

CORPORATIONS LAW
A COMPANY LIMITED BY GUARANTEE

CONSTITUTION
of
RAINFOREST RESCUE

*Adopted by written agreement of the persons specified
in the application for the Company's registration as
the persons who consent to become members,
pursuant to section 136(1)(a) of the Corporations Law*

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**CONSTITUTION OF
RAINFOREST RESCUE**

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PART A

1 NAME

The name of the Company is Rainforest Rescue.

2 LIMITED LIABILITY

The liability of members of the Company is limited.

3 OBJECTS

3.1 Principal Object of the Company

The principal object for which the Company is formed is the protection and enhancement of the natural environment.

3.2 Specific Objects of the Company

The objects for which the Company is formed are:

- (a) To promote, facilitate, participate in, carry out, arrange or otherwise engage in, for the benefit of the community:
 - (i) the conservation of rainforests and the preservation of the bio-diversity of rainforest ecosystems;
 - (ii) the restoration, rehabilitation, enhancement and management of remnant and regrowth rainforest;
 - (iii) the revegetation of ex-rainforest lands, including without limitation the establishment and ongoing management of rainforest plantings of significant ecological value.
- (b) To establish and maintain a public fund (“**Rainforest Rescue Fund**”) under this constitution and the rules of the Company for the specific purpose of attaining the objectives of the Company as set out in this constitution. The Rainforest Rescue Fund must be a public fund in accordance with the Income Tax Assessment Act 1997.
- (c) To subscribe to, become a member of and co-operate with any other company, club, association or organisation, whether incorporated or not, whose objects are altogether or in part similar to those of the Company, provided that the Company shall not subscribe to or support with its fund any club, association or organisation which does not prohibit the distribution of its income and property among its

members to an extent at least as great as that imposed on the Company under or by virtue of clause 3.3 of Part A of this Constitution.

- (d) To purchase, take on lease or in exchange, hire and otherwise acquire any lands, buildings, easements 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.
- (e) 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.
- (f) 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.
- (g) 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 dependants 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.
- (h) To construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, buildings, grounds, works or conveniences which may seem calculated directly or indirectly to advance the Company's interest, 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.
- (i) To invest and deal with the money of the Company not immediately required in such manner as may be permitted by law for the investment of trust funds.
- (j) 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 of 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 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 any such securities.
- (k) To make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.
- (l) In furtherance of the objects of the Company 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.
- (m) 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 any kind sold by the Company, or any money due to the Company from purchasers and others.

- (n) 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 but subject always to the proviso in paragraph (c) of this clause 3.3 of Part A of this Constitution.
- (o) To take such steps by personal or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Company, in the form of donations, annual subscriptions or otherwise.
- (p) To print and publish any newspapers, periodicals, books or leaflets that the Company may think desirable for the promotion of its objects.
- (q) In furtherance of the objects of the Company to amalgamate with any companies, institutions, societies or associations having objects altogether or in part similar to those of the Company and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as that imposed upon the Company under or by virtue of clause 3.3 of Part A of this Constitution.
- (r) In furtherance of the objects of the Company to purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate.
- (s) In furtherance of the objects of the Company 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.
- (t) To make donations for environmental, patriotic or charitable purposes.
- (u) To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the Company.

3.3 Application of funds

The income and property of the Company, shall be applied solely towards the promotion of the objects of the Company as set forth in this Constitution, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to the members of the Company. Provided that nothing herein shall prevent the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Company, or to any member of the Company in return for any services actually rendered to the Company, nor prevent the payment of interest at a rate not exceeding interest at the rate for the time being charged by bankers in Brisbane for overdrawn accounts on money lent, or reasonable and proper rent for premises demised or let by any member to the Company.

3.4 Conduit Policy

The Company shall not act as a mere conduit for the donation of money or property to other organisations, bodies or persons. The allocation of funds or property to other organisations or persons shall be made in accordance with the objects of the Company, and shall not be influenced by the preference or interest of a particular donor to the organisation

4 MEMBERS' CONTRIBUTION

Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the Company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding \$1.00.

5 PUBLIC FUND RULES

The rules of the Rainforest Rescue Fund ("Fund") are:

