

CONSTITUTION

As amended

PARTIES

FRANCHISE COUNCIL OF AUSTRALIA LIMITED
ACN 002 789 988

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Corporations Act 2001
A Company Limited by Guarantee
and not having a Share Capital

Constitution
of
Franchise Council of Australia Limited
ACN 002 789 988

1. **Preliminary**

1.1 **Definitions**

In this Constitution, unless the context otherwise requires:

- (1) **"Act"** means the Corporations Act 2001;
- (2) **"address"** means either postal or email address;
- (3) **"Adviser Member (Corporate)"** means a member specified in the Members' Register as an Adviser Member (Corporate);
- (4) **"Adviser Member (Individual)"** means a member specified in the Members' Register as an Adviser Member (Individual);
- (5) **"Associate Franchisee Member"** means a member specified in the Members' Register as an Associate Franchisee Member;
- (6) **"By-laws"** means by-laws, rules and regulations made from time to time by the Board pursuant to rule 26;
- (7) **"Board"** means the directors acting as a Board of directors;
- (8) **"Chairman"** means the Chairman of the Board;
- (9) **"Chapter meetings"** means a meeting of a State Chapter held in accordance with the By-laws;
- (10) **"Chapter Committee"** means the committee of each State Chapter as referred to in rule 25.4, members of which are elected from time to time in accordance with rule 25.4 and the By-laws;
- (11) **"Chapter Representative"** means the current President of a Chapter **Committee** or, if the President is unavailable for nomination, such other member of a Chapter Committee as may be nominated by that Chapter Committee and approved by the Board;

- (12) **"Company"** means the Franchise Council of Australia Limited;
- (13) **"Constitution"** means the constitution of the Company for the time being in force;
- (14) **"directors"** means the directors of the Company from time to time;
- (15) **"External Director"** means a person appointed as a director of the Company in accordance with rule 7.4(2) being either a member or non member;
- (16) **"Franchise"** means the rights granted by a Franchisor to a Franchisee;
- (17) **"Franchise Advisory Council Member"** means a member who is an association or council representing collectively the interests of Franchisees and which is otherwise specified in the Members' Register as a Franchise Advisory Council Member;
- (18) **"Franchisee"** means a company, person or firm which has been granted a Franchise by a Franchisor;
- (19) **"Franchisee Member"** means a member specified in the Members' Register as a Franchisee Member;
- (20) **"Franchise Sector"** means all activities related to franchising in Australia, including activities regulated under or affected by the Franchising Code of Conduct established pursuant to Section 51EA of the Trade Practices Act 1974 (Cth) (as amended or replaced) ("TPA"), other relevant provisions of the TPA or any other legislative instrument, judicial decisions in respect of the foregoing or the laws of any foreign country or place which affect in any way residents or citizens of Australia or other persons carrying on activities related to franchising in Australia or with residents or citizens of Australia;
- (21) **"Franchisor"** means a company, person or firm which in the course of its business grants a contractual licence to another party which:
- (a) permits or requires the Franchisee to carry on during the period of the Franchise a particular business under or using a specific name belonging to or associated with the Franchisor; and
 - (b) entitles the Franchisor to exercise continuing control during the period of the Franchise over the manner in which the Franchisee carries on the business which is the subject of the Franchise; and
 - (c) obliges the Franchisor to provide the Franchisee with assistance in carrying on the business which is the subject of the Franchise (including assistance in relation to the organisation of the Franchisee's business, the training of staff, merchandising, management or otherwise); and
 - (d) requires the Franchisee periodically during the term of the Franchise to pay to the Franchisor sums of money in

consideration for the Franchise or for goods or services provided by the Franchisor to the Franchise; and

- (e) is not a transaction between a holding company and subsidiary or between subsidiaries of the same holding company or between an individual and a company controlled by him.
- (22) **"Franchisor Member"** means a member specified in the Members' Register as a Franchisor Member;
- (23) **"financial year"** has the same meaning as in the Act;
- (24) **"Master Franchisee Member"** means a member specified in the Members' Register as a Master Franchisee Member;
- (25) **"member"** means a member for the time being of the Company, admitted to membership in accordance with this Constitution;
- (26) **"Members' Register"** means the register of members to be kept under the Act;
- (27) **"month"** means calendar month;
- (28) **"Next AGM"** means the next annual general meeting of the Company following the annual general meeting at which this Constitution is approved and adopted by the members;
- (29) **"Network Member"** means a member specified in the Members' Register as a Network Member;
- (30) **"Nominee"** means a person appointed by the Chairman to represent the interests of the Chairman;
- (31) **"Number of Directors"** means not less than three and not more than twelve;
- (32) **"Office"** means the registered office for the time being of the Company;
- (33) **"Postal Poll"** means a secret poll taken of all voting papers received through the Postal Voting procedure specified in rule 5.4;
- (34) **"Postal Voting"** means the system of voting specified in rule 5.4;
- (35) **"Postal Voting Papers"** means the papers used to cast a postal vote;
- (36) **"President"** means a president of a Chapter Committee elected under rule 25.5;
- (37) **"related body corporate"** has the same meaning as in the Act;
- (38) **"resolution"** means a resolution other than a special resolution;
- (39) **"Returning Officer"** means a person appointed with the function of administering the Postal Voting process;

- (40) **"Seal"** means the common seal of the Company or, where appropriate, the duplicate seal or the official seal;
- (41) **"secretary"** includes any person appointed to perform the duties of secretary on a temporary basis and any properly appointed assistant secretary;
- (42) **"Secret Poll"** means a process where only the Chairman or Nominee of the Chairman acts as a Returning Officer for the Postal Poll and counts the votes for and against the resolution and declares the resolution either to be carried or lost;
- (43) **"special resolution"** has the same meaning as in the Act;
- (44) **"Standards of Conduct"** means any standards or code of conduct for members prescribed by the Board from time to time pursuant to rule 26 and approved by the members;
- (45) **"State Chapter"** means the members of the Company located in a particular State or Territory as referred to in rule 25;
- (46) **"Supplier Member (Corporate)"** means a member specified in the Members' Register as a Supplier Member (Corporate);
- (47) **"Supplier Member (Individual)"** means a member specified in the Members' Register as a Supplier Member (Individual);
- (48) **"Tax Act"** means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth), the *Taxation Administration Act 1953* (Cth) and all current and future legislation with respect to exemptions from liability to pay tax; and
- (49) **"in writing"** or **"written"** includes printing, lithography, photography and other means of representing or reproducing words in a visible form including by email.

1.2 Interpretation

In this Constitution, unless the context otherwise requires:

- (1) the singular includes the plural and vice versa;
- (2) words importing a gender include every gender;
- (3) references to the Act, any section, regulation or schedule of the Act or any other legislation are references to that law as amended, consolidated, supplemented or replaced;
- (4) headings are for convenience only and must be ignored in interpreting this Constitution;
- (5) references to any person include references to any individual, company, body corporate, association, partnership, firm, joint venture, trust or government agency;
- (6) mentioning anything after include, includes or including does not limit what else might be included;

- (7) for the purposes of rules 7, 8 and 25 the words “term of one year” and “term of two years” and similar expressions shall refer to the approximate periods between annual general meetings of the Company and are not intended to describe periods of 365 days or 730 days.

