
Constitution

Centre for Organic Research and Education Ltd



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Constitution

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Constitution

Centre for Organic Research and Education Ltd
ABN 22 166 587 364
(the Company)

1 Definitions and interpretation

1.1 Definitions

In this Constitution, unless the context requires otherwise:

ACNC Act	means the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth).
AGM	means annual general meeting.
Applicable Act	means: (a) while the Company is a Registered Charity, the ACNC Act and the Corporations Act; or (b) if the Company is not, or ceases to be, a Registered Charity, even if it is still a charity, the Corporations Act.
Association	means the Centre for Organic Research & Education Inc. which is the entity whose incorporation was transferred to the Company.
Board	means the board of Directors of the Company.
Business Day	means a day on which banks are open for general banking business in Sydney, New South Wales, excluding Saturdays, Sundays and public holidays in that city.
Chairperson	means the person appointed or elected from time to time pursuant to clause 20.
Commissioner	means the Commissioner of Taxation, a second Commissioner of Taxation or a Deputy Commissioner of Taxation or other delegate of the Commissioner of Taxation for the purposes of the Tax Act.
Company	means the company defined at the beginning of this Constitution.
Constitution	means this Constitution as supplemented, substituted or amended from time to time and includes any rules, regulations and by-laws of the Company for the time being in force.

Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Deputy Chairperson	means the person appointed or elected from time to time pursuant to clause 20.
Director	means a person occupying the position of director of the Company.
Eligible Charity	means a fund, authority or institution: <ul style="list-style-type: none"> (a) which is charitable at law with objects similar to or inclusive of the objects in clause 2; (b) that prohibits the distribution of any surplus assets to its members to at least the same extent as the company; and (c) that is a deductible recipient within the meaning of the Tax Act and is on the Register of Environmental Organisations.
First Resolution	has the meaning given to that term in clause 10.2(a).
GST	has the meaning given to that term by Section 195-1 of the GST Act.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> .
Life member	is an honorary member appointed under clause 6.7
Member	means a person who is entered in the Register.
Membership	means the contractual rights of a person to membership of the Company, being the rights attaching to the class of membership conferred on that person.
Membership Year	means each period of 12 Months commencing on 1 July and ending on the next ensuing 30 June.
Minister	means the federal Minister with responsibility for the environment.
Month	means calendar month.
Office	means the Company's registered office.
Officer	has the meaning given to the term in section 9 of the Corporations Act.
Poll	means a vote other than a vote on a show of hands, in which votes are notified in writing or some other form, to the Chair of the Meeting, or their nominee at the meeting, and all votes, including those made electronically and by proxy, are counted to determine the outcome of the vote.
Present	means, when used in relation to a Member at a meeting and subject to clause 13.2, present in person, or by audio or audio-visual technology, or by proxy, attorney, representative or guardian.

Public Fund	means the Centre for Organic Research and Education Fund established for the purposes of the Tax Act in accordance with clause 4.
Register	means the register of members of the Company.
Registered Charity	means a charity that is registered under the ACNC Act.
Register of Environmental Organisations	means the register kept in accordance with section 30-255 of the Tax Act.
Responsible Person	<p>means an individual who has the requisite degree of responsibility to the wider Australian community by virtue of their tenure of public office or their position in the community including for example who –</p> <ul style="list-style-type: none"> (a) performs a significant public function (including school principals, academics or teachers with more than five years' experience, mayors, town clerks and members of parliament); (b) is a member of a professional body having a code of ethics or rules of conduct; (c) is officially charged with spiritual functions by a religious institution; (d) has received formal recognition from government for services to the community; (e) is a director of a company whose shares are listed on the ASX Limited; or <p>is approved as a Responsible Person by the Commissioner or department with responsibility for this approval.</p>
Secretary	means a person appointed from time to time pursuant to clause 25.1.
Security Interest	means any mortgage, lien, charge (whether fixed or floating), bill of sale, caveat, pledge, claim, trust arrangement, preferential right, right of set-off, title retention or other form of encumbrance and includes any "security interest" within the meaning of section 12 of the <i>Personal Property Securities Act 2009</i> (Cth).
Special Resolution	<p>means a resolution:</p> <ul style="list-style-type: none"> (a) of which notice has been given under clause 12.5 and 12.6(c), and (b) that has been passed by at least 75% of the votes cast by Members Present and entitled to vote on the resolution.
Subscription	means the annual subscription fee payable by Members pursuant to clause 6.3 and 6.4.

1.2 Words and expressions

In this Constitution, unless expressly provided otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a gender includes all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule, exhibit, attachment, annexure or party is a reference to a clause or paragraph in, or a schedule, exhibit, attachment, annexure or party to, this Constitution;
- (e) a reference to this Constitution includes any schedules, exhibits, attachments or annexures to it (as applicable);
- (f) headings are for convenience and do not affect interpretation;
- (g) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (h) a reference to “\$”, “A\$”, “AUD” or “dollar” is a reference to Australian currency;
- (i) a reference to a particular person includes that person’s executors, administrators, successors, permitted substitutes and permitted assigns who take under an assignment or novation pursuant to the terms of this Constitution;
- (j) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (k) the word “person” includes an individual as well as a body corporate, a partnership, an association, a firm, a joint venture, a trust, a government or governmental authority or governmental agency (whether or not incorporated or having a separate legal identity);
- (l) a reference to any legislation or to any provision of any legislation includes all delegated or subordinate legislation, including statutory instruments and regulations, issued or made under that legislation or provision, and all modifications, re-enactments, consolidations or replacements of any of them, from time to time;
- (m) the words “include”, “including”, “for example”, “such as” or other similar expressions (in any form) are not words of limitation and must be read as if they are followed by the words “without limitation”;
- (n) a reference to a body or entity, other than a party to this Constitution, whether statutory or not:
 - (i) which ceases to exist; or

(ii) whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

- (o) a reference to a time is a reference to Australian Eastern Standard time or Australian eastern Daylight Time, whichever is appropriate;
- (p) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Constitution or any part of it; and
- (q) words or expressions defined in the Corporations Act but not in this Constitution have the same meaning in this Constitution.

1.3 Replaceable rules and interaction with the Applicable Act

- (a) To the extent permitted by law, the replaceable rules contained in the Corporations Act do not apply to the Company.
- (b) While the Company is a Registered Charity, the ACNC Act and the Corporations Act override any clauses in this Constitution which are inconsistent with those Acts as they apply to a Registered Charity.
- (c) If the Company is not a Registered Charity (even if it remains a charity) the Corporations Act overrides any clauses in this Constitution which are inconsistent with that Act.

2 Objects

2.1 Principal objects

The Company is established for the principal purposes of:

- (a) protecting and enhancing the natural environment, or a significant aspect of the natural environment; and
- (b) providing information, education and carrying on research about the natural environment,

with a specific focus on supporting, encouraging, and educating society and taking action about the circular economy systems and responses to changing climate conditions to create a more liveable and sustainable environment.

2.2 Ancillary objects

For the purpose of achieving the principal objects set out in clause 2.1, the Company may:

- (a) Undertake collaboration, advocacy, research and education activities and programs in relation to sustainable systems for climate change responses, soil, green infrastructure, recycling, recycled bio-products, water treatment, refuse technology, sustainable agriculture and food production.

