

Corporations Act 2001

A Company Limited by Guarantee

THE CONSTITUTION

of

SWITCH2VAPING LIMITED

ACN:

CORPORATE EXPRESS

Suite 506, Level 5, 267 Castlereagh Street, SYDNEY NSW 2000

Telephone: (02) 9261 2100 Facsimile: (02) 9283 2294

E-Mail: admin@corporateexpress.com.au

Version 8.7

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SWITCH2VAPING LIMITED

ACN:

NAME

1. The name of the company is **SWITCH2VAPING LIMITED**

REPLACEABLE RULES DISPLACED

2. The provisions of the *Corporations Act* which operate as replaceable rules do not apply to the company.

INTERPRETATION

3. (a) In this constitution:

“**ATO**” means the Australian Taxation Office;

“**ATO Endorsed Entity**” means an entity which is charitable at law and which is endorsed by the ATO as a deductible gift recipient in accordance with Division 30 of the ITAA 1997;

“**auditor**” means the person appointed for the time being as the auditor of the company;

“**the board**” or “**the board of Directors**” means the Directors and alternate Directors present at a meeting, duly convened as a board meeting, at which a quorum is present;

“**Business Day**” means a day which is not a Saturday, Sunday or bank or public holiday in the state of the company’s incorporation;

“**the company**” means **SWITCH2VAPING LIMITED**;

“*Corporations Act*” means the *Corporations Act 2001* (Cth) or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as so modified, amended or enacted;

“**Deductible Contribution**” means a contribution of money or property as described in item 7 or item 8 of the table in Section 30-15 of the ITAA 1997;

“**Director**” means a person who is a Director for the time being of the company and “**Directors**” means more than 1 Director, and in relation to rules applying to meetings of the board, including voting by Directors and material personal interests, references to Directors include alternate Directors;

“**general meeting**” means a meeting of the **company’s members**;

“**ITAA 1997**” means the Income Tax Assessment Act 1997 (Cth);

“**Legal Proceedings**” means any claim, action, suit or demand, enquiry, Royal Commission or other regulatory investigation, whether civil or criminal, which relates to or arises in connection with the Officer being an officer of the company or the employment of the Officer with the company;

“**member**” means a member of the company;

“**Officer**” means a Director, an alternate Director, a Secretary, an officer as defined by the *Corporations Act*, or the Chief Executive Officer;

“**regulation**” means a regulation made by the board in accordance with paragraph 51(b)(v) of this constitution;

“**the seal**” means the common seal (if any) of the company; and

“**secretary**” means any person appointed to perform the duties of a secretary of the company and includes an honorary secretary.

- (b) Except so far as the contrary intention appears in this constitution, an expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the *Corporations Act*, the same meaning as in that provision of the *Corporations Act*.
- (c) A reference to any statute or any provision of any statute is to be read as though the words “or any statutory modification thereof or any statutory provision substituted therefore” were added to that reference.

OBJECTS

4. The objects for which the company is established are:

- (a) To **improve public health** by educating the Australian public on the health, financial and social consequences of **tobacco smoking, tobacco related harm, and evidence-based strategies to quit tobacco smoking and for tobacco harm reduction**;
- (b) To **encourage complete cessation** of tobacco smoking in Australia;

- (c) To help and support smokers to effectively quit tobacco smoking and to make informed choices in the tobacco smoking cessation process;
- (d) To provide evidence-based information on the role of nicotine-containing electronic cigarettes in reducing tobacco harm to:
 - i. smokers who are unable or unwilling to quit tobacco smoking with currently approved methods; and
 - ii. health professionals;
- (e) To disseminate accurate evidence-based information in relation to nicotine-containing electronic cigarettes to alleviate widespread misperceptions of the public and health professionals about vaping and nicotine which are undermining its potential as a tobacco harm reduction strategy;
- (f) To disseminate information on the legal pathways available to access and use nicotine-containing electronic cigarettes, and to educate tobacco smokers as to the responsible, safe and correct use of nicotine-containing electronic cigarettes based on medical research;
- (g) To discourage the use of all electronic cigarettes by non-smokers;
- (h) To take action to assist with or effect the elimination of the promotion of tobacco products and tobacco smoking;
- (i) To engage in research into tobacco smoking cessation aids, tobacco smoking cessation strategies, tobacco harm reduction strategies, and to encourage such research by other individuals and organisations;
- (j) To collaborate with other individuals and organisations in Australia in the furtherance of the above objects or any of them;
- (k) To apply the income of the company solely to promote these purposes; and
- (l) To do any and all such acts and things as are conducive or incidental to the attainment of the above objects or any of them.

POWERS

- 5. Solely for the purpose of carrying out the aforesaid objects and not otherwise, the company has the following powers:
 - (a) to make such grants to or in aid of or to make donations or give assistance to or to make contracts with such individuals, trusts, corporations, associations, societies, institutions or other organisations or authorities whether within or outside the Commonwealth of Australia as may be necessary or desirable;

