolution, or
 - (c) where the Corporations Act or this constitution requires a meeting to be held.
- 31.4 A circular resolution is passed if all the Fellows entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 31.5 or clause 31.6.
- 31.5 Fellows may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 31.6 The School may send a circular resolution by email to Fellows and Fellows may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at General Meetings

32. How many votes a Fellow has

Each Fellow has one vote.

33. Challenge to Fellow's right to vote

- 33.1 A Fellow or the chairperson may only challenge a person's right to vote at a General Meeting at that meeting.
- 33.2 If a challenge is made under clause 33.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

34. How voting is carried out

- 34.1 Voting must be conducted and decided by:
- (a) a show of hands
 - (b) a vote in writing, or
 - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 34.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 34.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 34.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

35. When and how a vote in writing must be held

- 35.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five Fellows Present

- (b) Fellows Present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
- (c) the chairperson.

35.2 A vote in writing must be taken when and how the chairperson directs, unless clause 35.3 applies.

35.3 A vote in writing must be held immediately if it is demanded under clause 35.1:

- (a) for the election of a chairperson under clause 26.2, or
- (b) to decide whether to adjourn the meeting.

35.4 A demand for a vote in writing may be withdrawn.

36. Appointment of proxy

36.1 A Fellow may appoint a proxy to attend and vote at a General Meeting on their behalf.

36.2 A proxy does not need to be a Fellow.

36.3 A proxy appointed to attend and vote for a Fellow has the same rights as the Fellow to:

- (a) speak at the meeting
- (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
- (c) demand a vote in writing under clause 35.1.

36.4 An appointment of proxy (proxy form) must be signed by the Fellow appointing the proxy and must contain:

- (a) the Fellow's name and address
- (b) the **company's** name
- (c) the proxy's name or the name of the office held by the proxy, and
- (d) the meeting(s) at which the appointment may be used.

36.5 A proxy appointment may be standing (ongoing).

36.6 Proxy forms must be received by the Secretary at the address stated in the notice under clause 21.5(e) at least 48 hours before a meeting.

36.7 A proxy does not have the authority to speak and vote for a Fellow at a meeting while the Fellow is at the meeting.

36.8 Unless the School receives written notice before the start or resumption of a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Fellow:

- (a) dies
- (b) is mentally incapacitated
- (c) revokes the proxy's appointment, or
- (d) revokes the authority of a representative or agent who appointed the proxy.

36.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

37. Voting by proxy

37.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a Fellow appointed as a proxy from voting as a Fellow on a show of hands).

37.2 When a vote in writing is held, a proxy:

- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
- (b) if the way they must vote is specified on the proxy form, must vote that way, and
- (c) if the proxy is also a Fellow or holds more than one proxy, may cast the votes held in different ways.

Directors

38. Number of Directors

The School must have at least three Directors.

39. Election and appointment of Directors

39.1 The initial Directors are the people who were Advisory Board Members of the Net Balance Foundation Limited trading as the Supply Chain Sustainability School (ABN 86 122 436 042), on 31 December 2021.

39.2 The Fellows may elect a person to fill a vacancy on the Board by a resolution passed in a General Meeting. The Board will determine how many vacancies will be available for election at each annual General Meeting in accordance with clauses 41 and 42.