- (a) The environmental purpose of the Fund is to support the environmental objectives of Rainforest Rescue.
- (b) The Fund will be used only to support the environmental objectives of Rainforest Rescue.
- (c) Members of the public are to be invited to make donations of money or property to the Fund for the environmental purposes of Rainforest Rescue.
- (d) Money from interest on donations, income derived from donated property, and money from the realisation of such property are to be deposited into the Fund.
- (e) The Fund must not receive any other money or property, including corporate sponsorship money, and donations to it are to be kept separate from other funds of Rainforest Rescue.
- (f) A separate bank account is to be opened to deposit money donated to the Fund, including interest accruing thereon.
- (g) Receipts are to be issued in the name of the Fund and proper accounting records and procedures are to be kept and used for the Fund.
- (h) The Fund will be operated on a non-profit basis. None of the money or property accumulated by the Fund will be distributed to members of Rainforest Rescue apart from proper remuneration for administrative services.
- (i) In the event of the winding up of the Fund, any surplus assets are to be transferred to another fund with similar objectives that is on the Register of Environmental Organisations.
- (j) The Fund is to be administered by a committee of management of no fewer than three persons. The committee will be appointed by the Executive Committee of Rainforest Rescue. A majority of the members of the committee are required to have the requisite degree of responsibility to the general community, that is, persons who, because of their tenure of some public office or their position in the community, have a degree of responsibility to the community as a whole as distinct from obligations solely in regard to the environmental objectives of Rainforest Rescue.
- (k) Any changes to the membership of the committee of management of the Fund are to be advised to the Department of the Environment within a reasonable time following the making of the changes.

- (l) Any changes to the Rules of the Fund are to be advised to the Department of the Environment within a reasonable time following the making of the changes.
- (m) Statistical data about donations to the Fund during the financial year are to be provided to the Department of the Environment within four months after the end of the financial year and in the form required by the Department.
- (n) The Company shall comply with any rules that the Treasurer and the Minister with responsibility for the environment may make to ensure that gifts made to the Fund are only used for its principal purpose.

PART B

1 INTERPRETATION

5.1 Definitions

In this Constitution, unless the contrary intention appears:

“**business day**” means a day on which trading banks are open for business in the State in which the Company’s registered office is for the time being located.

“**Company**” means Rainforest Rescue.

“**Constitution**” means this Constitution as amended from time to time.

“**Director**” includes an alternate Director.

“**member**” means a person entered in the register as a member of the Company for the time being.

“**register**” means the register of members of the Company kept pursuant to the Corporations Law.

“**representative**” means a person authorised to act as a member’s representative pursuant to section 250D of the Corporations Law.

“**seal**” means the common seal of the Company (if any) and includes any duplicate common seal of the Company.

5.2 Construction

- (a) Section 110B of the Corporations Law applies in relation to this Constitution as if they were an instrument made, granted or issued under the Corporations Law as in force on the date on which this Constitution became binding on the Company.
- (b) An expression used in a particular Part or Division of the Corporations Law that is given by that Part or Division a special meaning for the purposes of that Part or Division has, in any of this Constitution that deals with a matter dealt with by that Part or Division, unless the contrary intention appears, the same meaning as in that Part or Division.

- (c) References to statutes or regulations include all statutes or regulations amending, consolidating or replacing them.
- (d) A reference to a body or entity (whether corporate or unincorporate) includes, in the event that the body or entity ceases to exist, or is reconstituted, renamed or replaced from time to time, a reference to the body or entity established or constituted in its place or nearly as may be succeeding to its powers, objects or functions.
- (e) Unless the contrary intention appears:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words importing any gender include all genders; and
 - (iii) the term “person” or words importing persons include bodies corporate.
- (f) Headings are for ease of reference only and do not affect the construction of this Constitution.

5.3 Replaceable Rules Excluded

The replaceable rules contained in the Corporations Law are excluded and do not apply to the Company.

6 COMPANY DETAILS

6.1 Status as public company

The Company is a public company.

6.2 Company limited by guarantee

The Company is limited by guarantee.

7 MEMBERSHIP

7.1 Who may be a member

The persons who have consented to become members for the purposes of sections 117(2)(c) and (5) and such other eligible persons or associations as the Directors shall admit to membership in accordance with this Constitution shall be members of the Company. A natural person shall be eligible for membership if he or she is over the age of eighteen. A corporation or association shall be eligible for membership if it has in the opinion of the Directors, aims and objects similar to the aims and objects of the Company.

7.2 Application for membership

Any eligible person may apply for membership of the Company. The application for membership shall be made in writing, signed by the applicant and shall be in such form as the Directors from time to time prescribe.

7.3 Acceptance of application

At the next meeting of the Directors after the receipt of any application for membership the Directors shall consider such application and may admit or reject the applicant. In no case shall the Directors be required to give any reason for the rejection of an applicant.

7.4 Notice of acceptance

Where an applicant has been accepted for membership, the Secretary shall forthwith send to the applicant written notice of their acceptance and a request for payment of the entrance fee and the first annual subscription (if any). Where such a fee is payable, the applicant becomes a member upon receipt by the Company of that fee, but otherwise becomes a member upon the sending of the Secretary's notice.

7.5 Fees

The Board may determine the entrance fee and annual subscription (if any) payable by members of the Company.

7.6 Date for payment of fees

All annual subscriptions shall become due and payable in advance on the First day of January in every year.