- (b) organise functions, events or entertainment of any kind to raise funds for the Company;
- (c) implement and market materials to promote awareness and knowledge of the purposes and activities of the Company;
- (d) administer one or more funds into which all gifts, contributions, donations and bequests to the Company for the purposes of the Company will be credited;
- (e) disseminate information relating to education and community programs and to produce, edit, publish, issue, sell, circulate and preserve such papers, periodicals, books, circulars and other literary matters as are conducive to the objects of the Company;
- (f) establish and maintain relationships, collaborations and close communications with corporations, entities, associations, foundations, institutions, organisations and groups including Federal, State and Local Government instrumentalities, authorities and professionals that may have related interests to the Company and utilise their resources and facilities to provide and achieve the objects of the Company;
- (g) seek and co-ordinate funding from Federal, State and Local Government and the private sector in the form of grants, gifts, donations and bequests committed to the objects of the Company;
- (h) encourage and promote and generally seek to create greater community awareness in the knowledge and understanding of the objects of the Company;
- (i) provide or attract funds for the facilitation of any of the objects of the Company;
- (j) do all such other things as are incidental or conducive to the attainment of the objects and aims of the Company and its Members.

The Company will be established and operated in Australia.

2.3 Not for profit

- (a) The objects of the Company will not be carried on for the purpose of profit or gain to its Members and the income and property of the Company, from whatever sources derived, will be applied solely towards the promotion of the objects of the Company in this clause 2.
- (b) No income or property of the Company will be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to the Members of the Company.
- (c) Nothing in clauses 2.3(a) and 2.3(b), will prevent:
 - (i) the payment, in good faith, of remuneration to any officers or servants of the Company or to any Member in return for any services actually rendered to the Company or for goods supplied in the ordinary or usual course of business;
 - (ii) the payment of interest at a rate not exceeding the rate fixed for the purposes of this clause 2.3(c) by the Board on money borrowed from any

Member or reasonable and proper rent for premises demised or let by any Member to the Company; or

- (iii) making a payment to a Member in carrying out the Company's charitable objects.

3 Powers of the Company

- 3.1 The Company has, subject to the Applicable Act, power to do all things necessary or convenient to be done for, or in connection with, the performance of its objects.
- 3.2 Without limiting the generality of clause 3.1, the Company has all the rights, powers and privileges and the legal capacity of a natural person including, but not limited to, the powers to:
 - (a) accept gifts, devises, bequests or assignments made to the Company, whether on trust or otherwise, and whether unconditionally or subject to a condition and, if a gift, devise, bequest or assignment is accepted by the Company for the Company on trust or subject to a condition, to act as trustee or to comply with the condition, as the case may be;
 - (b) make available (whether in writing or in any other form and whether by sale or otherwise) information relating to the Company and its functions;
 - (c) occupy, use and control any land or building owned or held under lease by any other person made available to the Company;
 - (d) acquire, hold and dispose of real and personal property;
 - (e) enter into contracts;
 - (f) employ managers and other staff to implement the objects of the Company and pay such fees, salaries, emoluments and expenses as the Board considers reasonable to such persons; and
 - (g) do anything incidental to any of the Company's objects.
- 3.3 Notwithstanding anything contained in this Constitution, any money or other property held by the Company on trust or accepted by the Company subject to a condition, will not be dealt with except in accordance with the obligations of the Company as trustee or in accordance with the relevant condition, as the case may be.

4 Public Fund

4.1 Application of this clause

This clause applies only if the Company is required to establish and maintain a Public Fund by the Tax Act or if the Board otherwise determines to maintain a Public Fund.

4.2 Requirements of the Public Fund

- (a) The Company must, if required under the Tax Act, establish and maintain, for the specific purpose of supporting the environmental objects of the Company set out in clause 2, the Public Fund:
 - (i) to which gifts of money, contributions or property for those purposes must be made;
 - (ii) to which any money received by the Company because of those gifts, contributions or property must be credited;
 - (iii) that does not receive any other money, contributions or property;
 - (iv) to which the public will be invited to make gifts of money or property; and
 - (v) that complies with subdivision 30-E of the Tax Act.
- (b) The Public Fund will not be maintained for the purpose of profit or gain to the Members of the Company.
- (c) All gifts or contributions made to the Public Fund and any money received because of those gifts or contributions will be applied solely towards the promotion of the objects of the Company set out in clause 2 and no portion of the Public Fund will be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to the Members of the Company.
- (d) The Company will maintain a separate bank account for the Public Fund and must comply with subdivision 30-BA of the Tax Act with respect to the administration of the Public Fund.
- (e) The Public Fund will be administered by a committee of not fewer than three persons appointed by the Board, a majority of whom must be Responsible Persons. The Public Fund committee will have the sole responsibility for decisions regarding the use and application of all gifts or contributions made to the Public Fund and any money received because of those gifts or contributions for the objects set out in clause 2 (Objects).
- (f) In accordance with the Tax Act, receipts issued for gifts must state:
 - (i) the name of the Company and Public Fund;
 - (ii) the ABN applicable to the Company;
 - (iii) the date the gift is received;
 - (iv) the fact that the receipt is for a gift;
 - (v) the name of the donor; and
 - (vi) the amount of the gift.

4.3 Changes to Public Fund

The Company must inform the ministerial department with responsibility for the environment as soon as possible if:

- (a) it changes its name or the name of the Public Fund;
- (b) there is any change to the Membership of the management committee of the Public Fund; or
- (c) there has been any departure from the model rules for the Public Funds located in the Guidelines to the Register of Environmental Organisations.

4.4 Ministerial Rules

The Company agrees to comply with any rules that the Treasurer and the Minister with responsibility for the environment may make to ensure that gifts made to the Public Fund are used for its principal purpose.

4.5 Conduit Policy

Any allocation of funds or property to other persons or organisations will be made in accordance with the established purposes of the Company and not be influenced by the preference of the donor.

4.6 Statistical Information

Statistical information requested by the ministerial department with responsibility for the environment on donations to the Public Fund will be provided by the Company within four months of the end of the Financial Year. If required by the Tax Act or the Guidelines to the Register of Environmental Organisations, an audited financial statement for the organisation and its Public Fund will be supplied with the annual statistical return and the statement will provide information on the expenditure of Public Fund monies and the management of Public Fund assets.

4.7 Winding Up

- (a) At the first occurrence of either the winding up of the Public Fund or the Company ceasing to be endorsed as a deductible gift recipient for the operation of the Public Fund any surplus assets of the Public Fund must be transferred to an Eligible Charity as decided by the Directors.
- (b) The decision as to the Eligible Charity must be made by the Directors at or before the time of winding up or deregistration. If the Directors do not make this decision, the Company may apply to the Supreme Court of any Australian state to make this decision.

5 Amending the Constitution

- (a) Subject to clause 5(b), the Members may amend this Constitution by passing a Special Resolution.
- (b) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.

6 Membership and eligibility

6.1 General

- (a) Subject to this Constitution and the Corporations Act there must be at least one Member.
- (b) Before seeking registration on the Register of Environmental Organisations, and for such time as the Company and its Public Fund are on the Register of Environmental Organisations, the Company must have at least 50 Members in accordance with the Tax Act.
- (c) The Board may, from time to time, prescribe a maximum number of Members.

6.2 Classes of Membership

- (a) The Board may, from time to time but subject to clauses 7.2 (Variation of Rights) and 7.3 (Effect of new class of Membership), establish different classes of Membership and may prescribe the qualifications, rights and privileges of persons admitted to Membership in, or transferred into, such classes of Membership.
- (b) If, in exercising this power, the Board would vary the rights, restrictions or obligations of existing Members, then the new class of Membership will not be created unless it is agreed by a Special Resolution of existing Members.

6.3 Admission to Membership

- (a) A person who was a voting Member of the Association at the time of adoption of this Constitution continues to be a Member of the Company.
- (b) A person who was not a voting Member of the Company at the date of adoption of this Constitution will not be admitted to Membership unless:
 - (i) the person applies for Membership in accordance with clause 6.3(c); and
 - (ii) the person's admission as a Member is approved by the Board.