1.3 Replaceable Rules

The replaceable rules in the Act do not apply to the Company.

1.4 Objects of the Company

- (1) The objects of the Company are to:
- (a) advance public knowledge and understanding of the Franchise Sector, the practices of public authorities regulating the Franchise Sector and the attitude of governments towards the Franchise Sector;
 - (b) advance education in relation to franchising and the Franchise Sector;
 - (c) encourage and facilitate the study of franchising and the Franchise Sector;
 - (d) encourage research into the reform of any aspect of the Franchise Sector;
 - (e) disseminate information concerning the work of the Company; and
 - (f) conduct activities incidental to paragraphs (a) – (e) inclusive of this rule 1.4(1).
- (2) The income and property of the Company must be applied solely to promote the objects of the Company.

1.5 Exercise of Powers

- (1) Subject to this Constitution, the Company may exercise, in any manner permitted by the Act, any power which a public company limited by guarantee may exercise under the Act.
- (2) The business of the Company is to be managed by, or under the direction of the Directors.
- (3) The Directors may exercise all of the powers of the Company except any powers that the Act or this Constitution requires the Company to exercise in general meeting.

1.6 No Distribution to Members

- (1) The Company must not make any distributions to members, whether by way of dividend, bonus, surplus in winding up or otherwise.
- (2) Nothing in this Constitution shall prevent the Company, with the approval of the Board acting in good faith, paying:

6.

- (a) reasonable remuneration to a member for professional or technical services rendered to the Company as an employee, contractor or consultant;
- (b) for goods supplied by a member to the Company in the ordinary course of business;
- (c) interest, at a reasonable rate on money borrowed by the Company from a member;
- (d) reasonable rent for premises leased to the Company by a member;
- (e) out of pocket expenses incurred by a member for or on behalf of the Company;
- (f) reasonable remuneration to a director of the Company for professional or technical services rendered to the Company;
- (g) any other reasonable amount of similar character to those described in paragraphs (a) to (f) of this rule.

1.7 Liability of members

The liability of members is limited.

2. Membership

2.1 Membership of the Company

The members of the Company are the persons who are members at the time of the adoption of this Constitution and such other persons as may be admitted to membership from time to time.

2.2 Categories of membership

- (1) Subject to rule 2.2(2), the categories of membership are:
- (a) Network Members;
 - (b) Franchisor Members;
 - (c) Master Franchisee Members;
 - (d) Franchisee Member (Corporate);
 - (e) Franchisee Member (Individual);
 - (f) Adviser Members (Corporate);
 - (g) Adviser Members (Individual);
 - (h) Supplier Members (Corporate);
 - (i) Supplier Members (Individual);
 - (j) Honorary Members;

- (k) Associate Franchisee Member (Corporate);
 - (l) Associate Franchisee Member (Individual);
 - (m) Provisional Members (Corporate);
 - (n) Provisional Members (Individual);
 - (o) Industry Association; and
 - (p) Franchise Advisory Council Member who for purposes of the Constitution shall be deemed to be a body corporate.
- (2) The Board may, from time to time, determine:
- (a) various additional or replacement categories of membership of the Company;
 - (b) any restriction in the number of members or the number of members within each category;
 - (c) the qualifications for admission to each category; and
 - (d) the rights attached to being a member in each category.

2.3 **Qualification for membership**

- (1) Subject to rule 2.3(2), any person:
- (a) body corporate;
 - (b) person or firm;
 - (c) government agency; or
 - (d) academic institution
- which agrees to be bound by and to comply with this Constitution and the Standards of Conduct is qualified to be a member.
- (2) The Board may in its discretion invite to become and admit as an Honorary Member for any membership year (but only for that membership year) any:
- (a) individual or body corporate which, in the opinion of the Board, warrants such appointment; or
 - (b) overseas organisation having similar objects or subscribing to similar Standards of Conduct.

2.4 **Application for membership**

A person qualified for membership may apply for membership in such form as the Board prescribes from time to time.

2.5 Admission to membership

- (1) On being satisfied of the eligibility of an applicant for membership, the Board may in its discretion admit the applicant as a member. The Board may interpret the member categories, eligibility for inclusion in any category, and satisfaction of any pre-conditions, qualifications or requirements as it sees fit.
- (2) If an application to become a member is accepted, the Company must:
 - (a) give written notice of the acceptance to the applicant including details of the category of membership and the rights that are then attached to that category;
 - (b) request payment of any amount owing for the joining fee and annual subscription fees (being a pro-rata sum if so determined by the Directors); and
 - (c) upon payment of that amount, enter the applicant's name in the Members' Register.
- (3) If an application to become a member is rejected, the Company must:
 - (a) give written notice of the rejection to the applicant; and
 - (b) refund in full any fees paid by the applicant.

2.6 Rights and privileges of membership

- (1) Subject to rule 2.6(2) and (7), and without limiting any other rights conferred on members, members have the right to:
 - (a) receive notice of, attend and vote at any general meeting of the Company;
 - (b) enjoy member rates at any of the Company's events or in purchasing any goods or services supplied by the Company;
 - (c) use the Company's logo in accordance with guidelines determined by the Board from time to time.
- (2) Honorary Members have no right to attend or vote at a general meeting of the Company and have no right to receive notices of such meeting or other communications issued to members.
- (3) A Network Member has the right to attend and vote at a State Chapter meeting held in any State or Territory in which a Franchisor, Franchisee or Master Franchisee of that Network carries on business.
- (4) Provisional Members (Corporate) and Provisional Members (Individual) may attend a general meeting of the Company but will have no right to vote at a general meeting of the company.

- (5) All other members have the right to attend a State Chapter meeting in any State or Territory but may only vote at a State Chapter meeting held in their nominated home State or Territory.
- (6) A Provisional Member (Corporate) and a Provisional Member (Individual) may only hold that category of membership for two years, after which their membership will lapse unless they qualify for a different category of membership.
- (7) Associate Franchisee Members have the right to receive notices of general meetings of the Company and attend all such general meetings but shall not have the right to vote at these meetings.

2.7 **Membership fees**

- (1) The Board may impose a joining fee and must impose an annual membership fee.
- (2) The Board may set different rates of membership for different categories of membership of the Company.

2.8 **Effect of membership**

Members acknowledge and agree that:

- (1) they shall comply with and observe the Constitution and the By-laws including the Standards of Conduct and any determination or resolution which may be made or passed by the Company or the Board;
- (2) this Constitution and the By-laws including the Standards of Conduct are necessary for promoting the objects of the Company; and
- (3) they are entitled to such benefits, advantages, privileges and services of membership of the Company as are prescribed (for each category of membership) under this Constitution and the By-laws.

2.9 **Transferability of membership**

Membership of the Company is not transferable. The rights, privileges and benefits of membership of the Company are personal to the member.