7.7 Failure to pay fees

If the subscription of a member shall remain unpaid for a period of 2 calendar months after it becomes due then the member may after notice of the default has been sent to him by the Secretary be debarred by resolution of the Directors from all privileges of membership and his name may be removed by the Directors from the Register of Members PROVIDED THAT the Directors may reinstate the member and restore his name to the Register on payment of all arrears if the Directors think fit to do so.

7.8 Resignation by members

A member may at any time by giving notice in writing to the Secretary resign his membership of the Company but shall continue liable for any annual subscription and all arrears due and unpaid at the date of his resignation and for all other moneys due by him to the Company and in addition for any sum not exceeding ONE DOLLAR (\$1.00) for which he is liable as a member of the Company under clause 4 of Part A of this Constitution.

7.9 Expulsion of members

If any member shall wilfully refuse or neglect to comply with the provisions of the Constitution of the Company or shall be guilty of any conduct which in the opinion of the Directors is unbecoming of a member or prejudicial to the interest of the Company the Directors shall have power to expel the member from the Company PROVIDED THAT at least 1 week before the meeting of the Directors at which a resolution for his expulsion is passed the member shall have had written notice of such meeting and of what is alleged against him and of the intended resolution for his expulsion and that he shall at such meeting and before the passing of such resolution have had an opportunity of giving orally or in writing any explanation or defence he may think fit AND PROVIDED FURTHER that 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 for his expulsion is to be considered by the Directors elect to have the question of his expulsion dealt with by the Company in general meeting and in that event an extraordinary general meeting of the

Company shall be called for the purpose and if at the meeting a resolution for the expulsion of the member be passed by a majority of two-thirds of those present and voting (such vote to be taken by ballot) the member shall be expelled and his name removed from the Register of Members.

8 GENERAL MEETINGS

8.1 Convening and Notice of General Meetings

- (a) Any Director may at any time convene a general meeting of the Company.
- (b) The Directors shall, on receipt of a request in accordance with section 249D of the Corporations Law, convene a general meeting of the Company.
- (c) A notice convening a meeting of the Company shall:
 - (i) set out the place, date and time of the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
 - (ii) set out the general nature of the meeting's business;
 - (iii) 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
 - (iv) if a member is entitled to appoint a proxy – contain a statement setting out the following information:
 - (A) that the member has a right to appoint a proxy;
 - (B) that the proxy need not be a member of the Company;
 - (C) that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.
- (d) The Directors may by notice in writing to the members postpone any meeting which has been convened to a date specified in the notice, or cancel the meeting, subject to the Corporations Law.
- (e) The accidental omission to give notice of any general meeting to, or the non-receipt of any such notice by, any person entitled to be notified does not invalidate the meeting or any resolution passed at that meeting.

8.2 Proceedings at General Meetings

- (a) A quorum at a general meeting of the Company is constituted by:
 - (i) where the Company has 1 member only, that member;
 - (ii) where the Company has 2 or more members, 2 members present in person or by proxy, attorney or representative.
- (b) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

- (c) If a quorum is not present within 15 minutes after the time appointed for a meeting or such longer period as the chairman of the meeting allows, the meeting:
 - (i) if convened on the request of members pursuant to section 249D, or by members pursuant to section 249E or 249F, of the Corporations Law, is dissolved;
 - (ii) in any other case, stands adjourned to the same day in the next week at the same time and place or to such other day, time and place as the chairman determines.
- (d) If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.
- (e) The chairman's ruling on all matters relating to the order of business, procedure and conduct of a general meeting is final.

8.3 Voting procedures at General Meetings

- (a) The chairman of Directors shall preside at every general meeting of the Company, but where there is no chairman present and willing to act within 15 minutes after the time appointed for a meeting, the following may preside as chairman of the meeting, in the following order of entitlement:
 - (i) a Director chosen by a majority of the Directors present;
 - (ii) the only Director present;
 - (iii) a member present in person or by proxy, attorney or representative chosen by a majority of the members present in person or by proxy, attorney or representative.
- (b) In the case of an equality of votes, the chairman of the meeting does not have a casting vote, either on a show of hands or on a poll, and the motion is deemed not to have been passed.
- (c) Every question submitted to a meeting shall be decided by a show of hands unless, before or upon the declaration of the result of the show of hands, a poll is demanded by:
 - (i) the chairman of the meeting;
 - (ii) not less than 3 members present in person or by proxy, attorney or representative and having the right to vote at the meeting; or
 - (iii) a member or members present in person or by proxy, attorney or representative representing not less than 10% of the total voting rights of all members having the right to vote at the meeting.
- (d) Unless a poll is demanded, a declaration by the chairman of the meeting that the resolution has been carried or carried unanimously or without dissent or by a particular majority or lost, and an entry to that effect in the minutes of the meeting, is conclusive evidence of the result of the resolution and it is not necessary to prove the number or proportion of votes cast in favour of or against the resolution.