- (b) to print, publish and distribute any papers, journals and other publications that the company may think desirable for the promotion of its objects;
- (c) as far as the law will permit and subject to the provisions of any relevant statute, rule, regulation, by-law or any licence issued in pursuance thereof to collect funds and to solicit, receive, enlist and accept financial and other aid, subscriptions, donations and bequests from individuals, trusts, companies, associations, societies, institutions and other organisations or authorities, and from governments and public bodies;
- (d) to undertake and execute any trusts the undertaking whereof may be necessary or desirable for the carrying out of any of the objects of the company;
- (e) to accept any gift, endowment or bequest made to the company generally or for the purpose of any specific object and to carry out any trusts attached to any gift, endowment or bequest, provided that the company must deal with any property which is subject to any trusts only in such manner as is allowed by law having regard to such trusts;
- (f) to subscribe to, become a member of, cooperate with or amalgamate with any other association or organisation, whether incorporated or not, whose objects are similar to those of the company;
- (g) to buy, sell and deal in all kinds of apparatus and all kinds of provisions, liquid and solid, required by the members of the company or persons frequenting the company's premises;
- (h) to purchase, take on lease or in exchange, hire and otherwise acquire any lands, building, easement or property, real and personal, and any rights or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the objects of the company;
- (i) to enter into any arrangements with any government or authority, supreme, municipal, local or otherwise, that may seem conducive to the company's objects or any of them and to obtain from any such government or authority any rights, privileges and concessions which the company may think it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
- (j) to appoint, employ, remove or suspend such managers, clerks, secretaries, servants, workmen and other persons as may be necessary or convenient for the purposes of the company;
- (k) to establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the company or the dependents or connections of any such persons; and to grant pensions and allowances; and to make payments towards insurance; and to subscribe or guarantee money for charitable or benevolent objects; or for any public, general or useful object;

- (l) to construct, improve, maintain, develop, work, manage, carry out, alter or control any **houses, building, grounds,** works or conveniences which may seem calculated directly or indirectly to advance the company's interests, and to contribute to, subsidise or otherwise assist and take part in the construction, improvement, maintenance, development, working, management, carrying out, alteration or control thereof;
- (m) to **insure** against fire or otherwise **any insurable property of the company** and to pay premiums on insurance or assurance policies which the company may acquire by any means;
- (n) to **invest and deal with the money of the company not immediately required** in such manner as may be permitted by an Act of the Commonwealth, a State Act, or a law of a Territory of the Commonwealth for the investment of trust funds without special authorisation but the company may hold or retain any property or gift including any stocks funds and shares in the original form in which it was received by the company without selling or converting the same into money and the powers authorities and discretions in relation to securities conferred upon trustees by the applicable State or Territory Trustee Act as amended apply to any such property or gift;
- (o) to **borrow or raise or secure the payment of money** in such manner as the company may think fit and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the company in any way and in particular by the issue of mortgages, charges or debentures, perpetual or otherwise, charged upon all or any of the company's property (both present and future), and to purchase, redeem or pay off such securities;
- (p) to make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (q) to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise **deal with all or any part of the property** and rights of the company;
- (r) to take or hold **mortgages,** liens and charges to secure payment of the purchase price or any unpaid balance of the purchase price, of any part of the company's **property** of whatsoever kind sold by the company or any money due to the company from purchasers and others;
- (s) to **take any gift of property** whether subject to any special trust or not, for any one or more of the objects of the company;
- (t) to hold or arrange **competitions** and provide or contribute towards the provision of prizes, awards and distinctions in connection therewith;
- (u) to purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the companies,

institutions, societies or associations with which the company is authorised to amalgamate;

- (v) to transfer all or any part of the property, assets, liabilities and engagements of the company to any one or more of the companies, institutions, societies or associations with which the company is authorised to amalgamate;
 - (w) to ensure that the company complies with the requirements in regard to ethical and other standards for human and animal experimentation imposed from time to time by institutions or organisations which may provide accommodation or premises for use by the company; and
 - (x) to do all such other acts matters and things and to enter into and make such agreements as are incidental or conducive to the attainment of the objects and the exercise of the powers of the company.
6. The powers set forth in subsection 124(1) of the *Corporations Act* do not apply to the company except in so far as they are included in clauses 4 and 5.

INCOME AND PROPERTY

7. (a) The **income, property and profit** of the company whencesoever derived must only be applied **solely towards the promotion of the objects of the company** as set forth in this constitution.
- (b) The company is a **not-for-profit organisation** and shall not carry on business for the purpose of profit or gain of its owners or members and **no portion of its income or assets, wherever it is derived, may be distributed, paid or transferred directly or indirectly by way of dividend, bonus or otherwise to the members or directors**, unless:
- (i) The distribution is made to another entity with objects similar to the objects of the company and which:
 - A. is charitable at law
 - B. is not carried on for profit or gain of its owners or members, and
 - C. has rules prohibiting the distribution of assets and income to its members; or
 - (ii) the distribution is made to a director or member in good faith of:
 - A. money representing **genuine compensation for services** provided to the company; or
 - B. money representing **reimbursements for reasonable expenses** incurred on behalf of the company

All payments to a director by the company in accordance with this clause 7(b) must be approved by a resolution of the board of directors.

(c) **Establishment and operation of Gift Fund**

The company must maintain for the purpose of pursuing the objects and purpose of the company a fund (*Gift Fund*):

- (i) to which members of the **public are invited to make gifts** of money or property to the Gift Fund for that purpose;
- (ii) to which gifts of money or property or Deductible Contributions for that purpose are to be made;
- (iii) to which **contributions** (that are not gifts) but which can be made to the Gift Fund for that purpose without adversely affecting the company's deductible gift recipient status are to be made;
- (iv) to which **any money** received by the company because of those gifts or Deductible Contributions is to be credited;
- (v) that does not receive any other money or property;
- (vi) which is operated on a **not-for-profit basis**; and
- (vii) in respect of which the company will maintain a **separate bank account**.

(d) **Winding up of the Gift Fund**

At the first occurrence of:

- (i) the winding up of the Gift Fund (including where the company ceases to operate a fund, authority or institution that is an ATO Endorsed Entity); or
- (ii) the company ceasing to be an ATO Endorsed Entity,

any surplus assets of the company or the Gift Fund, remaining after payment of liabilities attributable to it must be **transferred to one or more ATO Endorsed Entities** (whether or not such ATO Endorsed Entities are members) that satisfy the requirements of clauses 11(a) to (d) as the board in its discretion determines, and in default, by application to the Supreme Court of New South Wales for determination.