- (c) Each application for membership must:
 - (i) be in writing, in the form prescribed by the Board (if any), and signed by the applicant;
 - (ii) specify the class of Membership sought (if there are different classes) and such other particulars as the Board may either generally or, in a particular case, require;
 - (iii) contain, or be accompanied by, the undertaking referred to in clause 6.6 and
 - (iv) be delivered with payment for the first year's Subscription (if any) to the Secretary at the Office.
- (d) As soon as practicable after receipt of an application referred to in clause 6.3(c) the Secretary must refer the application to the Board who will then determine, in their absolute discretion, whether to approve or to reject the application.
- (e) The Directors do not need to give a reason for rejecting an application for Membership.
- (f) If an application is approved by the Board, the Secretary must, as soon as practicable notify the applicant, and where relevant its representative, in writing that the applicant has been approved for Membership.
- (g) The Secretary must, within 28 days after the later of approval by the Board or payment of the first year's Subscription (if any), enter the applicant's name in the Register and, if the applicant is not a natural person, the representative's name.
- (h) If an application has been rejected by the Board, the Secretary must, as soon as practicable:
 - (i) notify the applicant in writing that the applicant's application has been rejected; and
 - (ii) return to the applicant the first year's Subscription (if any) which accompanied the application.
- (i) An applicant for Membership becomes a Member and is entitled to exercise the rights of Membership when the applicant's name is entered into the Register.

6.4 Subscription

- (a) Subject to the following provisions of this clause 6.4, the Board will determine the Subscription payable by Members in each Membership Year and that Subscription can vary between Members and classes of Members.
- (b) If the first Membership Year applicable to the person seeking admission to Membership is comprised of less than 365 days, the first year's Subscription payable by that person is to be apportioned according to the number of days remaining in that Membership Year.
- (c) Until the Board makes its first determination in relation to Subscriptions the Subscription is set at \$0.

- (d) The Subscription must be paid annually in advance and is due to be paid on or before the first day of each Membership Year.
- (e) The Subscription must be paid by delivery to the Secretary, or to such other person or in such other manner as the Board determines and advises the Members, from time to time.

6.5 Representatives of Members

- (a) A person seeking admission to Membership who is not a natural person must appoint one or more natural persons to be its representative but only one representative may exercise the Member's powers at any one time.
- (b) The appointment must set out what the representative is appointed to do and may set restrictions on the representative's powers.
- (c) If the appointment does not set any restrictions on the representative's powers, the representative may exercise on the Member's behalf all of the rights and powers of the Member except the power to appoint and remove a representative.
- (d) An appointment for the purpose of clause 6.5(a) must:
 - (i) be in writing;
 - (ii) include the name of the representative;
 - (iii) be signed or executed by the body corporate or entity seeking Membership;
 - (iv) be delivered to the Secretary, or to such other person as the Board determines, from time to time; and
 - (v) accompany the application referred to in clause 6.3(c).
- (e) A representative may be removed or replaced by written notice to the Secretary, signed or executed by the body corporate or entity which appointed that representative.
- (f) If the body corporate or entity which appointed a representative gives notice to the Secretary that it wishes its representative to be removed or replaced (for whatever reason), the Secretary will, as soon as practicable, make the appropriate entries in the Register.

6.6 Undertaking

Each Member undertakes to contribute an amount not more than \$10 to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they ceased being a Member, and this contribution is required to pay for the:

- (a) debts and liabilities of the Company incurred before the Member ceased being a Member, or
- (b) costs of winding up.

6.7 Supporters and Life members

- (a) The Company may maintain registers and categories of supporters who are not Members but who receive information from the Company or participate in programs, events or promotions of the Company from time to time.
- (b) A natural person may be nominated by a Director to be a Life member in recognition of the substantial progress in the area are of organics and sustainability that that person has achieved.
- (c) Nominations for Life membership will be considered and approved or rejected by the Board.
- (d) Life membership is an honorary position. A Life member is not a Member of the Company and does not have voting rights or any other rights and privileges of Membership unless the person is also, and separately, a Member of the Company.
- (e) The Secretary will maintain a register of Life members including their name, contact details, nominator, date of appointment and brief details of the reason for their approval as a Life member.

6.8 GST

- (a) All payments that are required to be made by a Member under this Constitution (including but not limited to Subscriptions) are exclusive of GST.
- (b) If any payment referred to in clause 6.8(a) is for, or is in connection with, a supply made by the Company under this Constitution on which the Company is liable to pay GST, then such payment will be increased by the prevailing rate of that GST and the Member will pay that increased amount to the Company at the same time and in the same manner as all other payments required to be made.
- (c) The Company must issue to the Member a tax invoice for the increased amount referred to in clause 6.8(b) within 14 days from the date that the increased amount is required to be paid by the Member.

7 Rights of members

7.1 Rights and privileges

- (a) Subject to this Constitution, the Members are entitled to all the rights and privileges of Membership of the Company.
- (b) A right, privilege, or obligation of a person by reason of the person's Membership:
 - (i) is not capable of being transferred or transmitted to another person; and
 - (ii) terminates on cessation of Membership whether by death or resignation or otherwise as set out in clause 10 (Cessation of Membership).

7.2 Variation of Rights

If at any time the Directors exercise the powers under clause 6.2(a) (Classes of Membership), the rights, restrictions or obligations of Members or any class of Members may be varied with either:

- (a) the written consent of not less than 75% of the existing Members; or
- (b) the sanction of a Special Resolution passed at a separate general meeting of the existing Members.

7.3 Effect of new class of Membership

If the Board establishes a new class of Membership that has the same rights, restrictions or obligations as an existing class of Membership, the establishment of that new class of Membership is not treated as a variation of the rights attaching to the existing class.

8 Register of Members

8.1 Information in Register

The Secretary must keep and maintain a Register containing:

- (a) the name and address of each Member;
- (b) the date on which each Member's name was entered in the Register; and
- (c) any other information which the Board considers necessary.

8.2 Inspection and copies

Subject to the Corporations Act:

- (a) the Register will be made available for inspection, free of charge, to any Member on request;
- (b) a Member may make a copy of entries in the Register; and
- (c) information that is accessed from the Register must only be used in a manner relevant to the interests or rights of Members.

9 Default by Members

9.1 A Member is not entitled to vote at a general meeting or by any circular resolution if any Subscription owing by that Member has not been paid on or before the date of the meeting or the date the resolution is circulated.

9.2 If a Member is required to pay a Subscription and has not paid the Subscription for 60 days or more after the due date for payment:

- (a) any remaining rights and privileges of that Member will be automatically suspended on the 60th day after the due date for payment until the Subscription,

or such part which is payable and remains outstanding, is paid or until the Member's Membership has been determined in accordance with clause 9.3; and

- (b) the Secretary will give notice to that Member requiring payment of the Subscription, or such part of the Subscription which is payable and remains outstanding.

9.3 If any part of the Subscription which is payable remains outstanding for 60 days or more after service of the notice to the Member in accordance with clause 9.2(b), the Member will automatically cease to be a Member on the 60th day after service of the notice and the Secretary must notify that Member accordingly.

10 Cessation of Membership

10.1 Ceasing to be a Member

A person ceases to be Member of the Company if:

- (a) the person resigns as provided in clause 11.1 (Resignation of a Member);
- (b) the person dies;
- (c) the person is not a natural person and they are wound up, deregistered or otherwise dissolved;
- (d) the person has not responded within three months to a written request from the Secretary that they confirm in writing that they want to remain a Member; or
- (e) the provisions of clauses 9.1 and 9.3 or the succeeding provisions of this clause 10 become applicable to that Member.