- (e) Where a poll is duly demanded, it shall be taken in such manner and at the time and place the chairman of the meeting directs.
- (f) The result of the poll is deemed to be the resolution of the meeting at which the poll was demanded.
- (g) A poll cannot be demanded on the election of a chairman of a meeting or on the adjournment of a meeting.
- (h) A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.
- (i) The demand for a poll may be withdrawn.

8.4 Adjournment of General Meetings

- (a) The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time and place to place, but the only business that may be transacted at an adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (b) Where a meeting is adjourned for more than 1 month, the Directors must give at least 3 business days' notice of the adjourned meeting in the same manner as for an original meeting. Otherwise, it is not necessary to give notice of any adjournment or of the business to be transacted at an adjourned meeting.

9 VOTES OF MEMBERS

9.1 Right to Vote

- (a) A member entitled to receive notice of general meetings of the Company has the right to attend general meetings.
- (b) On a show of hands, each member present in person or by proxy, attorney or representative has one vote and on a poll, each member present in person or by proxy, attorney or representative has one vote.
- (c) If a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the member's committee or trustee or other person as properly has the management of the member's estate may exercise any rights of the member in relation to a general meeting as if the committee, trustee or other person were the member.
- (d) An objection may be raised to the right of a person to attend or vote at a meeting or adjourned meeting or to vote on a poll only at that meeting or adjourned meeting or when that poll is taken, and every vote not disallowed at the meeting or adjourned meeting or when the poll is taken is deemed valid for all purposes.
- (e) In the case of a dispute as to the admission or rejection of a vote, the chairman of the meeting shall decide the matter and the chairman's decision is final and conclusive.

9.2 Proxies and Attorneys

- (a) A member entitled to attend and vote at a meeting of the Company or of any class of members of the Company is entitled to appoint a person (whether a member or not) as the member's proxy to attend and vote for the member at the meeting.
- (b) If a member is entitled to cast 2 or more votes at a meeting, the member may:
 - (i) appoint 2 proxies; and
 - (ii) specify the proportion or number of votes each proxy may exercise, but if the appointment does not do so each proxy may exercise one half of the member's vote.
- (c) A proxy has the same right as the member to speak at the meeting.
- (d) An instrument appointing a proxy shall be:
 - (i) in writing under the hand of the appointor or of the appointor's attorney authorised in writing, or if the appointor is a body corporate under its common or official seal or the hand of an officer or attorney authorised in writing;
 - (ii) in or to the effect of the following form or in any other form acceptable to the Directors generally or in a particular case:

**RAINFOREST RESCUE
FORM OF PROXY**

I/We

of

being a member or members of Rainforest Rescue, hereby appoint as my proxy to vote on my behalf at the *annual general meeting/general meeting of the Company to be held on the day of..... and at any adjournment thereof, of or failing him, the chairman of the meeting.

This Form of Proxy is to be used *in favour of/against the resolution.

If this proxy is signed under power of attorney, the signatory declares that the attorney has had no notice of revocation thereof.

DATED this day of 1999.

.....
Signature(s)

.....

9.3 Signed Document Passing Resolution of Members

- (a) The Company may pass a resolution without a general meeting being held if all members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy. An electronically transmitted facsimile copy of a document, the original of which in the opinion of the secretary has been apparently signed by a member, is deemed to be a document signed by that member for these purposes.
- (c) Any document that is attached to a resolution signed in accordance with this **clause 5.3** is deemed to have been laid before the Company in general meeting.
- (d) The resolution is passed when the last member signs.
- (e) If the Company has only 1 member, the Company may pass a resolution by the member recording the resolution and signing the record.
- (f) The passage of a resolution in accordance with this **clause 5.3** satisfies any requirement that the resolution be passed at a general meeting.

10 DIRECTORS

10.1 Appointment of Directors

- (a) Unless otherwise determined by the Company in general meeting, the number of Directors shall be not less than 3 and not more than 10.
- (b) A Director must be a natural person.
- (c) A Director is not required to be a member and is not subject to retirement by rotation.
- (d) The Directors may at any time appoint any person to be a Director either to fill a casual vacancy or as an addition to the current Directors, but so that the total number of Directors (excluding any alternate Directors) does not at any time exceed the number determined in accordance with this Constitution.
- (e) The Company may by ordinary resolution remove any Director from office and may by ordinary resolution appoint another Director.
- (f) The appointment of the first Director or Directors takes effect in accordance with the Corporations Law on the date of the Company's registration.

10.2 Remuneration and Expenses

- (a) The Directors are not entitled to receive remuneration for acting as a Director, except as set out in this **clause 6.2**.
- (b) A Director may receive remuneration in the Director's capacity as an employee of the Company, provided that the terms of the Director's employment are approved by a resolution of the Directors.