2.10 **Cessation of membership**

A person will cease to be a member automatically if that person:

- (1) dies;
- (2) is or is deemed to be insolvent, bankrupt, unable to pay their debts as they fall due, or suffers the appointment of a receiver, receiver and manager, administrator, trustee in bankruptcy, or liquidator;
- (3) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
- (4) resigns membership by notice in writing to the Company;

- (5) ceases to qualify for membership of the Company in accordance with rule 2.3; or
- (6) has not paid the annual membership fee by the due date for payment as set by the Board, and fails to pay within fourteen days of receiving a written notice from the Company which advises the member of such non-payment and notifies the member that membership will terminate on a specified date.

2.11 Cessation of Rights

The rights and privileges of a member cease when the member ceases to be a member or when the member's name is removed from the Members' Register.

2.12 Censure, Suspension and Expulsion

- (1) If a member:
 - (a) fails without just cause to observe and comply with the Constitution;
 - (b) fails without just cause to comply with the Standards of Conduct applying to the member;
 - (c) makes a wilful material misrepresentation to the Company in their application for membership; or
 - (d) is not, in the opinion of the Board, a fit and proper person to be a member of the Company;

then a resolution passed by not fewer than three quarters of the directors for the time being comprising the Board may do any of the following:

- (a) censure or fine such member;
 - (b) suspend or expel such member from the Company;
 - (c) require such member to perform a certain activity or activities including undertaking training or education, attending mediation, paying an amount to any person, publishing an advertisement or issuing a communication.
- (2) Any question of the censure, fining, suspension or expulsion of a member or the requirement that a member undertake an activity or activities of the type referred to in rule 2.12(1) must be dealt with by a meeting of the Board of which at least fourteen days' notice is given, specifying the date, time and place of the meeting. The notice must state the nature of the business but need not identify by name the member whose conduct is under consideration.
 - (3) The member whose conduct is under consideration must receive the same notice of the meeting as the Board, must receive with the notice written particulars of the matter to be considered and must be invited to attend and be heard. The member may be present at the meeting in person or through a representative and must advise the

Chairman at least seven days before the meeting whether they will attend in person or through a representative. At the meeting, the member or their representative may make submissions in writing and orally and must be given an opportunity to respond to any matters raised at the meeting.

- (4) After the member or their representative has addressed the Board, all submissions have been heard and received and the member has been given an opportunity to respond, the member or representative, as the case may be, must leave the meeting and the Board will consider its position. A copy of the Board's resolution must be served on the member.
- (5) The member who is the subject of such a resolution may lodge an appeal within fourteen days of receiving notice of the resolution, by delivering a notice of appeal to the Chairman setting out in detail the grounds of appeal. If such a notice of appeal is not received by the Chairman within this period, the resolution will immediately become effective and binding.
- (6) If a notice of appeal complying with rule 2.12(5) is received within that fourteen day period, the Chairman must convene an arbitration panel comprising:
 - (a) an employee, partner or director of a Franchisor Member of over five years' standing appointed by the member appealing (member appointee). The notice of appointment of the member appointee must include a signed statement from the member appointee agreeing to act on the panel. The notice of appointment must be lodged with the notice of appeal for the notice of appeal to be effective;
 - (b) an employee, partner or director of a Franchisor Member of over five years' standing appointed by the Chairman (Chairman appointee). The Chairman appointee must be a person who is willing to act and who was not present at the meeting of the Board at which the resolution referred to in rule 2.12(4) was made; and
 - (c) a person who is neither a member nor an employee, partner or director of a member and who is appointed by the member appointee and Chairman appointee. If these members fail to appoint a third member within fourteen days of the later of their respective dates of appointment, the third member will be a person appointed by the Board who is neither a member nor an employee, partner or director of a member.
- (7) The Chairman must give the member appealing at least fourteen days' notice of the time and place of the meeting of the arbitration panel.
- (8) The Board may present its case in support of the resolution referred to in rule 2.12(4) through any representative. The appealing member may appear in person or by a representative. The appealing member must notify the Company at least seven days before the hearing date whether or not they will be represented and if so the name and capacity of the representative. The Company will

not be entitled to be represented by a barrister or a solicitor unless the appealing member is also represented by a barrister or solicitor.

- (9) The appeal will be by way of a complete rehearing. The arbitration panel may uphold, reverse or vary a finding or determination of the Board. Decisions of the arbitration panel will be by majority vote.
- (10) Within 28 days of completing the hearing, the arbitration panel must hand down its decision in writing addressed to the Board and copied to the appealing member.

2.13 Reinstatement of membership

Notwithstanding anything else contained in this Constitution, where a member's membership has been terminated or lapsed, the Directors may in their total and unfettered discretion reinstate that member's membership subject to such conditions (if any) as the Directors consider appropriate.

3. General Meetings

3.1 Annual general meetings

Subject to the **Act**, a general meeting of the Company called the "annual general meeting" must be held at least once in every calendar year no later than five months after the end of the financial year of the Company. All other meetings of the Company will be called "general meetings" and may be convened at any time.

3.2 Deemed holding of annual general meeting

An annual general meeting will be deemed to have been held if the Company has held a general meeting at which resolutions have been passed dealing with all matters required to be dealt with at an annual general meeting, but this does not affect the obligation to hold an annual general meeting as required by the Act or this Constitution.

3.3 Convening of general meetings

In relation to the convening of general meetings:

- (1) the Board may convene general meetings to be held at any place the directors think fit;
- (2) a general meeting must be convened by the directors as soon as practicable following a requisition of members in the manner provided for by the Act; and
- (3) members have no right to call general meetings of the Company except as provided by this rule.

3.4 Notice of general meetings

Subject to the provisions of the Act as to shorter notice at least twenty one days' notice of every general meeting or meeting of any class of members must be given in the manner provided by this Constitution to the members and the persons entitled under this Constitution and the Act to receive notices.

3.5 **Contents of notice of general meetings**

Every notice convening a general meeting must specify the place, the day and the hour of the meeting and the general nature of the business to be transacted at the meeting. Every notice of an annual general meeting must be accompanied by a statement setting out those Board positions which will become vacant at the end of the annual general meeting and invite nominations for those positions. Nominations must be received by the Company by no later than seven days before the annual general meeting.

3.6 **Omission to give notice**

Failure to give proper notice of a meeting to any person entitled to receive it or the non-receipt of notice of a meeting by any person will not invalidate any of the proceedings at that meeting if:

- (1) the failure was accidental;
- (2) the person gives notice to the Company that the person waives proper notice or agrees to the thing done at the meeting; or
- (3) the person attended the meeting and:
 - (a) does not object at the start of the meeting to the holding of the meeting; or
 - (b) if the notice omitted an item of business, does not object to consideration of the business when it is presented to the meeting.

4. **Proceedings at General Meeting**

4.1 **Business at annual general meeting**

The business of an annual general meeting will be:

- (1) to receive and consider the annual financial report, the directors' report and the auditor's report;
- (2) to elect directors in place of any retiring director or any director whose office will be vacated by virtue of rule 8.6; and
- (3) to transact any other business which may be properly brought before the meeting.

4.2 **Quorum for general meeting**

No business will be transacted at any general meeting unless a quorum is present at the beginning of the business. A quorum is constituted by fifteen members present in person, by attorney or proxy.