10.2 Power to censure, suspend or expel

- (a) If any Member:
 - (i) fails to comply with this Constitution;
 - (ii) fails to comply with any of the rules, regulations or by-laws of the Company; or
 - (iii) engages in conduct which, in the opinion of the Directors, is causing or is likely to cause harm to the Company, its interests or its Members,

the Board may, subject to clause 10.2(b), by resolution of the Directors (**First Resolution**) censure, suspend or expel that Member.

- (b) A First Resolution under clause 10.2(a) does not take effect unless the Board, at a meeting held not earlier than 14 days and not later than 21 days after the service on the Member of a notice in accordance with clause 10.2(c), confirms the First Resolution in accordance with clause 10.2(d).
- (c) Where the Directors pass a First Resolution in accordance with clause 10.2(a), the Secretary must, as soon as practicable, serve on the Member, a notice in writing:

- (i) setting out the First Resolution and the grounds on which it is based;
 - (ii) stating that the Member may address the Board at a meeting to be held not earlier than 14 days and not later than 21 days after service of the notice;
 - (iii) stating the date, place and time of that meeting;
 - (iv) informing the Member that the Member may:
 - (A) attend the meeting; or
 - (B) give to the Board, before the date of the meeting, a written statement seeking revocation of the First Resolution.
- (d) At a meeting of the Directors held in accordance with clause 10.2(c), the Board must:
- (i) give the Member, or a person nominated by the Member, an opportunity to be heard; and
 - (ii) give due consideration to any written statement submitted by, or on behalf of, the Member; and
 - (iii) by resolution, determine whether to:
 - (A) confirm the First Resolution;
 - (B) revoke the First Resolution with or without a warning;
 - (C) refer the decision to an unbiased, independent person on conditions that the Board considers appropriate (however, the independent person can only make a decision that the Directors could have made under this clause); or
 - (D) require the matter to be determined at a general meeting of Members.
- (e) If the Directors confirm the First Resolution it will be effective immediately and the Secretary must notify the Member of the confirmation as soon as possible after the date of the meeting of the Directors.
- (f) At a general meeting of the Members called in accordance with clause 10.2(d)(iii)(D):
- (i) no business other than the question of the appeal shall be transacted;
 - (ii) the Directors must place before the meeting details of the grounds for the First Resolution and the reasons for the passing of the First Resolution;
 - (iii) the Member, or a person nominated by the Member, must be given an opportunity to be heard; and
 - (iv) the other Members Present must vote by secret ballot on the question of whether the First Resolution should be confirmed or revoked.

- (g) If at a general meeting called in accordance with clause 10.2(d)(iii)(D):
 - (i) a majority of the other Members Present and voting, vote in favour of the confirmation of the First Resolution, the First Resolution will stand confirmed and will be effective immediately; and
 - (ii) in any other case, the First Resolution will be revoked.
- (h) The Member the subject of a First Resolution is not entitled to vote at a general meeting called in accordance with clause 10.2(d)(iii)(D) and quorum and voting is determined without regard to that Member.

10.3 Continuing liability

A Member who ceases to be a Member continues to be liable for any Subscription and all arrears due and unpaid at the date the Member ceases to be a Member and for all other amounts due by the Member to the Company and for any sum not exceeding \$10 for which the Member may become liable as a Member under clause 6.6.

11 Resignation of Member

11.1 Resignation of a Member

A Member may resign from the Company by first giving the Secretary written notice of one month, or such other notice period as is agreed by the Board, of the Member's intention to resign and on the expiration of that period of notice, the Member will cease to be a Member.

11.2 Expiry of notice

On expiry of notice under clause 11.1, the Secretary will:

- (a) repay to the Member the proportion of the Subscription received by the Company referable to the unexpired term of the Membership Year; and
- (b) make an entry in the Register recording the date on which the Member ceased to be a Member.

12 General meetings

12.1 General meetings

A general meeting is a meeting of the Members of the Company held in accordance with this Constitution and the Applicable Act and includes the AGM.

12.2 AGM

- (a) The Company will hold an AGM in accordance with this Constitution and the Applicable Act:
 - (i) within 18 months after registration of the Company; and

- (ii) after the first AGM, at least once in every calendar year.
- (b) The business of the AGM may include:
 - (i) the appointment of the Directors;
 - (ii) the consideration of the financial reports of the Company, the Directors' report and the auditor's report; and
 - (iii) such other business as may be properly transacted at the AGM.
- (c) The Chairperson of the AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.

12.3 General Meetings called by the Board

- (a) The Board may call a general meeting at any time.
- (b) The Board must call and arrange to hold a general meeting on the written request of Members with at least 5% of the votes that may be cast at the general meeting and must:
 - (i) within 21 days of such Members' request being given to the Company, give notice of a general meeting; and
 - (ii) hold the general meeting within two months of such Members' request.
- (c) The percentage of votes that Members have is to be worked out as at midnight before the Members request the meeting.
- (d) The Members who make the request for a general meeting must:
 - (i) provide the request in writing;
 - (ii) state in the request any resolution to be proposed at the meeting;
 - (iii) sign the request; and
 - (iv) give the request to the Company.
- (e) Separate copies of a document setting out the request may be signed by Members if the wording of the request is the same in each copy.

12.4 General meetings called by Members

- (a) If the Directors do not call a meeting within 21 days of being requested under clause 12.3(b), 50% or more of the Members who made the request may call and arrange to hold a general meeting.
- (b) To call and hold a meeting the Members must:
 - (i) as far as possible, follow the procedures for general meetings set out in this Constitution;

- (ii) call the meeting using the list of members of the Company's Register; and
 - (iii) hold the general meeting within three months after the request was given to the Company.
- (c) The Company must pay the Members who request the general meeting under clause 12.3(b) any reasonable expenses they incur because the Directors did not call and hold the meeting.

12.5 Notice

- (a) At least 21 days prior written notice of a general meeting must be given to:
- (i) each Member who is entitled to vote;
 - (ii) each Director;
 - (iii) any auditor of the Company; and
 - (iv) any other person required by law.
- No other person is entitled to receive notice of a general meeting.
- (b) Subject to clause 12.5(c) and the Applicable Act, notice of a meeting may be provided less than 21 days before the meeting if:
- (i) for an annual general meeting, all the Members entitled to attend and vote at the annual general meeting agree beforehand; and
 - (ii) for any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (c) Subject to the Applicable Act, notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (i) remove a Director;
 - (ii) appoint a Director in order to replace a Director who was removed; or
 - (iii) remove an auditor.

12.6 Content of notice

A notice of a general meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places or by audio or audio-visual technology, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and the Special Resolution itself; and

- (d) contain a statement specifying that:
 - (i) the Member has a right to appoint a proxy;
 - (ii) the proxy must be a Member; and
 - (iii) a Member entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

12.7 Failure to give notice

The inadvertent failure or accidental omission to send notice of a general meeting to, or the non-receipt of a notice by, any person entitled to notice does not invalidate the proceedings or any resolution passed at the meeting.

12.8 Postponement or cancellation or change of general meeting

Subject to the Applicable Act, the Board may at any time prior to the time at which a general meeting is to be held, postpone or cancel any general meeting or change the place of any general meeting. Any such postponement, cancellation or change must be communicated to each Member of the Company and each other person to whom notice was given, in any manner permitted under clause 30 (Notices).

13 Proceedings at general meetings

13.1 Quorum

- (a) No business may be transacted at an AGM or any other general meeting unless a quorum is present at the time when the meeting proceeds to business.
- (b) A quorum consists of 5 Members Present and entitled to vote at the meeting unless the Company only has one Member entitled to vote at the meeting, in which case the quorum is one.
- (c) Each individual Present at a general meeting may only be counted once toward a quorum. If a Member has appointed more than one proxy, attorney or representative, only one of them may be counted towards a quorum.