- 39.3 Each Fellow will be entitled to nominate one person for election to the Board upon any vacancy arising. For the avoidance of doubt, if a Fellow has previously nominated a person for election to the Board and that person remains on the Board at the time that any vacancy arises, the relevant Fellow will not be entitled to nominate a person for election to fill that vacancy, unless their previous nominee has agreed to step down from the time of the election.
- 39.4 Each of the Directors must be appointed by a separate resolution, unless:
- (a) the Fellows Present have first passed a resolution that the appointments may be voted on together, and
 - (b) no votes were cast against that resolution.
- 39.5 For the avoidance of any doubt,
- (a) the number of votes each Fellow may cast in an election of Directors will be the number of vacancies as determined by the Board, and
 - (b) only one vote may be cast for each nominee.
- 39.6 The person elected to fill each vacancy on the Board will be the person who receives the most votes under clause 39.5, on the basis that once a vacancy is filled, any further vacancy will be filled by the person who received the next most votes and, in the event of an equal number of votes, will be filled by lot as among the relevant candidates unless they otherwise agree.
- 39.7 A person is eligible for election as a Director of the School if they:
- (a) are a Fellow of the School, or a representative of a Fellow of the School appointed under clause 24
 - (b) give the School their written consent to act as an Director of the School, and
 - (c) are not ineligible to be a director under the Corporations Act or the ACNC Act.
- 39.8 Subject to clause 24, the Directors may appoint a person as a Director to fill a casual vacancy or as an additional Director
- 39.9 The Directors may appoint a person as an Board Advisor if:
- (a) the appointment is time bound (for example one meeting, or a period of time that includes a start and end date),
 - (b) that person gives the School their written consent to act as an Advisor of the School, and
 - (c) that person is not ineligible to be a director under the Corporations Act or the ACNC Act.
- For the avoidance of doubt:
- (d) Board Advisors will not be counted in the quorum of a meeting,
 - (e) Board Advisors will not vote in any resolution of Directors, and
 - (f) Board Advisors may be removed at any time and for any reason by Directors.
- 39.10 If the number of Directors is reduced to fewer than three or is less than the number required for a quorum, the continuing Directors may act for the purpose of increasing the number of Directors to three (or higher if required for a quorum) or calling a General Meeting, but for no other purpose.

40. Election of chairperson

The Directors must elect a Director as the **School's Elected Chairperson**.

41. Term of office

- 41.1 At each Annual General Meeting:
- (a) any Director appointed by the Directors to fill a casual vacancy must retire, and
 - (b) at least one-third of the remaining Directors must retire.
- 41.2 The Directors who must retire at each Annual General Meeting under clause 41.1(b) will be the Directors who have been longest in office since last being elected. Where Directors were elected on the same day, the Director (s) to retire will be decided by lot unless they agree otherwise.
- 41.3 Other than a Director appointed under clause 39.8, a Director's term of office starts at the end of the annual General Meeting at which they are elected and ends at the end of the annual General Meeting at which they retire.
- 41.4 Each Director must retire at least once every three years.
- 41.5 A Director who retires under clause 41.1 may nominate for election or re-election.

42. When a Director stops being a Director

A Director stops being a Director if they:

- (a) give written notice of resignation as a Director to the School

- (b) die
- (c) are removed as a Director by a resolution of the Fellows
- (d) were nominated for election by a Fellow, and that Fellow stops being a Fellow
- (e) are a representative of a Fellow, and that Fellow stops being a Fellow
- (f) are a representative of a Fellow, and the Fellow notifies the School that the representative is no longer a representative
- (g) are absent for 2 consecutive Directors' meetings without approval from the Directors, or
- (h) become ineligible to be a director of a company under the Corporations Act or the ACNC Act.

Powers of Directors

43. Powers of Directors

- 43.1 The Directors are responsible for managing and directing the activities of the School to achieve the purposes set out in clause 6.
- 43.2 The directors may use all the powers of the School except for powers that, under the Corporations Act or this constitution, may only be used by members.
- 43.3 The Directors must decide on the responsible financial management of the School including:
 - (a) any suitable written delegations of power under clause 44, and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 43.4 The Directors cannot remove a Director or auditor. Directors and auditors may only be removed by a Fellows' resolution at a General Meeting.

44. Delegation of Directors' powers

- 44.1 The Directors may delegate any of their powers and functions to a Committee, a Director, an employee of the School or any other person, as they consider appropriate.
- 44.2 The delegation must be recorded in the School's by-laws or Board meeting minutes.

45. Payments to Directors

- 45.1 The School must not pay fees to a Director for acting as a Director.
- 45.2 The School may:
 - (a) pay a Director for work they do for the School, other than as a Director, if the amount is no more than a reasonable fee for the work done, or
 - (b) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the School.
- 45.3 Any payment made under clause 45.2 must be approved by the Directors.
- 45.4 The School may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Corporations Act) and this constitution.

46. Execution of documents

The School may execute a document without using a common seal if the document is signed by:

- (a) two directors of the School, or
- (b) a director and the secretary.

Duties of Directors

47. Duties of Directors

- (a) The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
 - (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the School
 - (b) to act in good faith in the best interests of the **School** and to further the charitable purpose(s) of the School set out in clause 6
 - (c) not to misuse their position as a director
 - (d) not to misuse information they gain in their role as a director

- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 48
- (f) to ensure that the financial affairs of the School are managed responsibly, and
- (g) not to allow the School to operate while it is insolvent.