4.3 **Representative of body corporate**

Where:

(1) a person present at a meeting is authorised to act as the representative of a body corporate at the meeting under an authority given by the body corporate under Section 250D of the Act; and

(2) the person is not otherwise entitled to be present at the meeting,

the body corporate will, for the purposes of this Constitution, be deemed to be present in person at the meeting.

4.4 No quorum

If a quorum is not present within twenty minutes after the time appointed for the meeting, any meeting convened on a requisition of members will be dissolved but any other meeting will be adjourned to the same day in the next week at the same time and place or to such other day, time and place as the directors may appoint by notice to the members. If at the adjourned meeting a quorum is not present, the meeting will be dissolved.

4.5 Chairman of general meeting

The Chairman or, in the Chairman's absence, the deputy Chairman (if any) is entitled to take the chair at every general meeting. If there is no Chairman or if at any meeting the Chairman is not present within fifteen minutes after the time appointed for holding the meeting or if the Chairman is unwilling to act, the directors present may choose a Chairman. If the directors do not choose a Chairman, the members present must choose one of the directors to be Chairman and if no director is present or willing to take the chair, the members must choose one of their number to be Chairman.

4.6 Powers of Chairman

At any general meeting, a declaration by the Chairman that a resolution or special resolution has been carried or carried by a particular majority or not carried and a recording of that declaration in the minute book will be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against that resolution or special resolution.

4.7 Adjournment of general meeting

The Chairman of a general meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but only business left unfinished at the original meeting may be transacted at the adjournment.

4.8 Notice of adjourned meeting

If any general meeting is adjourned for more than twenty-one days, a notice of the adjournment must be given to members of the Company in the same manner as notice was or ought to have been given of the original meeting. In the case of all other adjournments, it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

5. Voting

5.1 Resolution determined by majority

At a general meeting:

- (1) all questions submitted to the meeting will be decided by a simple majority of votes except where a greater majority is required by this Constitution or the Act;
- (2) the Chairman will not have a casting vote in addition to the vote or votes to which the Chairman may be entitled as a member; and
- (3) in the first instance, voting will be on a show of hands. A poll may be demanded on any question before the close of the meeting by the Chairman, any member, or their proxy, attorney or representative. The Chairman must decide in each case the manner in which a poll will be taken, and the result of the poll will be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a Chairman or on a question of adjournment will be taken immediately. Any dispute relating to the admission or rejection of a vote must be determined by the Chairman and the Chairman's determination made in good faith will be final and conclusive.

5.2 **Votes**

On a show of hands every person present as a member who is entitled to vote or as a representative, proxy or attorney of a member who is entitled to vote will have one vote and on a poll every member **who is entitled to vote** present in person or by proxy, attorney or representative will have one vote.

5.3 **Attorney of member**

Any member may appoint an attorney to act on their behalf at all meetings of the Company or all meetings of the Company during a specified period. Before the first meeting at which the attorney acts on the member's behalf, a power of attorney must be deposited at the Office or at any place specified in the notice convening that meeting. At the first meeting and at any subsequent meeting to which the power of attorney may relate, the attorney must hand to the Chairman of the meeting a properly executed declaration of non-revocation of the power of attorney.

5.4 **Postal Voting**

- (1) A Postal Poll of the eligible members of the Company may be held in respect of any resolution for the election of directors who are entitled to vote or in relation to any ordinary or special resolution of the Company or in relation to any resolution before any annual general meeting of the Company.
- (2) In the case of a Postal Poll the procedures set out in rules 5.4(3) and 5.4(8) shall apply.
- (3) The Postal Poll shall be conducted by the authority of the directors as a Secret Poll, which may be conducted as a Postal Vote or an Electronic Vote, and the result shall be deemed to be the result of the resolution upon which it is called.
- (4) In all cases where a Postal Poll is conducted as provided for in this Constitution, the Board shall cause to be sent to each member entitled to exercise a vote on the Postal Poll a voting paper setting out the resolution and a direction to vote either for or against the resolution.

- (5) For the purposes of rule 5.4(4), the Board shall also cause to be sent to all members with the voting paper an explanatory statement which shall be prepared by the Board and which shall contain the following relevant information in relation to the resolution:
 - (a) a summary of the arguments for and against the resolution, such summary to be derived from discussion on the resolution at the meeting or by the Board (as the case may be) at which the Postal Poll was demanded;
 - (b) a summary of the views of the Board in relation to the resolution;
 - (c) a statement whether the views of the Board in relation to the resolution are unanimous or not and if not, setting forth the number of Board members in favour of the resolution and the number of Board members against the resolution; and
 - (d) the date and time prior to which completed voting papers must be received at the Office in order to be counted.
- (6) The date and time prior to which completed voting papers must be received at the Office in order to be counted shall be no less than twenty-one days from the date upon which voting papers are sent to members.
- (7) The Chairman or the Nominee shall act as Returning Officer in respect of the poll and shall, after counting the votes for and against the resolution, declare the resolution either to be carried or lost.
- (8) The accidental omission to send a voting paper in relation to a Postal Poll to any member or the failure of any member to receive any such voting paper shall not invalidate the result of such Postal Poll.

6. Proxies

6.1 Instrument appointing proxy

The instrument appointing a proxy must be in writing signed by the appointor or by the appointor's attorney properly authorised in writing, or, if the appointor is a body corporate, under its common seal or signed in accordance with its constitution.

6.2 Deposit of proxy with Company

The instrument appointing a proxy and the original power of attorney (if any) under which it is signed or a certified copy of the power of attorney must be deposited at the Office or at any other place specified in the notice convening the meeting not less than forty-eight hours before the time for holding the meeting. An instrument appointing a proxy will only be valid twelve months from the date of its execution unless it states that it is valid for all meetings until revoked, except that any instrument may be used at any adjournment of the meeting for which it was originally intended.

6.3 **Validity of vote given in accordance with proxy**

Unless the Company has received written notice of the matter before the start of the members' meeting at which a proxy or an attorney votes, a vote cast by the proxy or attorney will be valid even if, before the proxy or attorney voted:

- (1) the member dies;
- (2) the member is mentally incapacitated;
- (3) the member revokes the proxy's or attorney's appointment; or
- (4) the member revokes the authority under which the proxy was appointed by a third party.

6.4 **Form of proxy**

Every instrument of proxy must as nearly as circumstances permit be in the form or to the following effect:

"I _____ of _____ being a member of _____ appoint _____ of _____ or failing him/her _____ of _____ as my proxy to vote on my behalf at the general meeting of the Company to be held on the _____ day of 200_____ and at any adjournment."

Signed this _____ day of _____ 200_____ .

or in such other form as the directors may from time to time prescribe or accept. The instrument of proxy may be worded so that a proxy may be directed to vote either for or against each of the resolutions to be proposed. Any instrument of proxy deposited in accordance with this Constitution in which the name of the appointee is not filled in will be deemed to be given in favour of the Chairman of the meeting to which it relates.

7. **Directors**

7.1 **Number of directors**

The number of the directors must not be less than four, nor more than fifteen, until otherwise determined by the Company in general meeting. A body corporate cannot be appointed as a director.