13.2 Use of technology

- (a) General meetings can be held using audio or audio-visual technology, whether for all participating Members or only for Members who are unable to be present in person.
- (b) If a general meeting is held by audio or audio-visual technology:
 - (i) a Member is treated as Present if the Member is able to hear and be heard by all others attending; and
 - (ii) unless the Chairperson is notified that a Member is leaving the meeting, the Member will be assumed to have been Present for the duration of the meeting.

13.3 Quorum not present

If a quorum is not present within 15 minutes after the time appointed for a general meeting:

- (a) if the meeting was convened at the request of Members, it is automatically dissolved; and
- (b) in any other case:
 - (i) it will stand adjourned to the same time and place on the fifth Business Day after the meeting; and
 - (ii) if a quorum is not present within 15 minutes from the time appointed for the adjourned meeting, the Members Present (being not less than two) will comprise a quorum.

13.4 Chairing meetings

The Chairperson (or, in the Chairperson's absence, the Deputy Chairperson) will chair every meeting of the Members. If:

- (a) there is no Chairperson or Deputy Chairperson;
- (b) neither the Chairperson nor the Deputy Chairperson is present within 15 minutes after the time appointed for holding the meeting; or
- (c) both the Chairperson and the Deputy Chairperson are unwilling to act as chair of the meeting,

the Members Present and entitled to vote will elect a Member or Director to chair the meeting.

13.5 Function of Chairperson

The Chairperson of a general meeting is responsible for the general conduct and procedures to be adopted at the meeting.

13.6 Adjournment by Chairperson

The Chairperson of a general meeting at which a quorum is present:

- (a) may, with the consent of the meeting; and
- (b) must, if directed by resolution of the meeting,

adjourn the meeting to another time and place.

13.7 Adjourned meeting

The only business that can be transacted at an adjourned meeting is the unfinished business of the initial meeting. Notice of the adjourned meeting must be given if the meeting is adjourned for one month or more.

14 Voting at general meetings

14.1 Show of hands

Unless a Poll is demanded under clause 14.3:

- (a) a resolution put to a vote at a general meeting must be decided on a show of hands; and
- (b) a declaration by the Chairperson that a resolution has been carried, carried by a particular majority or lost and an entry to that effect in the minutes of the meeting will be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour or against the resolution.

14.2 Majority vote

A resolution of Members must be passed by a majority of the votes cast by Members Present and entitled to vote on the resolution unless otherwise required under the Applicable Act or this Constitution.

14.3 Demanding a Poll

Either before or on declaration of the result of a show of hands, a Poll may be demanded by:

- (a) the Chairperson;
- (b) at least 5% Members entitled to vote on the resolution.

The demand for a Poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

14.4 When and how Polls must be taken

A Poll will be taken when and in the manner the Chairperson directs, except for:

- (a) a Poll demanded on the election of a Chairperson; or
- (b) a Poll demanded on the adjournment of a meeting,

which must be taken immediately. The result of the Poll will be the resolution of the meeting at which the Poll was demanded.

14.5 Equal number of votes

If an equal number of votes is cast for and against a resolution:

- (a) the Chairperson does not have a casting vote in addition to the Chairperson's vote as a Member, proxy, attorney or representative; and
- (b) the resolution is not passed.

15 Voting at general meetings

15.1 Number of votes

Subject to this Constitution and any rights or restrictions imposed on or attached to a class of Membership, every Member who is Present at a general meeting and entitled to vote on a show of hands and on a Poll, has one vote.

15.2 Voting by guardians

Subject to the Applicable Act, if the Board is satisfied at least 24 hours before the time fixed for a general meeting that a person has the power to manage a Member's property as their guardian under a law relating to guardianship and the management of property, that person may vote and exercise any other rights in relation to the general meeting as if it were the Member entered on the Register and the Board must not count the vote of the actual registered Member.

15.3 Objections

An objection to the qualification of any voter:

- (a) may only be raised at the meeting or adjourned meeting at which the voter tendered its vote; and
- (b) must be determined by the Chairperson, whose decision, if made in good faith, will be final and conclusive.

A vote that the Chairperson does not disallow pursuant to an objection is valid for all purposes.

16 Electronic voting

16.1 Electronic and remote voting may be available

- (a) Electronic or remote voting will be available if approved by the Board before the notice of general meeting is sent.
- (b) If the notice of general meeting states that electronic or remote voting will be available, Members entitled to attend and vote at a general meeting may vote prior to the meeting by way of remote or electronic voting.
- (c) If the notice of general meeting does not state that electronic or remote voting will be available, then it will not be allowed and the rest of this clause will not apply for that general meeting.

16.2 Method

The manner and method of electronic or remote voting will be determined by the Company and notified to Members from time to time.

16.3 Company must receive vote

The electronic or remote vote is only effective in relation to a general meeting if the Company receives the electronic or remote vote at least 48 hours before the time for holding the meeting or adjourned meeting (unless the notice of meeting specifies a shorter time period).

16.4 Definition of receipt

The Company receives the vote referred to in clause 16.3 when it is received:

- (a) at the Office;
- (b) in a matter determined by the Company and notified to Members in accordance with clause 16.2;
- (c) at an electronic address specified in the notice of meeting; or
- (d) if the notice of meeting specifies other electronic means by which a Member may give the vote, by those means in accordance with the Corporations Act.

16.5 Chairperson may declare vote valid

If the electronic or remote vote:

- (a) does not comply with the terms of this Constitution; or
 - (b) is not received by the Company in accordance with the terms of this Constitution,
- the vote will be treated as invalid unless the Chairperson declares otherwise.

16.6 Adjourned meetings

Subject to clause 16.7 the electronic or remote vote for a particular general meeting is valid at the adjourned meeting.

16.7 Status of electronic or remote vote if Member Present

If the Member attends a meeting at which a vote is held on an issue that the Member has already provided an electronic or remote vote, the electronic or remote already cast is void and the Member must vote at the meeting.

16.8 Continuing authority

An electronic or remote vote at a general meeting will be valid even if, before the meeting the appointing Member dies or becomes mentally incapacitated, unless the Company has received written notification of the matter before the start or resumption of the meeting.

17 Proxies, attorneys and representatives

17.1 Proxies

A Member entitled to attend and vote at a general meeting may appoint a proxy to attend and vote for the Member at the meeting. A proxy must be a natural person.

17.2 Number of proxies

- (a) A Member entitled to one vote at a general meeting may appoint one proxy. A Member entitled to more than one vote may appoint no more than two proxies.
- (b) A person must not be a proxy for more than one Member.

17.3 Proportion of votes exercisable by proxies

If a Member appoints two proxies, the appointment may specify the proportion or number of the Member's votes each proxy may exercise. If the appointment does not specify this, each proxy may exercise half of the votes and any fractions of votes will be disregarded.

17.4 Rights of proxies

- (a) Subject to this Constitution and the proxy's terms of appointment, a proxy has the same rights as the appointing Member to speak at a general meeting, to vote and to join in and demand a Poll.
- (b) If a proxy's appointment specifies the way in which the proxy must vote, the proxy must follow those instructions.

17.5 Attorneys

A Member may appoint an attorney to:

- (a) act for the Member at general meetings; or
- (b) appoint a proxy to act for the Member at general meetings.

17.6 Rights of attorneys

Unless restricted by the terms of appointment or the Applicable Act, an attorney may exercise the same powers on the Member's behalf that the Member could exercise at a general meeting or in voting on a resolution.