48. Conflicts of interest

- 48.1 A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):
- (a) to the other Directors, or
 - (b) if all of the Directors have the same conflict of interest, to the Fellows at the next General Meeting, or at an earlier time if reasonable to do so.
- 48.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 48.3 Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution) must not, except as provided under clauses 48.4:
- (a) be present at the meeting while the matter is being discussed, or
 - (b) vote on the matter.
- 48.4 A Director may still be present and vote if:
- (a) their interest arises because they are a Fellow of the School, and the other Fellows have the same interest
 - (b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the School (see clause 66)
 - (c) their interest relates to a payment by the School under clause 65 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act
 - (d) the Australian Securities and Investments Commission (ASIC) makes an order or grants any relief allowing the Director to vote on the matter, or
 - (e) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the School, and
 - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

Directors' meetings

49. When the Directors meet

The Directors may decide how often, where and when they meet.

50. Calling Directors' meetings

- 50.1 A Director may call a Directors' meeting by giving reasonable notice to all of the other Directors.
- 50.2 A Director may give notice in writing or by any other means of communication that has previously been agreed to by all of the Directors.

51. Chairperson for Directors' meetings

- 51.1 The **Elected Chairperson** is entitled to chair Directors' meetings.
- 51.2 The Directors at a Directors' meeting may choose a Director to be the chairperson for that meeting if the **Elected Chairperson** is:
- (a) not present at the starting time for the meeting and has previously notified the Secretary in writing that they will be absent from the meeting or
 - (b) not present within 30 minutes after the starting time set for the meeting, or
 - (c) present but does not want to act as chairperson of the meeting.

52. Quorum at Directors' meetings

- 52.1 Unless the Directors determine otherwise, the quorum for a Directors' meeting is a majority (more than 50%) of Directors and at least two of those Directors must be representatives of Full Fellows.
- 52.2 Resolutions of the Board can only be passed while a quorum is present.

53. Using technology to hold Directors' meetings

- 53.1 The Directors may hold their meetings by using any technology (such as video or teleconferencing) determined by the chairperson of the meeting, provided that each Director who participates in the meeting without being physically present is given a reasonable opportunity to participate.
- 53.2 The directors' agreement may be a standing (ongoing) one.
- 53.3 A director may only withdraw their consent within a reasonable period before the meeting.

54. Passing Directors' resolutions

A Directors' resolution must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution.

55. Circular resolutions of Directors

- 55.1 The Directors may pass a circular resolution without a Directors' meeting being held.
- 55.2 A circular resolution is passed if all the Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 55.3 or clause 55.4.
- 55.3 Each Director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 55.4 The **School** may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 55.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 55.3 or clause 55.4.

Secretary

56. Appointment and role of Secretary

- 56.1 The School must have at least one secretary, who may also be a director.
- 56.2 A secretary must be appointed by the directors (after giving the School their signed consent to act as secretary of the School) and may be removed by the directors.
- 56.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 56.4 The role of the Secretary includes:
- (a) maintaining a register of the **School's** Fellows, and
 - (b) maintaining the minutes and other records of General Meetings (including notices of meetings), Directors' meetings and circular resolutions.

Minutes and records

57. Minutes and records

- 57.1 The School must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of General Meetings
 - (b) minutes of circular resolutions of Fellows
 - (c) a copy of a notice of each General Meeting, and
 - (d) a copy of a Fellows' statement distributed to Fellows.
- 57.2 The School must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of Directors' meetings (including meetings of any committees), and
 - (b) minutes of circular resolutions of Directors.
- 57.3 To allow Fellows to inspect the School's records:
- (a) the School must give a Fellow access to the records set out in clause 57.1, and
 - (b) the Directors may authorise a Fellow to inspect other records of the School, including records referred to in clause 57.2 and clause 58.1.
- 57.4 The Directors must ensure that minutes of a General Meeting or a Directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
 - (b) the chairperson of the next meeting.

57.5 The Directors must ensure that minutes of the passing of a circular resolution (of Fellows or Directors) are signed by a Director within a reasonable time after the resolution is passed.

58. Financial and related records

- 58.1 The School must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
 - (b) enable true and fair financial statements to be prepared.
- 58.2 The School must also keep written records that correctly record its operations.
- 58.3 The School must retain its records for at least 7 years.
- 58.4 The Directors must take reasonable steps to ensure that the School's records are kept safe.
- 58.5 Financial statements may be subject to an independent review or audit to be decided by the Board on an annual basis.