7.2 **Consent**

Before being appointed as a director a person must give the Company a signed consent to act as director which must be retained by the Company.

7.3 **Election of directors by Company**

The election of directors (other than External Directors and those who fill casual vacancies) must be by resolution of the Company in general meeting.

7.4 **Casual Vacancies and External Directors**

The directors have the power at any time to appoint:

- (1) any other member as a director to fill a casual vacancy; and,
- (2) five other members or non members to act as External Directors;

except that the total number of directors must at all times be in compliance with rule 7.1 and the composition of the Board referred to in rule 7.7 must be retained.

7.5 Qualification for election as a director

Any member (or, in the case of a member that is a body corporate or partnership, any employee or director of such member or any partner or employee of the partnership) may be elected as a director.

7.6 No qualification for election as an External Director

Any member or non member may be appointed as an External Director.

7.7 Composition of the Board

Until otherwise determined by a special resolution of the Company in general meeting, and subject to receiving the requisite number of nominations for each category, the Board must comprise of up to fifteen directors:

- (1) five of whom must be Chapter Representatives (each of a different State Chapter);
- (2) three of whom must be (or be an employee, partner or director of) Franchisor Members;
- (3) two of whom may be (or be an employee, director or partner of) any category of membership specified in rule 2.2; and
- (4) five of whom may be appointed by the Board as External Directors in accordance with rule 7.4(2).

7.8 In this rule 7, the five State Chapters referred to are:

- (1) New South Wales;
- (2) Queensland;
- (3) South Australia;
- (4) Victoria; and
- (5) Western Australia.

7.9 If the Board, by resolution pursuant to rule 25.2, alters the State Chapters referred to in rule 7.7, or eliminates or adds to them, the State Chapters as so altered become the State Chapters in place of those listed in rule 7.8.

7.10 Auditor cannot be director

Subject to the Act, an auditor of the Company or partner or employee or employer of an auditor must not be appointed a director of the Company.

7.11 No alternate directors

No director may appoint a person to act as an alternate director.

8. Directors' Tenure of Office

8.1 Directors' tenure of office

- (1) Subject to the Act and to rule 8.1(2) each director (excluding Chapter Representatives) will hold office until removed in accordance with this Constitution or until the director's office is vacated in accordance with this Constitution and, for the avoidance of doubt, must be re-elected every two years.
- (2) The directors to retire at the close of the Next AGM will be the directors (excluding Chapter Representatives and External Directors) who have held office for two years or more since he or she was last elected to office.

8.2 Chapter Representatives' tenure of office

- (1) Chapter Representatives will have a term of one year unless removed in accordance with this Constitution or until their office is vacated in accordance with this Constitution.
- (2) Subject to the Act and to rule 8.2(3), Chapter Representatives who are elected at or otherwise hold office at the close of the Next AGM and all other subsequent Chapter Representatives elected following the Next AGM will hold office until removed in accordance with this Constitution or until the office is vacated in accordance with this Constitution and must be re-elected every two years.
- (3) The three Chapter Representatives who receive the lowest, second lowest and third lowest number of votes during the election at the next AGM will hold office for one year, unless they are earlier removed in accordance with this Constitution. If any or all of these three Chapter Representatives are re-elected in the annual general meeting following the Next AGM they will from then on hold office until removed in accordance with this Constitution or until their office is vacated in accordance with this Constitution and must be re-elected every 2 years.

8.3 External Directors' tenure of office

External Directors will have a term of two years (unless removed by the Board earlier) and may be re-appointed by the Board at the end of the two years.

8.4 Retiring director eligible for re-election

A director who retires or whose office is vacated under this Constitution is eligible for election or re-election to the Board except as limited by rule 8.6.

8.5 **Removal of director by the Company**

The Company may by resolution remove any director at any time.

8.6 **Vacation of office**

The office of a director will be automatically vacated if the director:

- (1) is a Chapter Representative and either:
 - (a) ceases to be the President of a Chapter Committee; or
 - (b) the Board revokes its approval of a person who is not a President to serve as a director.
- (2) is not a Chapter Representative and has held the office of director for a term of two years.
- (3) is no longer a member (or, in the case of a director nominated by a member which is a body corporate or partnership, the relevant body corporate or partnership is no longer a member);
- (4) has not paid by the due date as prescribed by the Board any annual membership fee required to be paid under rule 2.7 or, in the case of a director nominated by a member which is a body corporate or partnership, the body corporate or partnership has not paid such fee;
- (5) commits an act of bankruptcy or enters into an arrangement or composition with all or a substantial number of his or her creditors;
- (6) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
- (7) resigns office by notice in writing to the Company; or
- (8) vacates office or is prohibited from being a director in accordance with any of the provisions of the Act or any order made under the Act.

A director whose office is vacated under rules 8.6(1) and 8.6(2) will be eligible for re-election.

A director whose office is vacated under rule 8.6(3), (4), (5), (6), or (8) will not be eligible for re-election until the disability referred to is removed.

9. **Proceedings of Directors**

9.1 **Board meetings and quorum for board meetings**

- (1) The directors may meet for the despatch of business and adjourn and otherwise regulate their meetings as they think fit but must meet on at least four occasions each year.
- (2) The directors may determine the quorum necessary for the transaction of business. Until such a determination is made, the quorum will be four directors. If the number of directors falls below

four, the directors may act for the sole purpose of filling the casual vacancy or vacancies pursuant to rule 7.4.

9.2 Conduct of board meetings

The directors may conduct their meetings by telephone or other means of communication without a director or directors being in the physical presence of another director or other directors.

9.3 Convening of board meeting and place of meeting

A director may at any time and the secretary on the request of a director must convene a meeting of directors. Meetings may be held outside Australia.

9.4 Board meeting competent to exercise all powers

A meeting of the directors at which a quorum is present may exercise all or any of the powers and discretions vested in or exercisable by the directors generally.

9.5 Resolution passed deemed to be determination of board

Any resolution properly passed at a duly convened meeting of the directors at which a quorum is present will be deemed to be a determination by all the directors of the Board for the purposes of this Constitution.

9.6 Chairman of board meetings

The directors may elect a Chairman and deputy Chairman of their meetings and determine the period they are to hold office. If no Chairman or deputy Chairman is elected or if at any meeting neither the Chairman nor the deputy Chairman is present at the time appointed for the meeting, the directors present at the meeting must choose one of their number to be Chairman of the meeting.

9.7 Questions to be decided by majority

Questions arising at any meeting will be decided by a majority of votes of directors present and voting. The Chairman will have a casting vote as well as a deliberative vote.

9.8 Resolution in writing

A resolution in writing of which notice has been given to all directors entitled to receive notice of a meeting of the directors and which is signed by a majority of directors entitled to attend and vote at meetings of the directors is valid as if passed at a meeting of the directors duly convened and held. Copies of the document may be distributed for signing by different directors but each copy must have identical wording. The resolution is passed when the last director signs the document.