17.7 Membership requirement

- (a) A proxy must be a Member.
- (b) An attorney may be, but need not be, a Member.

17.8 Standing appointments

A Member may appoint a proxy or attorney to act at a particular general meeting or make a standing appointment. A Member may revoke any appointment by written notice to the Company.

17.9 Instrument of appointment of proxies

The instrument of appointment of a proxy must be in a written form approved by the Board and must be signed or executed:

- (a) if the appointing Member is an individual, by the appointing Member or that Member's attorney; and
- (b) if the appointing Member is a body corporate, by the body corporate's representative or attorney.

17.10 Instrument of appointment of attorneys

The instrument of appointment of an attorney must be in a written form and must consist of a valid power of attorney signed by the appointing Member.

17.11 Company must receive appointments

The appointment of a proxy, attorney or representative is only effective in relation to a general meeting if the Company receives the instrument effecting the appointment and any additional documents required by clause 17.13:

- (a) in the case of a proxy or attorney, at least 48 hours before the time for holding the meeting or adjourned meeting (unless the notice of meeting specifies a shorter time period); and
- (b) in the case of a representative, before the commencement of the meeting or adjourned meeting.

17.12 Definition of receipt

The Company receives the documents referred to in clause 17.11 when they are received:

- (a) at the Office;
- (b) at a fax number at the Office;
- (c) at a place, fax number or electronic address specified in the notice of meeting; or
- (d) if the notice of meeting specifies other electronic means by which a Member may give the documents, by those means in accordance with the Applicable Act.

17.13 Additional documents

If an appointment purports to be executed under a power of attorney or other authority, the original power or authority or a certified copy of it must be received by the Company along with the appointment.

17.14 Chairperson may declare appointment valid

If:

- (a) the instrument of appointment of a proxy, attorney or representative does not comply with the terms of this Constitution; or
- (b) the appointment and any additional documents are not received by the Company in accordance with the terms of this Constitution,

the appointment will be treated as invalid unless the Chairperson declares otherwise.

17.15 Adjourned meetings

An appointment of a proxy, attorney or representative for a particular general meeting is valid at the adjourned meeting.

17.16 Rights of proxies and attorneys if Member present

A proxy or attorney has no power to act for a Member at a general meeting at which the Member is present in person or by audio or audio-visual technology, in the case of a body corporate, the representative is present in person or by audio or audio-visual technology. A proxy has no power to act for a Member at a general meeting at which the Member is present by attorney.

17.17 Priority of conflicting appointments

The following rules govern conflicting appointments:

- (a) an appointment of a proxy is revoked (or suspended for the particular general meeting if a standing appointment) if the Company receives a further proxy appointment that would result in the Member having more proxies than the Member is entitled to under clause 17.2;
- (b) the proxy appointment made first in time under clause 17.17(a) is the first to be treated as revoked or suspended under that clause; and
- (c) if more than one attorney or representative appointed by a Member is Present at a general meeting and the Company has not received notice of revocation of any of the appointments:
 - (i) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
 - (ii) subject to clause 17.17(c)(i), the more recently appointed attorney or representative may act to the exclusion of an attorney or representative appointed earlier in time.

17.18 Continuing authority

A vote cast by a proxy, attorney or representative at a general meeting will be valid even if, before the meeting, the appointing Member:

- (a) dies or becomes mentally incapacitated; or
- (b) revokes the appointment or the authority under which the appointment was made by a third party,

unless the Company has received written notification of the matter before the start or resumption of the meeting.

18 Directors

18.1 Number of Directors

- (a) The Company will have at least three Directors.
- (b) Subject to clause 18.1(a) and the Applicable Act the Members may fix the maximum number of Directors and increase or reduce that number by resolution passed in general meeting.

18.2 Initial Directors

The initial Directors are the people who have agreed to act as Directors and who are named as proposed Directors in the application for registration of the Company.

18.3 No Membership requirement

A Director may be, but need not be a Member.

18.4 Other positions

A Director may simultaneously hold any other office or position in the Company on terms determined by the Board.

18.5 Meetings of Members

A Director is entitled to notice of, and to attend, all general meetings.

19 Appointment and removal of Directors

19.1 Appointment by Members

- (a) The Members may appoint a Director by resolution passed in general meeting.
- (b) Each of the Directors must be appointed by a separate resolution, unless:
 - (i) the Members Present have first passed a resolution that the appointments may be voted on together; and

- (ii) no votes were cast against that resolution.
- (c) A person is eligible for appointment as a Director of the Company if they:
 - (i) are nominated by an existing Member of the Company;
 - (ii) meet any eligibility requirements identified by the Board prior to the nomination of the candidate;
 - (iii) give the Board their signed consent to act as a Director of the Company; and
 - (iv) are not ineligible to be a Director under an Applicable Act.
- (d) The Members can make further rules in relation to the appointment of Directors, provided those rules are not inconsistent with this Constitution or the Applicable Act.

19.2 Removal and rotation of Directors

Subject to clause 18.1 (Number of Directors), the Company may by resolution passed in general meeting:

- (a) remove a Director from office; and
- (b) determine any rotation and retirement policies for Directors.

19.3 Casual vacancy or addition to Board

- (a) The Board may appoint a person to be a Director at any time either to fill a casual vacancy or as an addition to the existing Directors, but the total number of Directors must not exceed any maximum number.
- (b) A Director appointed in accordance with clause 19.3(a) will hold office only until the end of the next AGM and will be eligible for re-appointment in accordance with this Constitution at that AGM.

19.4 Term of office

- (a) Subject to clauses 19.2, 19.3 and 19.5 and the terms of any agreement between the Company and the relevant Director, a Director holds office for a period of 5 years and their term ends at midnight on the final day of that term.
- (b) Directors are eligible for re-appointment in accordance with this Constitution.

19.5 Cessation of appointment

A person automatically ceases to be a Director if:

- (a) the person is not permitted or eligible under the Applicable Act (or an order made under the Applicable Act) to be a Director;
- (b) the person is a representative of a Member and that Member stops being a Member;

- (c) the person is a representative of a Member and the Member notifies the Company that the representative is no longer a representative;
- (d) the person becomes bankrupt or enters into or becomes subject to any arrangement or composition with creditors;
- (e) the person becomes mentally incapable or a person whose estate or property is liable to be dealt with in any way under any law relating to mental health;
- (f) the person resigns by notice in writing to the Company;
- (g) the person is removed from office under clause 19.2;
- (h) the person dies.
- (i) the term for which the person was appointed expires.

20 Board positions

- 20.1 The Board will from time to time appoint a Chairperson from among the Directors.
- 20.2 The Board may from time to time, at its discretion, appoint a Deputy Chairperson and/or a Treasurer from among the Directors.
- 20.3 The Board will from time to time appoint a Secretary in accordance with clause 25.
- 20.4 The same individual can hold more than one of the positions of Chairperson, Treasurer and Secretary.

21 Remuneration of Directors

21.1 Honorary Directors

The Company must not pay fees to a Director for acting as a Director but can make payments under clauses 21.2 and 21.3.

21.2 Expenses

The Company may pay Directors all reasonable travelling and other expenses properly incurred:

- (a) in attending Board meetings or any meetings of committees of Directors;
- (b) in attending any general meetings of the Company; and
- (c) in connection with the Company's business.

21.3 Extra services

The Company may:

- (a) remunerate a Director for performing any extra services or making special exertions (including going or living away from the Director's usual residential address) at the request of the Board and for the purposes of the Company; and
- (b) pay a Director if they are engaged to work for the Company other than as a Director.

21.4 Board approval

All payments to Directors under this clause 21 must be approved by the Board.