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- (e) **Administration of the Gift Fund**
- (a) The Gift Fund shall be administered by a **Fund Committee**:
- (i) consisting of no fewer than three persons appointed by the directors of the company in a meeting of the board of directors. The directors of the company in meeting may remove members of the Fund Committee and fill casual vacancies as it sees fit; and
 - (ii) where a majority of the members of the Fund Committee must be persons with a degree of responsibility to the community as a whole as defined in Taxation Ruling 95/27.
- (b) In the administration of the Gift Fund, the Fund Committee shall:
- (i) ensure that all times the fund is maintained and **used for the purpose** of pursuing the objects and purpose of the company (*Fund Purposes*);
 - (ii) ensure that the Gift Fund has its **own bank account** (separate from the company bank account) for the deposit of donated monies, including interest accruing thereon and monies earned from public fund assets;
 - (iii) ensure that the Gift Fund is operated separately and maintained with **separate books of account** from the company's general accounts;
 - (iv) have in place appropriate procedures to ensure only and all proper amounts of money and property are credited to the Gift Fund;
 - (v) ensure that any money received by the company from interest on donations, income derived from donated property, and money from the realisation of such property is to be **deposited into the Gift Fund**;
 - (vi) ensure that **receipts are to be issued** in the name of the Gift Fund;

- (vii) ensure any money or property which is incorrectly received into the Gift Fund will be removed from the Gift Fund as soon as practicable with the accounts for the Gift Fund adjusted and noted accordingly; and
 - (viii) keep proper **accounting records** and procedures for the Gift Fund which:
 - A. **record and explain all transactions** and other acts the Gift Fund engages in which is relevant to the company's status as a deductible gift recipient; and
 - B. show that each of the following assets of the Gift Fund is **used by the company only for the Fund Purposes**:
 - I. gifts of money or property for the Fund Purposes;
 - II. Deductible Contributions held for the Fund Purposes
 - III. contributions (that are not gifts) but which can be made to the Gift Fund without adversely affecting the company's deductible gift recipient status; and
 - IV. money received by the Gift Fund because of such gifts or contributions;
 - (ix) keep the records referred in paragraph (viii) for at least five years after the completion of such transactions or acts to which they relate;
 - (x) ensure that the release of monies from the Fund and the management of, and sale of, Fund assets is authorised by the Fund Committee; and
 - (xi) at all times ensure it complies with the requirements of the ITAA 1997 and all other laws and regulations in existence from time to time or any guidelines issued by the ATO in relation to gift funds or such other government authority overseeing the administration of gift funds.
- (c) The company and the Fund Committee agrees to comply with any rules or requirements that the Treasurer may make to ensure that gifts made to the Gift Fund are **only used for its Fund Purposes**.

- (d) The company and/or the Fund Committee will inform the Australian Taxation Office as any change to the governing rules of the Gift Fund.

8. Not used.

LIABILITY OF MEMBERS LIMITED

- 9. The liability of the members of the company is limited to the amount of the guarantee set out in clause 10.

GUARANTEE BY MEMBERS

- 10. Every member of the company undertakes to contribute to the property of the company, in the event of it being wound up while the member is a member or within one year after the member ceases to be a member, for payment of the debts and liabilities of the company contracted before the member ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required, **not exceeding \$10.00.**

WINDING UP

- 11. Upon the winding up of the company the surplus will not be paid to or distributed amongst members, but will after compliance with any transfer obligations outstanding under clause 7(d) in respect of the Gift Fund (if any), be given or **transferred to another body corporate** which, by its constitution, is:
 - (a) **required to pursue objects similar to the objects of the company;**
 - (b) required to apply its profits (if any) or other income in promoting its objects;
 - (c) prohibited from making any distribution of its income or property to its members; and
 - (d) is an ATO Endorsed Entity,

such body corporate to be determined by the board at or before the winding up, and in default, by application to the Supreme Court of New South Wales for determination.

FINANCIAL RECORDS

- 12. **Financial records** must be kept by the company in accordance with Part 2M.2 of the *Corporations Act*.

MEMBERSHIP

13. The following persons are the first members of the company:

Joe Max KOSTERICH

Colin Paul MENDELSON

Alexander David WODAK

Attila Lajos DANKO

Thereafter, the members of the company are to be such persons as the board admits to membership pursuant to this constitution and the regulations.

14. The rights and obligations of a member are personal and are not transferable.
15. Every applicant for membership must:
- (a) be nominated by one and seconded by another member of the company to both of whom the applicant is personally known;
 - (b) sign an application for membership in such form as may from time to time be prescribed by regulation or otherwise in such form as prescribed by the board; and
 - (c) undertake, as a condition of admission, to pay to the company such entrance fee (if any) and annual subscription as may from time to time be payable to the company in accordance with this constitution and to pay the member guarantee amount in clause 10.
16. At the next board meeting after the receipt of any application for membership, that application must be considered by the board, which must thereupon determine upon the admission or rejection of the applicant. In no case is the board required to give any reason for the rejection of an applicant.
17. (a) When an applicant has been accepted for membership, the secretary must forthwith send to the applicant written notice of his or her acceptance and a request for payment of his or her entrance fee (if any) and first annual subscription.
- (b) Upon payment of the entrance fee (if any) and first annual subscription, the applicant becomes a member of the company and the board must, as soon as practicable, enter the name of the applicant in the register of members.
- (c) If the payment is not made within two calendar months after the date of the notice, the board may in its discretion cancel its acceptance of the application for membership of the company.
18. (a) The entrance fee (if any) and annual subscriptions payable by members are as prescribed from time to time by regulation or otherwise such amount as prescribed by the board.