9.9 Committee powers and meetings

The directors may delegate any of their powers to a committee of directors or a Chapter Committee and may revoke any such delegation. Any committee must exercise the powers delegated to it in accordance with any directions of the Board. The meetings and proceedings of any committee consisting of two

or more directors or members of a Chapter Committee will be governed by the provisions of this Constitution regulating the meetings and proceedings of the directors so far as they are applicable and are not superseded by any direction made by the Board under this rule.

9.10 **Validity of acts of directors**

All acts done by any meeting of the directors or by a committee of the directors or by any person acting as a director or by a Chapter Committee are valid even if it is afterwards discovered that there was some defect in the appointment or election of any director or Chapter Committee member or person acting as a director or Chapter Committee member or that any director or Chapter Committee member was disqualified or had vacated office or was otherwise not entitled to vote or act.

9.11 **Directors to declare potential conflicts**

Any director who holds any office or possesses any property which might (whether directly or indirectly) create duties or interests in conflict with his duties or interests as a director of the Company must declare the fact of the holding and the nature and extent of any conflict at the first meeting of the directors held after the director becomes a director or (if already a director) at the first meeting of the directors held after the relevant facts came to the director's knowledge.

10. **Directors' Contracts**

10.1 **Directors not disqualified from holding office or contracting with Company**

Notwithstanding any rule of law or equity:

- (1) no director shall be disqualified by virtue of his office from holding any office or place of profit (other than as auditor) with the Company or with any company promoted by the Company or with any corporation in which the Company is a shareholder or which is a shareholder of the Company or in which the Company is otherwise interested;
- (2) no director shall be disqualified by virtue of his office from contracting with the Company (whether as vendor, purchaser or otherwise); and
- (3) no contract referred to in rule 10.1(2) or any contract or arrangement entered into by or on behalf of the Company in which any director is in any way interested shall be avoided and no director shall be liable to account to the Company for any profit arising from such a contract or arrangement or from any office referred to in rule 10.1(1) (or other place of profit) by reason only of that director holding that office or of the fiduciary relations established by it.

10.2 **Director may hold office or act in professional capacity**

Subject to the Act (and in particular Chapter 2E), a director:

- (1) may hold any office in connection with the Company's business except that of auditor; and

- (2) may act individually or through the director's firm in a professional capacity for the Company (except as auditor) and shall be entitled to remuneration for professional services as though the director were not a director.

10.3 **Director may vote on contract in which he is interested**

Subject to the Act (and in particular section 195), a director may vote in respect of any contract or arrangement in which the director is interested (whether directly or indirectly) and may be counted in a quorum, may affix the Seal and may otherwise act in respect of such contract or arrangement.

10.4 **Director not deemed to be interested in certain contracts or arrangements**

A director shall not be deemed to be interested (whether directly or indirectly) or to have been at any time interested in any contract or arrangement or proposed contract or arrangement:

- (1) relating to any loan to the Company, merely by reason of the fact that the director has guaranteed or joined in guaranteeing the repayment of such loan or any part of such loan; or
- (2) made or to be made with a corporation which under any provision of the Act is deemed to be related to or associated with the Company, merely by reason of his being a director of that corporation.

10.5 **Directors to declare interest**

Any director who is directly or indirectly interested in any contract or arrangement or proposed contract or arrangement with the Company must declare the nature of the interest at the meeting of the directors at which the contract or arrangement is first considered (if the interest then exists) or, in any other case, at the first meeting of the directors held after the interest is acquired. A general notice by a director that the director is a member of any specified corporation or firm and is to be regarded as interested in any contract which may be made with that corporation or firm after the date of that notice shall be deemed to be a sufficient declaration of interest in relation to any contract so made provided the notice complies with the provisions of the Act and in particular Section 191 of the Act.

10.6 **Secretary to record declarations of directors**

The secretary shall record in the minutes of the meeting any declarations made or notices given by a director under this Constitution.

10.7 **Effect of failure to make or record disclosures**

Failure to make or to record any disclosures will not render voidable or void any contract, transaction or arrangement to which the disclosure relates.

11. **Powers of Directors**

11.1 **Powers of directors**

Subject to the Act and this Constitution, the business of the Company will be managed by the directors, who may pay all expenses incurred in promoting

and forming the Company and may exercise all such powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Company in general meeting.

11.2 Powers to borrow or raise money

Without limiting the previous rule, the directors may from time to time borrow or raise any sum or sums of money or incur other financial obligations for the purposes of the Company and may give or take security over the repayment of such sum or sums or the payment, performance or fulfilment of any debts, liabilities, contracts or obligations incurred or undertaken by the Company on terms and conditions as they determine.

11.3 Security over Company's assets

Subject to the Act, if any director or any other person becomes personally liable (whether as surety or otherwise) for the performance of any of the Company's obligations, the directors may, despite their interest, execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the liability.

12. Executive Directors

12.1 Executive Appointments

The directors may (but need not) at any time appoint one or more directors to the office of managing director, chief executive officer, Executive Chairman or to any other executive office for any period and on any terms they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke any appointment.

12.2 Remuneration of executive directors

An executive director will, subject to the terms of any particular agreement entered into, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors may determine.

12.3 Directors may confer powers on executive directors

The directors may grant an executive director any of the powers exercisable by the directors on such terms and conditions and with such restrictions as they think fit. Any powers so conferred may be concurrent with or to the exclusion of their own powers. The directors may at any time revoke, withdraw, alter or vary all or any of those powers.

13. State Chapter and Other Local Management and Attorneys

13.1 State Chapter and other Local representatives and agencies

The directors may at any time provide for the management of the affairs of the Company in any place and in any manner they think fit and without limiting the generality of this rule, the directors may:

- (1) establish any local managers, representatives or agencies for managing any of the affairs of the Company (including, without

limitation, any Chapter Committee) in any locality and may appoint any persons to act as managers, representatives or agents of the Company and, in connection with any appointment, may fix remuneration, impose conditions and remove any appointee as the directors think fit;

- (2) subject to the law and their obligations as directors, delegate to any person referred to in rule 13.1(1) or Chapter Committee any of their management responsibilities and authorities and vary or annul such delegation.

13.2 **Appointment of attorney**

The directors may at any time by power of attorney under the Seal appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under this Constitution) and for such period and subject to such conditions as the directors think fit. Any appointment may be made in favour of any company or the members, directors, nominees or managers of any company or firm or in favour of any fluctuating body of persons (whether nominated by the directors or otherwise) and any power of attorney may contain provisions for the protection or convenience of the attorney or attorneys and of persons dealing with the attorney or attorneys.

13.3 **Sub-delegation of powers**

Any delegate, manager, agent or attorney appointed by the directors may be authorised by the directors to sub-delegate all or any of the powers, authorities and discretions given to them.

14. **Directors' Remuneration**

14.1 **Remuneration of non-executive directors**

There will be no remuneration for services rendered as directors (excluding any remuneration payable to any director under any executive service contract with the Company or a related body corporate), except as the Company in general meeting may determine.

14.2 **Expenses of directors**

The directors may be paid all travelling and other expenses incurred by them in attending and returning from meetings of the directors, any committee of the directors or any general meetings of the Company or otherwise in connection with the business of the Company, as determined by the directors or by the Company in general meeting.