By-laws

59. By-laws

- 59.1 The Directors may pass a resolution to make by-laws to give effect to this constitution.
- 59.2 Fellows and Directors must comply with by-laws as if they were part of this constitution.

Notice

60. What is notice

- 60.1 Anything written to or from the School under any clause in this constitution is written notice and is subject to clauses 61 to 63, unless specified otherwise.
- 60.2 Clauses 61 to 63 do not apply to a notice of proxy under clause 36.6.

61. Notice to the School

Written notice or any communication under this constitution may be given to the School, the Directors or the Secretary by:

- (a) delivering it to the School's registered office or to another address chosen by the School for notice to be provided
- (b) posting it to the School's registered office or to another address chosen by the School for notice to be provided
- (c) sending it to an email address or other electronic address notified by the School to the Fellows as the School's email address or other electronic address.

62. Notice to Fellows

- 62.1 Written notice or any communication under this constitution may be given to a Fellow:
- (a) in person
 - (b) by posting it to, or leaving it at the address of the Fellow in the register of Fellows or an alternative address (if any) nominated by the Fellow for service of notices
 - (c) sending it to the email or other electronic address nominated by the Fellow as an alternative address for service of notices (if any) or
 - (d) by notifying the Fellow at an email or other electronic address nominated by the Fellow, that the notice is available at a specified place or address (including an electronic address).
- 62.2 If the School does not have an address for the Fellow, the School is not required to give notice in person.

63. When notice is taken to be given

A notice:

- (a) delivered in person, or left at a recipient's address, is taken to be given on the day it is delivered
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
- (c) sent by email or other electronic method, is taken to be given on the business day after it is sent, and

Financial year

64. School's financial year

The School's financial year is from 1 July to 30 June, unless the Directors pass a resolution to change the financial year.

Indemnity, insurance and access

65. Indemnity

- 65.1 Each officer of the School is entitled to be indemnified out of the assets of the School, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the School.
- 65.2 In this clause, 'officer' means a Director or Secretary and includes a Director or Secretary after they have ceased to hold that office.
- 65.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the School is not precluded by law (including the Corporations Act) from doing so, and
 - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 65.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the School.

66. Insurance

To the extent permitted by law (including the Corporations Act), and if the Directors consider it appropriate, the School may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the School against any liability incurred by the person as an officer of the School.

67. Directors' access to documents

- 67.1 A Director has a right of access to the financial records of the School at all reasonable times.
- 67.2 If the Directors agree, the School must give a Director or former Director access to:
- (a) certain documents, including documents provided for or available to the Directors, and
 - (b) any other documents referred to in those documents.

Winding up

68. General Meeting called to wind up the School

To wind up the School, a Special Resolution must be passed at a General Meeting.

69. Distribution of surplus assets

- 69.1 If the School is wound up, any Surplus Assets must not be distributed to a Fellow or a former Fellow of the School, unless that Fellow or former Fellow is a charity described in clause 69.2.
- 69.2 Subject to the Corporations Act and any other applicable Act, and any court order, any Surplus Assets that remain after the School is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6, and
 - (b) which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as the School.
- 69.3 The decision as to the charity or charities to be given the Surplus Assets must be made by a Special Resolution of Fellows at or before the time of winding up. If the Fellows do not make this decision, the School may make this decision.

Definitions and interpretation

70. Definitions

In this constitution:

- (a) 'ACNC Act' means the Australian Charities and Not-for-profits Commission Act 2012 (Cth).
- (b) 'Board' means a group comprising representatives elected through voting and/or appointment as described in the document to represent the Fellows..
- (c) 'Advisory Board Advisor' means nominated individuals to advise the Advisory Board either for an agreed period of time or for a specific Advisory Board meeting.
- (d) 'Director means a person duly elected or appointed to be a member of the Board.