- (b) All annual subscriptions become due and payable in advance on 1 July in every year.
- (c) The board may, if hardship or other sufficient cause is shown, reduce or remit any entrance fee or annual subscription payable by a member.

CESSATION OF MEMBERSHIP

19. Cessation of membership

- (a) A natural person ceases to be a member:
 - (i) if the subscription of a member remains unpaid for a period of two calendar months after it becomes due and notice of the default has been sent to him or her by the secretary and the board resolves to ban the person from all privileges of membership provided that the board may reinstate the member on payment of all arrears if the board thinks fit to do so;
 - (ii) if the person resigns as a member by giving 30 days' notice in writing to the secretary;
 - (iii) if the person dies;
 - (iv) if the person is subject to assessment or treatment under any mental health law and the board resolves that the person should cease to be a member;
 - (v) if the person's whereabouts are unknown for more than 12 months and the board resolves that the person should cease to be a member;
 - (vi) if the person becomes bankrupt or insolvent; or
 - (vii) if the person is expelled as a member in accordance with this Constitution.
- (b) A body corporate ceases to be a member:
 - (i) if the body corporate resigns as a member by giving 30 days' notice in writing to the secretary;
 - (ii) if the body corporate is expelled as a member in accordance with this Constitution;
 - (iii) if the body corporate is placed under external administration or makes any composition or arrangement with its creditors; or
 - (iv) if the body corporate is the subject of an order by a court of competent jurisdiction directing the body corporate to be wound up.

20. A member who has resigned his/her or its membership of the company continues to be liable for any annual subscription and all arrears due and unpaid at the date of resignation and for all other moneys due to the company and in addition for any sum not exceeding \$10.00 for which he/she or it is liable as a member of the company under clause 10.
21. Subject to clause 22, if any member wilfully refuses or neglects to comply with the provisions of this constitution or is guilty of any conduct which in the opinion of the board is unbecoming of a member or prejudicial to the interests of the company the board may by resolution censure, fine, suspend or expel the member from the company.
22. (a) At least one week before the board meeting at which a resolution of the kind mentioned in clause 21 is to be considered, the member concerned must be given written notice of the place, date and time of the meeting and of what is alleged against him/her or it and of the proposed resolution and the grounds thereof, and the member must at that meeting and before the passing of that resolution be given an opportunity to make such oral or written submissions of a reasonable length in relation to it. In the case of a corporate member, a representative of the member shall be permitted to make submissions on its behalf.
- (b) Any such member may by notice in writing lodged with the secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the board, elect to have the question dealt with by the company in general meeting.
- (c) If any such member elects to have the matter dealt with by the company in general meeting, a general meeting must be called for the purpose and, if at the general meeting such a resolution is passed by two-thirds of those present and voting (such vote to be taken by ballot) the member concerned will be punished accordingly, and in the case of a resolution for expulsion, the member will be expelled.

REGISTER OF MEMBERS

23. (a) The secretary must maintain a register of members setting out:
- (i) the name and address of each member;
 - (ii) the date on which each person became a member; and
 - (iii) in respect of each person who has ceased to be a member, the date on which that person ceased to be a member.
- (b) The register of members must be kept at the company's registered office or the principal place of business. A member may inspect the register of members between the hours of 9am and 5pm on any Business Day. No amount may be charged for inspection.

GENERAL MEETINGS

24. An **annual general meeting** of the company must be held in accordance with the provisions of the *Corporations Act*.
25. Section 250R of the *Corporations Act* provides that the business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:
 - (a) the consideration of the **annual financial report, Directors' report and auditor's report**;
 - (b) the **election** of the directors;
 - (c) the appointment of the **auditor**; and
 - (d) determination of auditor's remuneration.
26. **Any Director may whenever he or she thinks fit convene a general meeting**. General meetings may also be convened on such requisition or in default may be convened by such requisitionists as provided by sections 249D or 249E of the *Corporations Act*.
27. Subject to the provisions of the *Corporations Act* relating to special resolutions and agreements for shorter notice, **21 days' notice** at least (exclusive of the day on which the notice is served or taken to be served, and exclusive of the day for which notice is given) must be given to such persons as are entitled to receive such notices from the company.
28. A **notice of general meeting** must:
 - (a) set out the place or places (which may be within or outside Australia), date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (b) in the case of special business, state the general nature of the business to be transacted at the meeting;
 - (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
 - (d) contain a statement that a member has the right to appoint a proxy who must be a member of the company.

PROCEEDINGS AT GENERAL MEETINGS

29. (a) No business may be transacted at any general meeting unless a **quorum of members is present** at all times during the general meeting.