- (c) Where with the prior approval of the Directors a Director renders or is called upon to perform services for the Company in the Director's technical or professional capacity, the Directors may arrange with that Director special remuneration by payment of a stated sum of money determined by a resolution of the Directors, provided the amount paid or payable for the services does not exceed reasonable commercial terms.
- (d) The Director is entitled to be reimbursed out of the funds of the Company reasonable travelling, accommodation and other expenses the Director incurs when travelling to or from and attending meetings of the Directors or a committee of the Directors or when otherwise engaged on the business of the Company, provided that the amount does not exceed a maximum amount previously approved by the Directors.

10.3 Vacation of Office

- (a) In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Law, the office of a Director becomes vacant if the Director:
 - (i) 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;
 - (ii) resigns from office by notice in writing to the Company or refuses to act; or
 - (iii) is absent from the meetings of the Directors for a continuous period of 6 calendar months without special leave of absence from the Directors (but for the purposes of determining whether the Director is absent from a meeting, attendance by the Director's alternate is deemed to be attendance by the Director).
- (b) A Director is not disqualified by that office from:
 - (i) holding any other office or position of profit (except that of auditor) in the Company or in any body corporate in which the Company is a member or otherwise interested;
 - (ii) entering into a contract or arrangement with the Company as vendor, purchaser, underwriter or otherwise and participating in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company,subject to **clause 6.12**.

10.4 Powers of Directors

- (a) Subject to the Corporations Law, the management of the business of the Company is vested in the Directors and they may exercise all the powers of the Company and do all such acts and things as the Company can exercise and do and are not required to be exercised or done by the Company in general meeting.
- (b) Without limiting the generality of **clause 6.4(a)**, the Directors may exercise all powers of the Company to:

- (i) borrow or raise or secure the payment or repayment of any sum or sums of money;
- (ii) charge, mortgage or otherwise encumber any or all of the undertakings, property, assets or business of the Company (both present or future whatsoever and wheresoever situate) or all or any of its uncalled capital;
- (iii) issue notes, bonds, debentures or any other securities whatsoever or give any other security or guarantee for any debt, liability or obligation of the Company or of any other person,

in such manner and on such terms and conditions as the Directors determine.

- (c) Where a Director or other officer of the Company becomes personally liable for the payment of a sum primarily due from the Company, the Directors may mortgage, charge or otherwise give security over the whole or any part of the Company's undertakings, property or assets (present or future) including its uncalled capital, by way of indemnity to secure the Director against any loss in respect of that liability.
- (d) All cheques, bills of exchange, promissory notes, bankers drafts and other negotiable instruments and all receipts for money paid to the Company, shall be signed, accepted, drawn, made, endorsed or otherwise executed for and on behalf of the Company by such persons (whether Directors or officers of the Company or not) in such manner as the Directors determine.

10.5 Meetings of Directors

- (a) The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit.
- (b) Without limiting the generality of **clause 6.5(a)**:
 - (i) the Directors may confer by radio, telephone, closed circuit television or other electronic means of audio or audio-visual communication, or by any other form of technology consented to by all of them (which consent:
 - (A) may be a standing consent;
 - (B) may only be withdrawn within a reasonable time before the meeting);
 - (ii) a resolution passed at such a conference, notwithstanding the Directors are not present together in one place at the time of the conference, is deemed to have been passed at a meeting of the Directors held on the day on which and at the time at which the conference was held;
 - (iii) the provisions of this Constitution relating to proceedings of Directors apply, so far as they are capable of application (*mutatis mutandis*), to conferences held by these means.
- (c) A Director may, and the secretary shall upon the request of a Director, convene a meeting of the Directors.
- (d) The person convening a meeting of Directors shall give notice of the meeting to each Director by delivering or posting the notice or by sending the notice by

communication service to the last address or communication service number (as the case may be) within Australia provided by the Director for the purposes of this **clause 6.5**.

- (e) If any of the Directors consider that a meeting of the Directors is required upon short notice for consideration of urgent business, notice of such meeting and of the general nature of the business for discussion at the meeting may be given by telephone to each Director at the Director's last telephone number within Australia provided by the Director for the purposes of this **clause 6.5**.
- (f) Notice of meetings of Directors may be given to a Director at an address or communication service number outside Australia provided by the Director for the purposes of this **clause 6.5**, but the Director or secretary convening a meeting of Directors is not obliged to give notice to any Director at an address or communication service number outside Australia.
- (g) For the purposes of this **clause 6.5**, "communication service" means any facsimile, telex, electronic post service or other electronic means of written communication.
- (h) Two Directors constitute a quorum at a meeting of Directors, unless the Directors at any time determine that a greater number of Directors must be present to constitute a quorum.