- (e) 'Background IPR' means any IPR related to the function of the School that remains the property of Action Sustainability Trading Ltd. This includes the prioritisation tool and self-assessment tool. The Background IPR in the names of the UK 'Supply Chain School' and 'Supply Chain Sustainability School' remains the property of Action Sustainability Trading Ltd. The Background IPR related to e-learning modules, training workshops and other training resources shall remain with the School.
- (f) Any party that creates any Foreground IPR not covered by clause 12.1.5 in relation to the School assigns such IPR with full title guarantee to the School to enable it to undertake its obligations set out in clause 12.3 of this constitution, unless agreed otherwise in advance in writing by the Board.
- (g) 'Business Plan' means the most recent active version of the Supply Chain Sustainability School of Australia's Business Plan developed by the School approved by the Directors.
- (h) 'Chief Executive Officer' or 'CEO' means the person appointed by the Board.
- (i) 'Confidential Information' means all confidential information and activities relating to any party which is of a confidential nature or which is commercially sensitive relating to that party or a third party, including but not limited to trade secrets, databases, processes, trading details and information relating to employees and business clients.
- (j) 'Corporations Act' means the Corporations Act 2001 (Cth).
- (k) 'Elected Chairperson' means a person elected by the Directors to be the School's chairperson under clause 40.
- (l) 'Foreground IPR' means the IPR pertaining to the School, the business in Australia, including but not limited to, the logo, video and graphic content on the website, e-learning, training materials (which is not the Background IPR of the UK School's delivery partner, Action Sustainability Trading Ltd) and any other content on the website developed by the School remains the property of the School. Under the Licensing Agreement dated 1 December 2021, Action Sustainability Trading Ltd incorporated and registered in England and Wales with company number 7275849 whose registered office is at 2 Angel Square, London EC1V 1NY, United Kingdom (Licensor) owns the IPR outlined in the Licensed Rights and in the Materials shown in the Schedules to that agreement, and has agreed to grant a licence to the School (Licensee) to use those IPR to operate the School in Australia. Any party that creates any Foreground IPR in relation to the School that has been wholly paid for by a specific funder assigns such IPR with full title guarantee to the funder, unless agreed in writing by the funder.
- (m) 'General Meeting' means a meeting of Fellows and includes the Annual General Meeting, under clause 20.1.
- (n) 'Initial Fellow' means a person who is named in the register of Fellows at the time this constitution comes into effect.
- (o) 'Intellectual Property Rights' or 'IPR' means all registered or unregistered patents; designs, trademarks, trade names, copyright and related rights, database rights, know-how and any other similar rights anywhere in the world, including any renewals and extensions of such rights. All parties who own any Background IPR and Foreground IPR in relation to the School, shall grant to the School a non-exclusive, royalty free, non-transferable license to use the IPR created in the School within the Australia and New Zealand.
The Board also acknowledges that the School aims to increase revenue generated for the School by promoting, developing, enhancing and making the School available, in whole or part, to other funders, regions and countries. Therefore all parties which own any IPR in relation to the School shall grant to the School a non-exclusive, perpetual, non-transferable license to use the IPR created in the School use anywhere in the world for the sole purpose of the School meeting this aim. Any display of the Fellow's logo and related trademarks (in any printed or other material, including on websites) will be in such manner and format approved in writing by the Fellow (including the use of any appropriate legal notices or markings as directed by the Fellow).
- (p) 'Member' means any organisation or person, with the shared ambition of developing their sustainability competence and who has registered with the School on www.supplychainschool.org.au.
- (q) 'Fellow' means a party that has become a Fellow of the School under clause 10 to 15.
- (r) 'Fellow Present' means, in connection with a General Meeting, a Fellow present in person, by representative or by proxy at the venue or venues for the meeting.
- (s) 'Registered Charity' means a charity that is registered under the ACNC Act.
- (t) 'School' means the business under the name the Supply Chain Sustainability School Limited Australian Business Number (ABN) 53 652 174 760.
- (u) 'Secretary' means the person appointed to act as the secretary of the School under this constitution.
- (v) 'Special Resolution' means a resolution:
(i) of which notice has been given under clause 21.5(d), and
(ii) that has been passed by at least 75% of the votes cast by Fellows Present and entitled to vote on the resolution.
- (w) 'Surplus Assets' means any assets of the School that remain after paying all debts and other liabilities of the School, including the costs of winding up.

71. Reading this constitution with the Corporations Act

- 71.1 The replaceable rules set out in the Corporations Act do not apply to the School.
- 71.2 While the School is a Registered Charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.
- 71.3 If the School is not a Registered Charity (even if it remains a charity), the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.
- 71.4 A word or expression that is defined in the Corporations Act or used in that Act and covering the same subject, has the same meaning as in this constitution.

72. Interpretation

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

ENDS