- (b) No resolution may be passed at any general meeting unless a quorum of members is present at the time when the resolution is put to the vote of the meeting.
 - (c) Save as herein otherwise provided, **two members constitute a quorum**, unless there is only 1 member of the company in which case that member constitutes a quorum for any general meeting.
 - (d) If a member attending a general meeting is also a proxy for a member, he or she is to be counted only once in determining whether a quorum is present.
30. If within half an hour from the time appointed for the general meeting (or any longer period of time as the chair may allow) a quorum is not present or ceases to be present at any time during the general meeting, the general meeting, if convened upon the requisition of members, is dissolved; in any other case it stands adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the board may determine. If at the adjourned general meeting a quorum is not present within half an hour from the time appointed for the resumption of the adjourned general meeting or ceases to be present during the general meeting, the general meeting is dissolved.
31. (a) **The chair for the time being of the board** will serve as chairman at every general meeting, or if he or she is not present within 15 minutes after the time appointed for the holding of the general meeting or is unwilling to act, the Directors present may elect a Director present to chair that general meeting or if no Director is elected or if all the Directors present decline to take the chair for the whole or any part of that general meeting, the members present (whether in person or by proxy) may elect one of their number present (in person) to be chairman of the general meeting. If the members do not so elect a chairman, the general meeting will be adjourned to be resumed on the same day, at the same time and at the same place (or places) in the following week.
- (b) The chairman of each general meeting has charge of **conduct of that meeting, including the procedures** to be adopted and the application of those procedures at that meeting.
32. The chairman may, with the consent of members present (in person or by proxy) at any general meeting at which a quorum is present (and must if so directed by a majority of the members present (in person or by proxy) at the general meeting), adjourn the general meeting from time to time and from place to place, but no business may be transacted at any adjourned general meeting other than the business left unfinished at the general meeting from which the adjournment took place. When a general meeting is adjourned for 30 days or more, notice of the adjourned general meeting must be given as in the case of an original general meeting. Save as aforesaid it is not necessary to give any notice of an adjournment or the business to be transacted at an adjourned general meeting.
33. At any general meeting a **resolution put to the vote of the general meeting is to be decided on a show of hands** unless a poll is (before or on the declaration of the result of the show of hands) demanded:

- (a) by the chairman; or
- (b) by at least five members present in person or by proxy; or
- (c) by members with at least 5% of the votes that may be cast on the resolution on a poll.

Unless a poll is so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost or not carried by a particular majority, and an entry to that effect in the book containing the minutes of the proceedings of the company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn by the person or persons who demanded it. A demand for a poll which is withdrawn does not invalidate the result of a show of hands declared before the poll was demanded.

- 34. If a poll is duly demanded it must be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll is 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 must be taken forthwith.
- 35. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a second or casting vote.
- 36. Each member entitled to vote at a general meeting has 1 vote, whether on a show of hands or on a poll. A member may vote in person or by proxy.
- 37. A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by his or her committee or trustee or by such other person as properly has the management of his or her estate, and any such committee, trustee or other person may vote by proxy.
- 38. No member is entitled to vote at any general meeting if his or her annual subscription (if any) is more than two months in arrears at the date of the meeting.
- 39. (a) Within 1 month after each general meeting, the Directors must record or cause to be recorded in the minute book:
 - (i) the proceedings and resolutions of each general meeting;
 - (ii) any declarations at each general meeting; and
 - (iii) all resolutions passed by members without a general meeting.
- (b) The chairman, or the chair of the next general meeting, must sign the minutes within 1 month after the general meeting.

- (c) The minute books must be kept at the registered office.
- (d) Members may inspect the minute books between the hours of 9:00am and 5:00pm on any Business Day. No amount may be charged for inspection.

PROXY

- 40. (a) A member who is entitled to attend and to vote at a general meeting may appoint a person as proxy to attend, speak and vote for that member.
 - (b) An instrument appointing a proxy must be in writing under the hand of the appointor or of his or her attorney duly authorised in writing.
 - (c) A proxy may but need not be a member.
 - (d) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
 - (e) An instrument appointing a proxy may specify that the proxy is to abstain from voting in respect of a particular resolution and, where an instrument of proxy so provides, the proxy may not vote in respect of the resolution.
 - (f) Unless otherwise instructed, a proxy may vote or abstain from voting as he or she thinks fit.
 - (g) An instrument appointing a proxy is taken to confer authority to demand or join in demanding a poll.
41. An instrument appointing a proxy must be in the following form or in a form that is as similar to the following form as the circumstances allow:

SWITCH2VAPING LIMITED

I, _____ of _____, _____,
 being a member of the company, hereby appoint
 of _____ or, failing him/her,
 of _____
 as my proxy to vote for me and on my behalf at the *annual general/*general meeting
 of the company to be held on the _____ day of _____ 20____ and at any adjournment
 of that meeting.

This form is to be used in accordance with the directions below. Unless the proxy is directed, he or she may vote or abstain as he or she thinks fit.

	For	Against	Abstain
[Description of resolution]			
*Strike out whichever is not desired.			

INSTRUCTIONS

- (i) *A proxy may but need not be a member of the company.*
 - (ii) *To direct the appointee to cast your vote in respect of an item of business in a particular manner either on a show of hands or on a poll, place a sufficient indication (including, without limitation, a tick or a cross) in the relevant box in respect of that item of business.*
42. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of that power or authority must be deposited at the registered office of the company, sent to a fax number at the registered office, or at such other place, fax number or electronic address as is specified for that purpose in the notice convening the general meeting, not less than 24 hours before the time for holding the general meeting or adjourned general meeting at which the person named in the instrument proposes to vote or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. In default the instrument of proxy will not be treated as valid.
43. A vote given in accordance with the terms of an instrument of proxy or attorney is valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no intimation in writing of such death, unsoundness of mind or revocation as aforesaid has been received by the company at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.
44. Notwithstanding clauses 29 to 43 inclusive, the company may hold a general meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.
45. The company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

BODY CORPORATE

46. Appointment of corporate representative
- (a) **If a member is a body corporate, it may appoint a natural person as its representative to exercise on its behalf any or all of the powers it may exercise:**
 - (i) at general meetings;
 - (ii) at meetings of creditors or debenture holders; or
 - (iii) relating to resolutions to be passed without meetings.
 - (b) The appointment of a **corporate representative** may be a standing one.