10.6 Proceedings of Directors

- (a) The Directors may elect a chairman and may determine the period during which the chairman holds office.
- (b) The chairman of Directors shall preside at meetings of the Directors, but if at the time of any meeting a chairman has not been elected or is not present within fifteen minutes of the time appointed for holding the meeting, the Directors present shall elect one of them to be chairman of that meeting.
- (c) Subject to this Constitution, questions arising at a meeting of the Directors are decided by a majority of votes of the Directors present and competent to vote on the question.
- (d) In the case of an equality of votes, the chairman of the meeting has a casting vote in addition to a deliberative vote, unless only 2 Directors are present at the meeting or only 2 Directors are competent to vote on the question, in either of which cases the chairman does not have a casting vote.
- (e) The Directors may delegate any of their powers to committees consisting of any Director or Directors and may at any time revoke that delegation.
- (f) A committee to which any powers have been delegated shall exercise the powers delegated in accordance with any directions of the Directors.
- (g) Subject to **clause 6.6(f)**, the meetings and proceedings of a committee of Directors are governed by the provisions of this Constitution regulating meetings and proceedings of the Directors, so far as they are capable of application (*mutatis mutandis*) to meetings and proceedings of committees.
- (h) All acts of the Directors, a committee of the Directors or a member of a committee of Directors are valid notwithstanding that it is afterwards discovered

that there was some defect in the appointment, election or qualification of them or any of them or that they or any of them were disqualified from acting or had vacated office.

10.7 Signed document passing Resolution of Directors

- (a) The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution (which does not include any alternate Director whose appointor signs the document) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. An electronically transmitted facsimile copy of a document, the original of which in the opinion of the secretary has been apparently signed by a Director, is deemed to be a document signed by that Director for these purposes.
- (c) The resolution is passed when the last Director signs.

10.8 Managing Directors

- (a) The Directors may:
 - (i) appoint one or more of their number to be a managing Director of the Company for such period and on such terms and conditions as they determine;
 - (ii) revoke the appointment of any managing Director, subject to the terms of any agreement entered into between the Company and the managing Director.
- (b) The managing Director's appointment automatically ceases if the managing Director ceases for any reason to be a Director.
- (c) The Directors may confer upon a managing Director for the time being such of the powers conferred on and exercisable by the Directors on such terms and conditions and with such restrictions as they determine.
- (d) Any of those powers may be conferred concurrently with, but not to the exclusion of, the powers of the Directors, and may be revoked, withdrawn or varied at any time by the Directors.

10.9 Alternate Directors

- (a) A Director may by notice in writing to the Company appoint a person (whether a member of the Company or not and whether otherwise a Director or not) approved by a majority of the other Directors, to act as an alternate Director in the Director's place on such terms and conditions and for such period as the Director specifies.
- (b) An appointment, or the termination of an appointment, of an alternate Director is effected by notice in writing signed by the Director who makes or made the appointment and served on the Company, either by delivery of the notice to the Company's registered office or sending the notice to the Company by post, courier, airmail or facsimile transmission.

- (c) An alternate Director:
 - (i) may at any time be removed or suspended from office by writing under the hand of the Director by whom the alternate was appointed, notwithstanding that the period of the appointment of the alternate has not expired;
 - (ii) is entitled to receive notice of meetings of the Directors and to attend and vote at those meetings if the Director by whom the alternate was appointed is not present;
 - (iii) where the alternate is also a Director, has a separate additional vote on behalf of the Director the alternate is representing;
 - (iv) may exercise all the powers reposed in the appointor (subject to any conditions or restrictions imposed in that regard by the appointor) but does not have the power to appoint an alternate Director;
 - (v) automatically ceases to be an alternate Director if the Director by whom the alternate was appointed ceases to be a Director;
 - (vi) whilst acting as a Director, is responsible to the Company for the alternate's own acts and defaults, and the Director by whom the alternate was appointed is not responsible for those acts or defaults;
 - (vii) is entitled to be reimbursed out of the funds of the Company for all reasonable travelling, accommodation and other expenses incurred by the alternate in travelling to or from and attending meetings of the Directors or a committee of the Directors or when otherwise engaged on the business of the Company; and
 - (viii) is counted in determining a quorum for the purposes of **clause 6.5(h)**, but where the alternate Director is also a Director is not counted in both capacities.

10.10 Appointment of Attorney

- (a) The Directors may, by power of attorney under the seal of the Company, appoint a person or persons, jointly or severally, to be the attorney or attorneys of the Company for such purposes and with such powers (not exceeding those conferred on the Directors by this Constitution) and on such terms and conditions as the Directors determine.
- (b) An attorney may be, but need not be, a Director or a member of the Company.
- (c) A power of attorney may:
 - (i) contain such provisions for the protection or convenience of persons dealing with the attorney as the Directors determine;
 - (ii) authorise the attorney to delegate all or any of the powers for the time being vested in the attorney.