15. **Minutes and Registers to be kept**

15.1 **Minutes**

The directors must ensure minutes of directors meetings are prepared within one month of the relevant meeting, which minutes must contain details of:

- (1) the names of the directors present at each meeting of the directors and of any committee of directors;

- (2) all declarations made or notices given by any director (either generally or specially) of his or her interest in any contract or proposed contract or of his or her holding of any office or property whereby any conflict of duty or interest may arise;
- (3) all orders made by the directors and committees of directors; and
- (4) all resolutions and proceedings of general meetings of the Company, meetings of the directors and meetings of any committee of the directors.

Any minutes of any general meetings of the Company, meetings of the directors or meetings of any committee of the directors must be signed by the Chairman of the meeting or by the Chairman of the next succeeding meeting and once signed will constitute evidence of the matters stated in the minutes.

15.2 Registers

In accordance with the Act, the directors must set up and maintain:

- (1) a Members' Register;
- (2) a register of charges;
- (3) if the Company issues debentures, a register of debenture holders; and
- (4) any other registers required to be kept under the Act.

The registers may be kept either in a bound or loose leaf book or on computer. If a register is kept on computer, its contents must be capable of being printed out in hard copy.

16. The Secretary

16.1 Secretary

A secretary or secretaries of the Company must be appointed by the directors in accordance with the Act. The directors may also appoint acting and assistant secretaries. Any such appointment may be for such term, at such remuneration and on such conditions as the directors think fit and any person so appointed may be removed by the directors.

17. The Seal

17.1 Use of common seal

The directors must provide for the safe custody of the Seal. The Seal must be used only by the authority of the Board or a committee of the directors with authority from the Board to authorise the use of the Seal. Every document to which the Seal is affixed must be signed by a director and countersigned by another director, a secretary, an assistant secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

18. **Negotiable Instruments**

18.1 **Negotiable instruments**

All cheques, bills of exchange, promissory notes and other negotiable instruments must be signed, drawn, accepted, made or endorsed (as the case may be) for and on behalf of the Company by such persons and in such manner as the directors may determine.

19. **Accounts**

19.1 **Accounting records**

The directors must cause accounting and other records to be kept to correctly record and explain the transactions and financial position of the Company, to enable true and fair profit and loss accounts and balance sheets to be prepared and to permit preparation of any other documents required by the Act or this Constitution. The records must be kept:

- (1) in such manner to enable them to be conveniently and properly audited;
- (2) for seven years after the completion of the transactions or operations to which they relate; and
- (3) at such place as the directors think fit and at all times be open to inspection by the directors.

19.2 **Financial reports**

The Board shall cause proper financial records to be kept and must send to members, as required by the Act, copies of the Company's financial report (including financial statements), the directors' report and the auditor's report on the financial report, for each financial year of the Company and the directors must table at the annual general meeting those reports for the financial year immediately preceding an annual general meeting, as required by the Act.

20. **Audit**

20.1 **Auditors**

- (1) Auditors of the Company must be appointed and removed and their remuneration, rights and duties will be regulated in accordance with the Act.
- (2) The accounts of the Company must be audited in respect of each financial year of the Company and the correctness of the profit and loss account and balance sheet must be ascertained by the auditors of the Company in accordance with the Act.

20.2 **Approval of accounts**

Accounts of the Company when prepared by the directors will be conclusive except as regards any error identified within three months after the date of

preparation. If any error is identified within this period, the accounts must immediately be corrected and will then be conclusive.

21. **Inspection of Records**

21.1 **Inspection of records**

Subject to the Act, the directors will determine whether, to what extent, at what times and places and under what conditions the accounting and other records of the Company or any of them will be open to the inspection of the members. A member who is not a director will not have any right to inspect any account, book or document of the Company or receive any information concerning the business, trading or customers of the Company or any trade secret or secret process of the Company except as provided by the Act or as authorised by the directors or a resolution of the Company in general meeting.

22. **Notices**

22.1 **Service of notices by Company**

A notice may be given by the Company to any member either personally, by post, facsimile or email to the relevant address, facsimile number or email address of the member as shown on the Member's Register or otherwise by any other method, including by advertisement, as the directors determine.

22.2 **Posting notices to overseas members**

In the case of a member whose registered address is outside Australia, a notice sent by post must be sent by pre-paid airmail in an envelope.

22.3 **Notice deemed to be served**

Any notice by advertisement will be deemed to have been served on the day of publication of the newspaper containing the advertisement. Any notice sent by post will be deemed to have been served on the second day following the day on which the notice is posted unless sent by airmail to an address outside the country in which it was posted, in which case it will be deemed to have been served on the fifth day following the day on which it is posted. A notice sent by facsimile or email will be deemed to have been served on the same day that it is sent.

22.4 **Service by post**

To prove service by post, it is sufficient to prove that the notice with required postage was properly addressed and posted. A certificate in writing signed by any manager, secretary or other officer of the Company that the notice was properly addressed and posted will be conclusive evidence of such matters.

22.5 **Notices to members whose whereabouts unknown**

Where:

- (1) the Company has a genuine reason to believe that a member is not known at the address shown for that member in the Members' Register;

- (2) the Company has subsequently made an enquiry at that address as to the whereabouts of the member; and
- (3) the enquiry either elicits no response or a response indicating that the member's present whereabouts are unknown,

all future notices will be deemed to be given to the member if the notice is exhibited in the Office for a period (not including weekends and public holidays) of forty-eight hours and will be deemed to be duly served at the end of that period. This rule will apply unless and until the member informs the Company of a registered place of address or that the member has resumed residence at the member's address shown in the Member's Register or notifies the Company of a new address to which the Company may send the member notices (which will be deemed to be the member's registered address).

22.6 **Notice to deceased or bankrupt members**

Any notice or document given to a member will be deemed to have been properly given despite the member's death or bankruptcy and whether or not the Company has notice of death or bankruptcy.

22.7 **Signing of notices**

The signature to any notice to be given by the Company may be written or printed.

22.8 **Counting of days**

Where a given number of days' notice or notice extending over any other period is required to be given, the day on which notice is deemed to be given will **not** be included in the number of days or other period.

23. **Winding Up**

23.1 **Distribution of Property**

If upon the winding up or dissolution of the Company there remains after the satisfaction of all its debts and the liabilities any property whatsoever the same shall be given or transferred to some other company or companies in Australia:

- (1) having objects similar to the Company;
- (2) which prohibits the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Company under or by virtue of rule 1.6; and
- (3) (if at the time of winding up or dissolution the Company is endorsed as an income tax exempt charity pursuant to the Tax Act) which is endorsed as an income tax exempt charity for the purposes of the Tax Act,

such company or companies to be determined by the Board at or before the time of dissolution and in default thereof by the Chief Judge in Equity of the Supreme Court of Victoria or any Judge of that Court as may have or acquire jurisdiction in the matter.

23.2 Prohibition

The members have no right to participate in any distribution or payment of the assets or property of the Company in the event of the winding up or dissolution of the Company.