47. Authority to act as corporate representative

- (a) An appointment of a corporate representative must be in writing and be signed by the body corporate appointing the representative and state:
 - (i) the member's name and address;
 - (ii) the company's name;
 - (iii) the representative's name or the name of the office held by the representative; and
 - (iv) the general meeting at which the representative may act, or if the appointment is a standing one, a clear statement to that effect.
- (b) The instrument appointing the corporate representative may restrict the exercise of any power.

48. Instrument to be received by company

- (a) An instrument purporting to appoint the corporate representative is not valid unless it is received by the company at least 24 hours before the general meeting or, in the case of an adjourned general meeting, at least 24 hours before the resumption of an adjourned general meeting.
- (b) An instrument appointing a corporate representative must be received by the company at any of the following:
 - (i) the registered office;
 - (ii) a fax number at the registered office; or
 - (iii) a place, fax number or electronic address specified for that purpose in the notice of the general meeting.

49. Revocation and appointment of corporate representative

The appointment of a corporate representative may be revoked by the member who appointed the corporate representative by notice to the company from the member stating that the appointment of the corporate representative is revoked or by appointing a new corporate representative.

50. Validity of votes of corporate representative

A vote cast by a corporate representative will be valid unless before the start of the general meeting (or, in the case on an adjourned general meeting, before the resumption of the adjourned general meeting) at which a corporate representative votes:

annual general meeting is entitled to vote for any number of such candidates not exceeding the number of vacancies.

(iv) If there is not a sufficient number of candidates nominated the board may fill up the remaining vacancy or vacancies.

(b) Election by directors

(i) Subject to this constitution, the board may by resolution at a board meeting appoint a natural person as a Director, as an additional Director or to fill the office of a Director vacated when a Director ceases to be a Director.

(ii) If a person is appointed as a Director by the board, the company must confirm the appointment at the next annual general meeting. If the appointment is not confirmed, the person ceases to be a Director at the conclusion of the annual general meeting.

56. A Director elected in accordance with clause 55 of this constitution takes office on the later of:

- (a) the conclusion of the annual general meeting at which he or she is elected; and
- (b) the date of appointment and the date on which the company receives the signed consent to act as a director. An appointment of a person as a Director is not effective unless a signed consent to the appointment is provided by that person to the company,

and subject to clause 55(b)(ii) and this constitution generally, holds office until the conclusion of the next succeeding annual general meeting. For the avoidance of doubt, a retiring Director is eligible for re-appointment in accordance with this constitution.

57. The company may by resolution of which notice pursuant to section 203D of the *Corporations Act* has been given remove any Director before the expiration of his or her period of office, and may by a resolution appoint another person in his or her stead; the person so appointed holds office only until the next following annual general meeting.

58. The office of a **Director becomes vacant** if the Director:

- (a) becomes an **insolvent** under administration or makes any arrangement or composition with his or her creditors generally;
- (b) becomes **prohibited** from being a director of a company by reason of any order made under the *Corporations Act*;
- (c) becomes of **unsound mind** or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) **resigns** his or her office by notice in writing to the company;

- (e) for more than 12 months is absent without permission of the board from meetings of the board held during that period;
- (f) holds any office of profit under the company otherwise than as provided by clause 8; or
- (g) dies.

59. If a casual vacancy occurs on the board, the board may appoint another member to fill the vacancy for the balance of the term of office which the former Director would otherwise have served.

POWERS AND DUTIES OF THE BOARD

60. (a) Subject to the *Corporations Act* and to any other provision of this constitution, the business and affairs of the company are to be managed by the board, which may exercise all such powers of the company as are not, by the *Corporations Act* or by this constitution, required to be exercised by the company in general meeting.
- (b) Without limiting the generality of subclause (a), the board may exercise all the powers of the company:
- (i) to borrow and raise money;
 - (ii) to charge any property or business of the company and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person;
 - (iii) to determine who is entitled on behalf of the company to sign, draw, accept, endorse or otherwise execute cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, receipts, acceptances, endorsements, releases, contracts and documents;
 - (iv) to pay the costs, charges and expenses incidental to the promotion, management and regulation of the company; and
 - (v) to make, amend and repeal regulations, not being inconsistent with the *Corporations Act* or this constitution, in relation to the affairs of the company.
61. Any regulation for the time being in force is binding on the members as if it were included in this constitution.
62. Within 1 month after each board meeting, the board must cause minutes to be made:
- (a) of all appointments of officers and servants;

- (b) of the names of the Directors present at all general meetings and board meetings; and
- (c) of all proceedings at all general meetings and board meetings.

Such minutes must be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting.

MANAGING DIRECTOR

63. (a) Subject to clause 63(c), the board may appoint 1 or more of the Directors to the office of Managing Director for such period, and on such terms, as the board determines.
- (b) The board may confer on the Managing Director any of the powers that the board may exercise.
- (c) The board may vary or revoke a conferral of any power on the Managing Director.
- (d) Subject to clause 63(c), the board may at any time vary or revoke an appointment of a Managing Director.
- (e) The appointment of a Managing Director is automatically revoked if the Managing Director ceases to be a Director.

ALTERNATE DIRECTORS

64. (a) Appointment and terms of appointment
- (i) If a Director wishes to appoint a person as an alternate Director, that Director must give notice to the company detailing:
 - (A) the name, experience and qualifications of the person;
 - (B) the terms upon which the Director intends to appoint the person as an alternate Director, including whether the person is to exercise some or all of the powers of the Director; and
 - (C) whether or not the alternate is to receive notice of each meeting the Director is entitled to attend.
 - (ii) The board may ask for further information in relation to the alternate Director's qualifications and experience.
 - (iii) If the alternate Director is an existing Director, the appointment will take effect immediately.