22 Powers and duties of Directors

22.1 Management of the Company

The business of the Company will be managed by the Board. The Board may exercise all the powers of the Company except any powers that are required by this Constitution or the Applicable Act to be exercised by the Company in a general meeting.

22.2 Specific powers

Without limiting the generality of clause 22.1, the Board may exercise all the powers of the Company to:

- (a) borrow money;
- (b) grant Security Interests in relation to any of the Company's property, assets or business, to secure any debt, liability or obligation of the Company or any other person;
- (c) guarantee, indemnify or otherwise become liable for the payment of money or the performance of any obligation by or of any other person; and
- (d) pay out of the Company's funds all expenses of the promotion, formation and registration of the Company and the vesting in it of the assets acquired by the Company,

on any terms determined by the Board.

22.3 Duties under the Applicable Act

A Director must comply with the Applicable Act and fulfil any duties prescribed in the Applicable Act and the common law including:

- (a) reasonable care and diligence;
- (b) good faith and proper purpose;
- (c) proper use of position;

- (d) proper use of information;
- (e) disclosure of any material personal interest in the manner set out in clause 22.5;
- (f) responsible management of financial affairs; and
- (g) not to allow the Company to trade while insolvent.

22.4 No disqualification

A Director is not disqualified by reason only of being a Director from:

- (a) holding any office, place of profit or position of employment with the Company;
- (b) acting in a professional capacity for the Company;
- (c) being a member or creditor of any corporation (including the Company) or partnership; or
- (d) entering into any agreement or arrangement with the Company.

22.5 Disclosure of interests

If required by the Applicable Act, a Director must disclose to the Board any material personal interest the Director has in a matter relating to the affairs of the Company. The Secretary must record details of any such disclosures in the minutes of the relevant Board meeting.

22.6 Voting if Director has an interest

- (a) A Director who has a material personal interest in a matter being considered at a Board meeting must not, except as provided under this clause 22.6:
 - (i) be present at the Board meeting while the matter is being discussed; or
 - (ii) vote on the matter.
- (b) A Director may still be present, counted towards the quorum and vote if:
 - (i) their interest arises because they are a Member of the Company, and the other Members have the same interest;
 - (ii) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company as contemplated in clause 32 (Indemnity and Insurance);
 - (iii) their interest relates to a payment by the Company under clause 32 (Indemnity and Insurance) or any contract relating to an indemnity that is allowed under the Applicable Act;
 - (iv) the regulator under the Applicable Act makes an order allowing the Director to vote on the matter; or
 - (v) the Directors who do not have a material personal interest in the matter pass a resolution that:

- (A) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and
 - (B) states that those Directors are satisfied that the interest should not prevent the Director from being present or voting.
- (c) Subject to clause 22.6(b):
 - (i) any transactions that relate to the interest may proceed and the Director may participate in the execution of any relevant document; and
 - (ii) if disclosure is made before the transaction is entered into:
 - (A) the Director may retain benefits under the transaction; and
 - (B) the Company cannot avoid the transaction merely because of the existence of the interest.

22.7 Confidentiality

- (a) Every Director must:
 - (i) keep the transactions and affairs of the Company confidential, except:
 - (A) to the extent necessary to enable the person to perform his or her duties to the Company;
 - (B) as required by the Board or the Company in general meeting; and
 - (C) as required by law.
 - (ii) if requested by the Board, sign a confidentiality undertaking consistent with this clause.
- (b) The Board must procure that all employees, agents and other officers of the Company:
 - (i) keep the transactions and affairs of the Company confidential, except:
 - (A) to the extent necessary to enable the person to perform his or her duties to the Company;
 - (B) as required by the Board or the Company in general meeting; and
 - (C) as required by law.
 - (ii) if requested by the Board, sign a confidentiality undertaking consistent with this clause.

23 Delegation of Directors' powers

23.1 Power to delegate

The Board may delegate any of its powers to:

- (a) a committee;
- (b) a Director;
- (c) an employee or adviser of the Company; or
- (d) an attorney.

23.2 Terms of delegation

A delegation of powers under clause 23.1 may:

- (a) be made for a specified period or without specifying a period;
- (b) be made on the terms (including the power to delegate further) and subject to any restrictions that the Board determines; and
- (c) may contain provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

23.3 Delegate to comply with directions

A delegate under clause 23.1 must exercise its powers subject to any direction from the Board.

23.4 Board may revoke delegation

The Board may revoke a delegation of its powers at any time.

23.5 Advisory committee

- (a) The Board may establish one or more advisory committees comprising such persons as the Board thinks fit. A member of an advisory committee may, but need not be, a Director or Member.
- (b) An advisory committee will act in an advisory capacity only and in the exercise of the powers delegated in accordance with this clause 23, conform to any direction from the Board.

23.6 Proceedings of advisory committee

Subject to the terms on which power is delegated to any committee and any directions from the Board:

- (a) a committee is free to determine the rules that regulate its meetings and proceedings; and

- (b) in the absence of such a determination, the rules will be the same as those that govern Board meetings in this Constitution, so far as they are applicable,

and the Board may change any of the powers, duties and functions of a committee, may remove any member of a committee or dissolve a committee at any time.

24 Board meetings

24.1 Procedure

Subject to this Constitution and the Corporations Act, the Board may meet, adjourn and otherwise regulate its meetings as it determines. The Board may invite any other person it considers necessary or appropriate to attend and speak at any meeting but that person is not entitled to vote.

24.2 Calling

A Director may at any time, and the Secretary must on request from a Director, convene a Board meeting.

24.3 Notice

Each Director must be given reasonable notice of a Board meeting or the resumption of an adjourned Board meeting. Notice may be given in any manner determined or adopted by the Board from time to time.

24.4 Use of technology

- (a) A Board meeting can be held using audio or audio-visual technology.
- (b) If a Board meeting is held by audio or audio-visual technology:
 - (i) a Director is treated as present if the Director is able to hear and be heard by all others attending; and
 - (ii) unless the Chairperson is notified that a Director is leaving the meeting, the Director will be assumed to have been present for the duration of the meeting.
- (c) A Board meeting may be held using audio or audio-visual technology for all participating Directors, or only for Directors who are unable to be present in person.
- (d) A minute certified by the Chairperson of such a meeting will be conclusive evidence of the proceedings at that meeting and the observance of all necessary formalities.

24.5 Quorum

The quorum necessary for the transaction of business at a Board meeting is two Directors unless the Board determines a greater number. A quorum must be present for the entire meeting.

24.6 Chairperson

The Chairperson (or, in the Chairperson's absence, the Deputy Chairperson) will chair every meeting of the Board. If:

- (a) there is no Chairperson or Deputy Chairperson;
- (b) neither the Chairperson nor the Deputy Chairperson is present within 15 minutes after the time appointed for holding the meeting; or
- (c) both the Chairperson and the Deputy Chairperson are unwilling to act as chair of the meeting,

the Directors present and entitled to vote will elect a Director to chair the meeting.

24.7 Decisions

A resolution of the Board must be passed by a majority of votes cast by Directors. If an equal number of votes is cast for and against a resolution:

- (a) the Chairperson does not have a casting vote in addition to the Chairperson's vote as a Director; and
- (b) the resolution is not passed.

24.8 Too few Directors

The Directors may continue to act even if there are vacancies on the Board. If the number of Directors is reduced below the minimum required under clause 18.1 (Number of Directors), the continuing Directors may act as a Board only:

- (a) to convene a general meeting of Members; or
- (b) in emergencies.

24.9 Written resolutions passed by multiple Directors

- (a) All the Directors entitled to vote on a resolution can pass that resolution without holding a Board meeting by signing a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The signed document can be communicated to the other Directors by any physical or electronic means that show the signed document.
- (d) The resolution is passed when the last Director signs.