10.11 Minutes

The Directors shall ensure that the Company keeps minute books, and that minutes of meetings are signed, as required by the Corporations Law.

10.12 Interests of Directors

- (a) A Director (including an alternate Director) in his capacity as such, shall not vote in respect of any contract or arrangement or proposed contract or arrangement in which he has, directly or indirectly, a material interest and shall not be present while the matter is being considered at a meeting of Directors unless permitted to do so in accordance with the Corporations Law. The provisions of section 232A of the Corporations Law shall apply in the case of any such material interest.
- (b) A Director may, notwithstanding his office as such and the fiduciary relationship established by that office:
 - (i) hold any other office or place of profit (except that of auditor of the Company) in the Company or in any body corporate in which the Company is a member or otherwise interested, provided however that a Director shall not without the approval of the Directors hold the office of a director of any other company which in the opinion of the Directors is for the time being in active competition with the Company;
 - (ii) enter into a contract or arrangement with the Company as vendor, purchaser, underwriter or otherwise and may participate in any association, institution, fund, trust, scheme or convenience for past or present employees or Directors of the Company; and
 - (iii) subject to clause 6.12(d), retain for his own benefit, any profit arising from any such other office or place of profit, or from any such contract or arrangement and any remuneration, pension, allowance, commission or other benefit received in relation to such office or place of profit or received by reason of participation in any such association, institution, fund, trust, scheme or convenience.
- (c) Any contract or arrangement entered into by or on behalf of the Company is not void or voidable by reason only that a Director is in any way directly or indirectly interested in it.
- (d) A Director who is in any way directly or indirectly interested in a contract or arrangement or proposed contract or arrangement with the Company or who holds any office or possesses any property by which, directly or indirectly, duties or interests might be created in conflict with his duties or interests as Director, shall declare the nature of his interest or the nature, character and extent of the conflict (as the case may be) in accordance with section 231 of the Corporations Law.

11 SECRETARY

11.1 Appointment

- (a) The Directors may at any time appoint a secretary and may at any time terminate the appointment of any secretary.

- (b) The appointment of the first secretary or secretaries of the Company takes effect in accordance with the Corporations Law on the date of the Company's registration.

11.2 Terms of Office

A secretary of the Company holds office on such terms and conditions, as the Directors determine.

12 SEAL

12.1 Types of Seals

- (a) The Directors may adopt a common seal of the Company.
- (b) Where the Company has a common seal, the Company may have a duplicate common seal, which must be a copy of the common seal with the words "duplicate seal" or "certificate seal" added.
- (c) The Directors shall provide for the safe custody of all seals in such manner as they determine.

12.2 Use of Seal

- (a) The seal shall be used only by the authority of the Directors.
- (b) Subject to **clause 8.2(c)**, every document to which the seal is affixed shall be signed by a Director and countersigned by the secretary or a second Director or by some other person appointed generally or in a particular case by the Directors for that purpose.
- (c) Where the Company has only 1 Director and that Director is also the only secretary, that Director alone shall sign any document to which the seal is affixed.
- (d) The Directors may determine, generally or in a particular case, that the seal and the signatures of the Director, secretary or other person appointed by the Directors for the purpose of signing documents to which the seal is affixed, may be affixed or written on documents by a specified mechanical means so as to produce a facsimile of such seal and signatures.

13 ACCOUNTS AND AUDIT

13.1 Auditor

Where the Company has an auditor, the auditor or the auditor's agent authorised in writing for the purpose is entitled to:

- (a) attend general meetings;
- (b) receive all notices of and other communications relating to general meetings which a member is entitled to receive;
- (c) speak at any general meeting which the auditor attends on any part of the business of the meeting which concerns the auditor in that capacity,

but does not have the right to vote at general meetings.

13.2 Inspection of Company Records

- (a) Subject to the Corporations Law, the Directors shall determine whether and to what extent and at what times and places and under what conditions the accounting records and other documents of the Company or any of them will be open to inspection by the members and other persons.
- (b) A member or other person (not being a Director):
 - (i) has no right to inspect any documents of the Company, except as conferred by the Corporations Law or any other statute, or except as authorised by the Directors; and
 - (ii) is not entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret or secret process of or used by the Company.

14 NOTICES

14.1 Mode of Service

- (a) The Company may give a certificate, cheque, warrant, notice or other document to any member by:
 - (i) serving it on the member personally;
 - (ii) sending it by post, courier or airmail to the member at the address recorded in the register or the address supplied by the member to the Company for the giving of notices to the member; or
 - (iii) where applicable, sending it to the member:
 - (A) by facsimile transmission to the facsimile number supplied by the member to the Company for the giving of notices to the member;
 - (B) by electronic mail to the electronic address supplied by the member to the Company for the giving of notices to the member.
- (b) A notice may be given by the Company to joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share.