- (iv) If the alternate Director is not an existing Director, at the first Board meeting after the notice of the proposed appointment has been received by the board, the board must consider the proposed appointment and either accept or reject the appointment. If the board accepts the appointment of the alternate Director, the Director may appoint the person on the terms of appointment.
- (v) Where the alternate Director is not a Director, an appointment of a person as an alternate Director is not effective until a signed consent to the appointment is provided by that person to the company. Accordingly, such an appointment will take effect on the later of the date of appointment and the date on which the company received the signed consent.
- (vi) An alternate Director is not an agent of the Director appointing the alternate.

(b) No liability

The company is not responsible for ensuring that the terms of appointment of an alternate Director are complied with and accordingly, is not liable if those terms are not complied with.

(c) Remuneration of alternate Director

An alternate Director is not entitled to receive any fee (or other remuneration) from the company for services performed as an alternate Director.

(d) Notice and attendance at Board meetings

If the notice appointing the alternate Director provides that the alternate Director is to receive notice of Board meetings, the company must provide each alternate Director with notice. By notice to the company, the Director who appointed an alternate Director may at any time require that the notice cease to be given to the alternate Director.

(e) Voting of alternate

An alternate Director is entitled to a vote for each Director that the alternate Director represents in addition to any vote the alternate may have as a Director in the alternate Director's own right.

(f) Termination of appointment of alternate Director

(i) A Director who appointed an alternate Director may terminate the appointment of the alternate Director at any time by notice to the alternate Director, the Directors and the company.

(ii) An alternate Director may terminate the alternate Director's appointment at any time by notice to the Directors and the company.

- (iii) A termination of appointment does not take effect until the company has received notice of termination.
- (g) Cessation of appointment of alternate Director

An alternate Director ceases to be an alternate Director if the person who appointed that alternate Director ceases to be a Director.

PROCEEDINGS OF THE BOARD OF DIRECTORS

65. (a) The board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A Director may at any time and the secretary must on the requisition of a Director convene a board meeting.
- (b) Reasonable notice of each board meeting must be given to the Directors and each alternate Director entitled to receive notice (if any). Each notice must state:
- (i) the date, time and place (or places) of the board meeting;
 - (ii) the general nature of the business to be conducted at the board meeting; and
 - (iii) any proposed resolutions.
- (c) No resolution passed at or proceedings at any board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:
- (i) that board meeting;
 - (ii) any change of place (or places) of that board meeting;
 - (iii) postponement of that board meeting; or
 - (iv) resumption of that adjourned board meeting.
66. Subject to this constitution questions arising at any board meeting are to be decided by a majority of votes and a determination by a majority of the Directors present is for all purposes taken to be a determination of the Directors. Each Director present in person or by alternate Director is entitled to vote and has 1 vote. In case of an equality of votes the chairman of the board meeting has a second or casting vote.
67. The quorum necessary for the transaction of the business of the board is two Directors not counting alternate Directors (if any) or such greater number as may be fixed by the Directors. The quorum must be present at all times during the board meeting.
68. The continuing Directors may act notwithstanding any vacancy in the board, but if and so long as their number is reduced below the number fixed by clause 67 as the necessary quorum of the board, the continuing Director or Directors may act for the

purpose of increasing the number of Directors to that number or of convening a general meeting of the company, but for no other purpose.

69. (a) The Directors **must from time to time elect one of their number as chair of their meetings and may determine the period for which he or she is to hold office.** Following the expiration of the term of a chair, the Directors must elect another Director as chair who will chair subsequent board meetings for the period determined by the board.
- (b) If the chair is not present within 10 minutes after the time appointed for a board meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that board meeting, the Directors present may elect a Director present to chair that board meeting.
70. (a) Any Director who has a **material personal interest in a contract or proposed contract** of the company, holds any office or owns any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, must give the board notice of the interest at a board meeting. A notice of a material personal interest must set out:
- (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the company.
- The notice must be provided to the board at a board meeting as soon as practicable.
- (b) A Director who has a **material personal interest in a matter** that is being considered at a board meeting:
- (i) may not vote in respect of any contract or proposed contract with the company in which he or she is interested, and if the Director does so vote his or her vote is not to be counted; and
 - (ii) may not be present while the matter is being considered at the meeting, and accordingly will not count for the purposes of determining whether there is a quorum.
71. The board may delegate any of its powers and/or functions (not being duties imposed on the board as the Directors of the company by the *Corporations Act* or the general law) **to one or more committees** consisting of such Director or Directors, member or members, employee or employees of the company or any other person as the board thinks fit. Any committee so formed must conform to any regulations that may be given by the board and subject thereto has power to co-opt any member or members and all committee members have one vote.
72. The board may **appoint one or more advisory committees** consisting of such Director(s) as the board thinks fit. Such advisory committees act in an advisory capacity only. They must conform to any regulations that may be given by the board

and subject thereto have power to co-opt any member or members and all such advisory committee members have one vote.