24. Indemnity

24.1 Indemnification of officers of the Company

The Company indemnifies every person who is or has been an officer (as defined in section 9 of the Act) of the Company or of a wholly-owned subsidiary of the Company (the "Officer") and any member of any Chapter Committee against:

- (1) any liability for costs and expenses incurred by the person in his or her capacity as an officer of the Company or of a wholly-owned subsidiary of the Company or Chapter Committee member, in defending any proceedings, whether civil or criminal, in which judgment is given in the person's favour, or in which the person is acquitted, or in connection with an application in relation to any such proceedings in which relief under the Act is granted to the person by a Court; and
- (2) any liability incurred by the person in his or her capacity as an officer of the Company or of a wholly-owned subsidiary of the Company or Chapter Committee member, to a person other than the Company or a related body corporate, unless the liability arises out of conduct by the person involving a lack of good faith.

25. State Chapters

25.1 Existing State Chapters

Subject to the powers of the Board in rule 25.2, the State Chapters of the Company are those stated in rule 7.7.

25.2 Variation of Areas and new State Chapters

The Board may from time to time:

- (1) authorise the formation of State Chapters, or the elimination or variation of existing State Chapters;
- (2) delegate to such State Chapters such roles, responsibilities, duties and powers as the Board may think fit, revoke or amend any delegation and include such powers, if any, of sub-delegation by the Chapter Committee of the State Chapter to which the delegation applies as the Board thinks fit.

25.3 Members

A State Chapter shall comprise members of the Company residing for the time being in a State, Territory or other area for which the State Chapter is constituted by the Board.

25.4 Chapter Committees

- (1) The role of a Chapter Committee is to provide advice from time to time to the Board and to the Company and to the relevant State Chapter, regarding the efficient conduct of the Company's activities and to give effect to such powers of the directors (if any) as are delegated to that Chapter Committee from time to time by the Board under rule 13.1.
- (2) Subject to rule 25.4(3), the composition of each Chapter Committee may comprise of any member or members of the State Chapter:
 - (a) 60% of whom must be Franchisor Members;
 - (b) 10% of whom must be Franchisee Members; and
 - (c) 30% of whom must be Corporate Advisers or Supplier Members.
- (3) Members of a Chapter Committee must be elected 30 days prior to the Company's annual general meeting.
- (4) Subject to rules 25.4(5) and (6) each member of a Chapter Committee will hold office for a term of two years.
- (5) At the election held before the Next AGM, one half of the members of the Chapter Committee for each State Chapter or if their number is not a multiple of two (2), then the numbers nearest to but not exceeding one half shall retire and be eligible for re-election provided that the President appointed pursuant to rule 25.5 shall be excluded for the purposes of this calculation.
- (6) Unless the members otherwise agree among themselves, the one-half or other nearest number to retire as aforesaid under rule 25.4(5) shall be determined by lot but in every subsequent year the one half or other nearest number who have been longest in office shall retire. As between two or more who have been in office an equal length of time the member or members to retire shall in default of agreement between them be determined by lot.
- (7) Any member of the State Chapter (or in the case of a member that is a body corporate or a partnership, any employee or director of such member or any partner or employee of the partnership) may be eligible for nomination as a candidate for election as a member of the Chapter Committee for that State Chapter provided the composition of the Chapter Committee referred to in rule 25.4(2) is retained.
- (8) The Directors may, from time to time, but subject to this Constitution, determine (whether by By-laws or otherwise):
 - (a) the composition of each Chapter Committee and the procedures for electing, appointing or removing its members;
 - (b) the procedures for the conduct of business and meetings of Chapter Committees;
 - (c) the requirements for the State Chapter to:

- (i) keep financial and other records; and
 - (ii) report to the directors.
- (9) Unless otherwise determined by the directors under rule 25.4(8):
- (a) rule 9 applies (with the necessary changes) to meetings of each Chapter Committee; and
 - (b) the procedures for nominations, voting and elections will be the same as those set out in this Constitution for the calling of general meetings and the election of directors.

25.5 **Presidents**

- (1) Each Chapter Committee will have a President. Upon the retirement of a President, a new President must be elected at least 30 days before the Company's annual general meeting. The procedure for nominations, meetings and voting will be the same as those set out in this Constitution for the calling and holding of general meetings and the election of directors.
- (2) The President of each Chapter Committee shall be the Chapter Representative for that State Chapter for the duration of his or her presidency.
- (3) Subject to rule 25.5(4), the President of each Chapter Committee who is elected immediately prior to or otherwise holds office immediately after the Next AGM and all other subsequently elected Presidents will hold office for a term of two years unless earlier removed in accordance with the By-laws or until the office is vacated in accordance with the By-laws.
- (4) The three Presidents who retire as a Chapter Representatives under rule 8.2(3) must also retire from the office of President. Three new Presidents must then be re-elected for a term of two years no later than 30 days after the Next AGM.
- (5) A President who retires or whose office is vacated under this Constitution is eligible for election or re-election for the position of President.
- (6) In the event that a director ceases to be a Chapter Representative by virtue of rule 8.6(1), the Board shall be entitled to fill the vacant position as a casual vacancy. However, the Board must fill the casual vacancy by either reinstating the director or appointing the person who is the President of the Chapter Committee.
- (7) Any member of the State Chapter (or in the case of a member that is a body corporate or a partnership, any employee or director of such member or any partner or employee of the partnership) is eligible to be nominated as a candidate for election as a President of a Chapter Committee.

25.6 **Accountability**

Chapter Committees will be responsible to the relevant State Chapter, which in turn will be responsible to the Company, with office bearers at all levels operating under this Constitution and in accordance with the By-Laws.

26. **By-Laws**

26.1 **By-laws**

The Directors may from time to time make, amend or rescind such by-laws, rules and regulations, not inconsistent with this Constitution, as in the opinion of the directors are necessary and desirable for the proper control, administration and management of the Company's operations, finances, affairs, interests, effects and property and the duties, obligations and responsibilities of the members.

26.2 **State Chapter By-laws**

Without limiting rule 26.1, the Directors may make, revoke and alter from time to time by-laws dealing with the election of Chapter Committees and the meetings of Chapter Committees. Such by-laws must include provisions to the effect of (and until made will be deemed to comprise) the following:

- (1) State Chapters will meet at the dates, times and places determined by the relevant Chapter Committee;
- (2) non-members may attend State Chapter functions but must pay a greater fee than members for attendance;
- (3) no joining or annual fees apply to State Chapters;
- (4) the right to vote at a State Chapter meeting will be as set out in rule 2.6.

26.3 **Incorporation**

The State Chapters are part of the Company and will not be formed as separate entities, unless the members in general meeting resolve that this should occur.

27. **Transition**

27.1 **Status Quo**

Any person being a member or holding, or having held any office or position with the Company prior to the adoption of this amended Constitution shall, subject to this Constitution and the continued existence of an office or position, or an equivalent office or position, continue to be a member and to hold or be deemed to have held, such office or position as though elected or appointed according to this Constitution.

27.2 **By-Laws Continue**

Unless repealed or revoked, all By-laws including Standards of Conduct in force at the time of this amended Constitution are adopted and shall so far as possible continue to apply until repealed, revoked or amended.