14.2 Deemed Receipt of Notice

- (a) A document sent by way of ordinary post, courier or air mail is deemed to have been received or served on the business day next following that on which it was posted or dispatched. In proving delivery or service it is sufficient to prove that the envelope or wrapper containing the document was properly addressed and stamped (if posted) and was posted or dispatched.
- (b) A document sent by way of facsimile transmission is deemed to be received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient if produced before 5 pm on a day, otherwise on the next business day.

- (c) A document sent by way of electronic mail is deemed to be received on the day and at the time specified in a delivery report indicating the document has been delivered or, if no delivery report is received, on the next business day (but is not deemed to have been received if a delivery report indicates a delivery failure).

14.3 Proof of Service

A certificate in writing signed by a Director, secretary or other officer of the Company that:

- (a) a document or its envelope or wrapper was addressed and stamped and was posted or dispatched;
- (b) a document was sent by facsimile transmission and that a transmission report was produced by the machine from which it was sent which indicated that the facsimile was sent in its entirety;
- (c) a document was sent by electronic mail, and that a delivery report was received indicating the document was delivered, or that no delivery report was received indicating a delivery failure,

is conclusive evidence of those facts.

14.4 Notice of General Meeting of the Company

- (a) Subject to **clause 10.4(c)**, the following persons are entitled to receive notice of every general meeting:
 - (i) every member;
 - (ii) every Director;
 - (iii) every person who has become entitled to a member's membership on the member's death or bankruptcy; and
 - (iv) the auditor for the time being of the Company.
- (b) No other person is entitled to receive notices of general meetings.
- (c) A member who has no registered address in Australia or who has not supplied to the Company any address or facsimile number within Australia for the giving of notices to the member is not entitled to receive notices from the Company.

14.5 Previous Notice

A person who by operation of law or other means becomes entitled to be registered as a member, is bound by every notice previously given in respect of that membership.

14.6 Notice on Transmission

The Company may give a notice to a person entitled to a membership on a member's death or bankruptcy by:

- (a) serving it on the person personally;

- (b) sending it to the person by post, courier, airmail or facsimile transmission or electronic mail addressed to the person by name, or by the title of representative of the deceased or assignee of the bankrupt or by any like description,

at the address or facsimile number (if any) within Australia or the electronic address (if any) supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice would have been sent had it been sent to the member.

15 WINDING UP

15.1 Distribution of assets

If on the winding up or dissolution of the Company, there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed amongst members, of the Company, but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Company, and which shall prohibit the distribution of its or their income among its or their members to any extent at least as great as is imposed on the Company by **clause 3.2** of this Constitution. The institution or institutions are to be determined by the members of the Company at or before the time of dissolution. If and so far as effect cannot be given to this provision, then the property is to be applied to some charitable object.

16 INDEMNITY

16.1 Definition of “Officer”

In this **clause 12**:

- (a) “**Officer**” means any of:
 - (i) a Director, secretary or executive officer of the Company;
 - (ii) a receiver or receiver and manager of property of the Company;
 - (iii) an administrator of the Company or of a deed of company arrangement executed by the Company;
 - (iv) a liquidator of the Company; or
 - (v) any person administering a compromise or arrangement made between the Company and another person or persons.
- (b) References to “**Officers**” or to “**auditor**” include references to former Officers and former auditors.

16.2 Indemnity to Officers and employees

- (a) Subject to **clause 12.2(b)**, every Officer or auditor of the Company and any employee of the Company shall be indemnified out of the assets of the Company against all costs, losses, expenses and liabilities incurred by that Officer, auditor or employee in the person’s capacity as an Officer, auditor or employee of the Company by reason of any act or thing done or omitted to be done by that person in that capacity or in any way in the discharge of that person’s duties or by reason of or relating to the person’s status as an Officer, auditor or employee of the Company.

- (b) An Officer of the Company is not entitled to be indemnified out of the assets of the Company for a liability which arises out of conduct involving a lack of good faith or where the liability is to the Company or a related body corporate.

16.3 Indemnity for proceedings

Without limiting **clause 12.2**, every Officer, auditor or employee of the Company shall be indemnified out of the assets of the Company against any liability for costs and expenses incurred by that person:

- (a) in defending proceedings, whether civil or criminal in which judgment is given in favour of the person 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 person under the Corporations Law.

16.4 Liability as Between Officers

Subject to the Corporations Law, an Officer is not liable for the negligence, default or breach of duty of any other Officer except to the extent of the Officer's own negligence, default or breach of duty.

16.5 Reimbursement of Expenses

Every Officer is entitled to:

- (a) have reimbursed to the Officer out of the funds of the Company all expenses which the Officer may from time to time incur in consequence of and in discharge or attempted discharge of the Officer's duties;
- (b) be indemnified by the Company against all liabilities whatsoever which the Officer may from time to time undertake as agent for the Company or for its benefit or intended benefit.