73. Every committee or advisory committee may meet and adjourn as it thinks proper. Questions arising at any meeting are to be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman has a second or casting vote.
74. All acts done by any board meeting or of a committee or by any Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such board, committee or Director, or that the Directors or any of them were disqualified, as valid as if every such person had been duly appointed and was qualified to be a Director or committee member.
75. (a) If all of the Directors have signed a document containing a statement that they are in favour of a resolution of the board in terms set out in the document, a resolution in those terms is taken to have been passed at a board meeting held on the day on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at time at which, the document was last signed by a Director.
- (b) For the purpose of subclause (a), two or more separate documents containing statements in identical terms each of which is signed by one or more Directors are together taken to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.
- (c) A reference in subclause (a) to all of the Directors does not include a reference to a Director who, at a board meeting, would not be entitled to vote on the resolution.
76. (a) If all of the Directors consent, the Directors may participate in a board meeting by means of any technology allowing all persons participating in the meeting to hear each other at the same time. Any Director participating in such a meeting is for the purposes of this constitution taken to be personally present at the meeting.
- (b) The consent of a Director to the use of technology may be a standing one.
- (c) Any consent of a Director to the use of technology may be withdrawn only within a reasonable period prior to a meeting at which the technology is to be used.

SECRETARY

77. The board may in accordance with section 204D of the *Corporations Act* appoint a secretary for such term, and upon such conditions as it thinks fit, and any secretary so appointed may be removed by it.

SEAL

78. (a) If the company has a seal, the board must provide for its safe custody (and any duplicate of it).
- (b) The seal (and any duplicate of it) may be used only by the authority of the board or of a committee of the board authorised by the board to authorise the use of the seal, and every instrument to which the seal is affixed must be signed by a Director and be countersigned by another Director or by a secretary.

INSPECTION OF BOOKS

79. (a) The Directors may determine whether and to what extent, and at what time and places and under what conditions, the books of the company or any of them will be open to the inspection of members other than Directors, and a member other than a Director has no right to inspect any document of the company except as provided by law or authorised by the Directors or by the company in general meeting.
- (b) Any Director may at any time access and inspect any financial and any other record of the company.
- (c) The board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record and any other record of the company relating to the time during which the person was a Director.

FINANCIAL REPORT

80. The board must distribute copies of every:
- (a) annual financial report;
 - (b) report of the Directors for the year; and
 - (c) report of the auditor or auditors on the financial report,
- as required by the *Corporations Act*.
81. The board must lay before each annual general meeting:
- (a) the financial report;
 - (b) the report of the Directors; and
 - (c) the report of the auditor or auditors,
- for the last financial year ended before the annual general meeting.

AUDITOR

82. (a) Appointment

A properly qualified auditor or auditors must be appointed and his or their duties regulated in accordance with Part 2M.4 of the *Corporations Act*.

(b) Removal

- (i) The company may remove an auditor by resolution at a general meeting.
- (ii) At least 2 months' notice must be given to the company of the intention to move a resolution to remove an auditor at a general meeting.
- (iii) If notice of an intention to move a resolution to remove the auditor at a general meeting is received by the company, the auditor must be given a copy of the notice as soon as practicable.
- (iv) The notice of an intention must also inform the auditor that the auditor:
 - (A) may submit written representations to the company within 7 days after receiving the notice and that the auditor may request the company to send a copy of the written representations to the members before the resolution is put to a vote; and
 - (B) may speak at the general meeting or request that the written representations be read at the general meeting at which the resolution is voted upon.

NOTICE

83. (a) A notice may be given by the company to any member by:

- (i) serving it on the member personally; or
 - (ii) leaving it at the member's registered address or the address if any supplied by the member to the company for the giving of notices to the member as recorded in the register of members; or
 - (iii) sending it by post to the member at his or her registered address or the address if any supplied by the member to the company for the giving of notices to the member as recorded in the register of members; or
 - (iv) sending it by fax to the member's current fax number for notices; or
 - (v) sending it by email to the member's current email address for notices.
- (b) Where a notice is sent by post, service of the notice is taken to be effected by properly addressing, pre-paying and posting a letter containing the notice, and

to have been effected, in the case of a notice of a meeting, on the third day after the date of its posting, and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.

- (c) A notice sent by facsimile (provided a status report is received by the sender which shows the notice has been transmitted) is taken to be served on the Business Day after it is sent immediately upon completion of sending if such completion is within business hours in the place where the addressee's facsimile machine is located, but if not, then at 9:00 am next occurring during business hours at such place.
 - (d) A communication is given if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient.
 - (e) For the purposes of this clause, "**business hours**" means from 9:00 am to 5:00 pm on a Business Day.
 - (f) If a communication is given after 5:00pm in the place of receipt or on a day which is not a Business Day in the place of receipt, it is taken as having been given at 9:00am on the next day which is a Business Day in that place.
84. (a) Notice of every general meeting must be given in the manner authorised by clause 83 to:
- (i) every member except those members for whom the company has no registered address or other address for the giving of notices to him or her;
 - (ii) each Director; and
 - (iii) the auditor or auditors for the time being of the company.
- (b) No other person is entitled to receive notices of general meetings.

INDEMNITY

85. Except to the extent that it is prohibited from doing so by the *Corporations Act*, the company:
- (a) indemnifies every Officer and past Officer (with the exception of any auditor) of the company to the fullest extent permitted by law against a liability incurred by that person as an Officer of the company or a subsidiary of the company, including without limitation legal costs and expenses incurred in participating or being involved in or in defending Legal Proceedings;
 - (b) may pay or agree to pay a premium in respect of a contract insuring any such person against any such liability; and

- (c) every employee who is not a Director, secretary or executive officer of the company may be indemnified out of the property of the company against a liability:
 - (i) incurred by the employee acting in that capacity; and
 - (ii) for the costs and expenses incurred by an employee:
 - (A) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the employee or in which the person is acquitted; or
 - (B) in connection with an application, in relation to such proceedings, in which the court grants relief to the employee under the *Corporations Act*.

MODIFICATION OR REPEAL OF THIS CONSTITUTION

- 86. (a) This constitution may be modified or repealed only by a special resolution of the company in a general meeting.
- (b) Any modification or repeal of this constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.