24.10 Resolutions by email

All the Directors entitled to vote on a resolution can pass that resolution by agreeing to an email sent by a Director, or the Secretary, that contains the proposed resolution, by sending a reply email to that effect, including the text of the resolution in their reply.

24.12 Other electronic means

All the Directors entitled to vote on a resolution can agree to a resolution sent to them via any other electronic means agreed by the Board that meets the following criteria:

- (a) all Directors entitled to vote on the resolution are able to view the text of the resolution;
- (b) all Directors entitled to vote on the resolution are able to communicate their agreement to the resolution; and
- (c) such agreement can be recorded as required under clause 26.1(c) (Board must keep minutes).

24.13 Signing written resolutions

For the purposes of clause 24.9, the Company may accept a copy of a signed document sent by facsimile or electronic means.

24.14 Valid proceedings

Each resolution passed or other thing done by or with the participation of a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing that thing.

25 Secretary

25.1 Appointment

Subject to the Corporations Act, the Board must appoint a Secretary who may also be a Director. The appointment may be made for a specified period or without specifying a period and, in either case, the Board may remove the Secretary from office at any time.

25.2 Terms

The appointment of a Secretary will be on the terms that the Board determines.

25.3 Role of the Secretary

The role of the Secretary includes maintaining the Register and maintaining the minutes in accordance with clause 26 (Minutes).

25.4 Cessation of appointment

A person automatically ceases to be a Secretary if:

- (a) the person is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a Secretary;

- (b) the person becomes bankrupt or enters into or becomes subject to any arrangement or composition with one or more of its creditors;
- (c) the person becomes mentally incapable or a person whose estate or property is liable to be dealt with in any way under any law relating to mental health;
- (d) the person resigns by notice in writing to the Company;
- (e) the person is removed from office under clause 25.1;
- (f) the person dies; or
- (g) the term for which the person was appointed expires.

26 Minutes

26.1 Board must keep minutes

The Board must cause minutes to be kept of:

- (a) the proceedings and resolutions of meetings of Members and Directors;
- (b) the names of Directors present at each meeting of Directors;
- (c) any resolutions passed by Members or Directors without a meeting;
- (d) any disclosures or notices of Directors' interests; and
- (e) any other matters for which the Applicable Act requires minutes to be kept.

26.2 Minutes must be signed

Minutes must be signed in accordance with the Applicable Act. Minutes of a meeting must be signed within a reasonable time after the meeting by:

- (a) the Chairperson or the chair of that meeting; or
- (b) the Chairperson or the chair of the next meeting.

26.3 Minutes as evidence

A minute recorded and signed in accordance with the Applicable Act is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proven.

26.4 Access to minutes

The Company must ensure that the minute books for meetings of Members and for resolutions passed by Members without meetings are open for inspection by Members in accordance with the Applicable Act.

27 Seal and execution of documents

27.1 Common seal

The Board may decide whether or not the Company has a common seal. The Board is responsible for the safe custody of a common seal and any duplicate seals.

27.2 Use of seals

A common seal or duplicate seal may only be used with the authority of the Board.

27.3 Executing documents

- (a) If the Company has a common seal the Company can execute a document if the seal is affixed to the document and the fixing of the seal is witnessed by:
 - (i) two Directors;
 - (ii) a Director and a Secretary.
- (b) The Company can execute a document without using a common seal if the document is signed by:
 - (i) two Directors;
 - (ii) a Director and a Secretary; or
 - (iii) some other person or combination of persons appointed by the Board for that purpose.

27.4 Execution under the Corporations Act or other law

Neither this clause nor the adoption of a common seal is intended to limit the ways in which the Company may validly execute documents in accordance with the Corporations Act or any other applicable law.

28 Accounts

28.1 Obligations

In accordance with the Applicable Act, the Company must:

- (a) keep written financial records that:
 - (i) correctly record and explain its transactions and financial position and performance; and
 - (ii) enable true and fair financial statements to be prepared and to be audited; and
- (b) prepare any reports required.

28.2 Inspection

A Member who is not a Director does not have any right to inspect the Company's financial records except:

- (a) as authorised by the Board on terms determined by the Board; or
- (b) as required by the Applicable Act.

29 Audit

The Board must appoint an auditor if required to do so under the Applicable Act unless the Members at a general meeting have appointed an auditor or unless otherwise required or permitted.

30 Notices

30.1 Method

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature); and
- (b) either:
 - (i) delivered personally;
 - (ii) sent by post to that person's registered address or an alternative address nominated by that person;
 - (iii) transmitted by email to the email address nominated by that person; or
 - (iv) sent electronically to an electronic address nominated by that person.

30.2 Receipt

A notice given in accordance with clause 30.1 is taken as having been given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by post from and to a place within Australia either:
 - (i) on the day on which the relevant postal service estimates delivery will occur; or
 - (ii) on the first day of the period during which the relevant postal service estimates delivery will occur,

based on the most recent estimate published by the relevant postal service as at the date on which the notice is sent;

- (c) if transmitted by email or other electronic means, when the email (including any attachment) or other electronic means is transmitted,

but if the delivery or transmission is not on a Business Day or is after 5.00 pm on a Business Day, the notice is taken to be received at 9.00 am on the next Business Day.

30.3 Evidence of service

A certificate in writing signed by a Director or Secretary that a Notice was sent is conclusive evidence of service.

31 Winding up and revocation of DGR endorsement

31.1 Distribution of Company's assets

On the first to occur of:

- (a) the winding up or deregistration of the Company;
- (b) if the Company is endorsed as a deductible gift recipient under subdivision 30-BA of the Tax Act, revocation of the Company's endorsement as a deductible gift recipient; or
- (c) if the Company is endorsed as an income tax exempt charity under subdivision 50-B of the Tax Act, revocation of the Company's endorsement as an income tax exempt charity,

all surplus assets of the Company that remain, after satisfaction of all debts and liabilities of the Company, must be paid, distributed or transferred to:

- (i) one or more Eligible Charities; or
- (ii) to the extent required or permitted by the Tax Act, funds, charitable at law, which comply with the requirements of item 2 of the table in section 30-15 of the Tax Act,

but if the Company is never endorsed as a deductible gift recipient under subdivision 30-BA of the Tax Act, paragraph (c) of the definition of Eligible Charity will not apply.

31.2 Conditions of distribution to Eligible Charities

Where gifts to an Eligible Charity are deductible only if, among other things, the conditions set out in the relevant table item in subdivision 30-B of the Tax Act are satisfied, a transfer under this clause 31 must be made in accordance with those conditions.

31.3 Identity of Eligible Charities

The identity of an Eligible Charity for the purposes of this clause 31 will be determined by the Board and (if applicable) approved by the Commissioner and, in default, will be determined by the Supreme Court of New South Wales.

32 Indemnity and insurance

32.1 Indemnity and insurance

Subject to and to the maximum extent permitted under the law, the Company:

- (a) indemnifies each of its officers; and
 - (b) may enter into and pay premiums on a contract insuring any of its officers,
- against any liability incurred by an officer in that capacity, including any legal costs incurred in defending an action for such a liability.

32.2 Survival of indemnity

The indemnity in clause 32.1 will continue notwithstanding that an Officer ceases to be an officer of the Company.

32.3 Indemnity and insurance subject to law

- (a) The indemnity in clause 32.1 does not apply so as to indemnify an Officer from any liability for which the Company is prohibited from indemnifying the Officer under the Corporations Act.
- (b) The Company may not insure an officer against any liability for which the Company is prohibited from indemnifying the Officer under the Corporations Act.