

Corporations Act 2001

Company limited by guarantee

CONSTITUTION

OF

**Seed Harvest Spoon Education
Foundation**

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1. DEFINITIONS

- 1.1** In this Constitution the following expressions shall, unless the context otherwise requires, have the following meanings:
- 1.1.1 **"ACN"** means Australian Company Number.
 - 1.1.2 **"Act"** means the *Corporations Act 2001* as amended or re-enacted from time to time and includes any statutory instruments issued under the *Corporations Act 2001*.
 - 1.1.3 **"Alternate Director"** means any person appointed under Clause 19.
 - 1.1.4 **"ASIC"** means the Australian Securities & Investments Commission or any successor body.
 - 1.1.5 **"Board"** means the Board of Directors of the Company from time to time established under Clause 16.
 - 1.1.6 **"Chairperson"** means the person elected from time to time pursuant to the provisions of Clause 16 to perform the duties of a chairperson.
 - 1.1.7 **"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.
 - 1.1.8 **"Constitution"** means this document and includes any variation or replacement of it.
 - 1.1.9 **"Directors"** means the Directors for the time being or such number of them as have authority, acting as a body, to act for the Company and includes, where applicable, a person duly appointed and for the time being acting as an Alternate Director.
 - 1.1.10 **"Eligible Charity"** means a fund, authority or institution:
 - 1.1.10.1 which is charitable at law; and

- 1.1.10.2 gifts to which are deductible under item 1 of the table in section 30-15 of the Tax Act.
- 1.1.11 "**Executive**" means each of the persons who, together, comprise the executive body of the Company, established under Clause 16.
- 1.1.12 "**First Members**" means the Founder and each other person who has consented to become a member of the Company on registration under the Law.
- 1.1.13 "**Company**" means Seed Harvest Spoon Education Foundation.
- 1.1.14 "**Founders**" means Michelle Carrick and Bree Velluti.
- 1.1.15 "**GST**" has the meaning given by Section 195-1 of the GST Act.
- 1.1.16 "**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999*.
- 1.1.17 "**Law**" means the *Corporations Act 2001 (Commonwealth)*.
- 1.1.18 "**Member**" means each person who is recorded as a Member in the Register.
- 1.1.19 "**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.
- 1.1.20 "**Membership Year**" means each period of 12 Months commencing on 1 July and ending on the next ensuing 30 June.
- 1.1.21 "**Month**" means calendar month.
- 1.1.22 "**Office**" means the registered office of the company.
- 1.1.23 "**Present**" when used in relation to a Member at a meeting means present in person, or by proxy, or by attorney, or by representative.
- 1.1.24 "**Register**" means the register of members to be kept pursuant to the Act.

- 1.1.25 **“Regulations”** means the *Corporations Regulations 2001* (Commonwealth).
- 1.1.26 **“Replaceable Rules”** means the replaceable rules under, or as referred to in, the Act as amended or re-enacted from time to time.
- 1.1.27 **“Secretary”** means any person appointed from time to time pursuant to the provisions of Clause 24.1 to perform the duties of a secretary of the Company.
- 1.1.28 **“Subscription”** means the annual subscription fee payable by Members pursuant to the provisions of Clause 6.3.
- 1.1.29 **“Tax Act”** means the *Income Tax Assessment Act, 1997* (Commonwealth).
- 1.1.30 **“Treasurer”** means the person appointed from time to time pursuant to the provisions of Clause 25 perform the duties of a treasurer of the Company.

2. INTERPRETATION

2.1 In this Constitution:

- 2.1.1 References to any officer of the Company include any person acting for the time being as such officer.
- 2.1.2 Words importing:
- 2.1.2.1 the singular include the plural and vice versa;
 - 2.1.2.2 words importing any gender shall mean and include all other genders;
 - 2.1.2.3 words importing persons include companies, corporations, partnerships, associations, institutions, bodies and entities (whether incorporated or not) and visa versa.

- 2.1.3 Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.
 - 2.1.4 In this Constitution, any reference to a clause is a reference to a clause of this Constitution.
 - 2.1.5 Headings to clauses in this Constitution are added for convenience only and do not affect interpretation.
 - 2.1.6 Annotations to this Constitution by reference to sections of the Act or to Replaceable Rules do not form part of the Constitution.
 - 2.1.7 Where an expression used in this Constitution is defined in the Act it has the same meaning and shall be construed in this Constitution as expressions to the Act as amended or modified or re-enacted from time to time, unless the context otherwise requires.
- 2.2 The Replaceable Rules contained in the Law do not apply in respect of the company, unless expressed in the Law to be mandatory in respect of the company.
- 2.3 The company is a **not profit public company limited by guarantee** and does not have share capital.

3. OBJECTS OF THE COMPANY

- 3.1 The principal object for which the company is established is, solely, for the public charitable purposes of health and wellbeing enhancement by:
- 3.1.1 Engaging young children, students and community groups in education programs that promote health and wellbeing of individuals, communities and environments by learning how to: grow local seasonal organic food, generate healthy ecosystems and promote local biodiversity.

- 3.1.2 Delivering experiential learning programs based on ecology and Permaculture principles to Early Childhood services and schools to build knowledge and life long skills that encourage food security and an awareness of where food comes from with the outcome of continuity towards healthy food choices;
 - 3.1.3 Supporting community resilience and wellbeing in the delivery of programs that promote intergenerational connections and cultural diversity to foster social cohesion through participation and involvement in local community food initiatives with the outcome of enhanced mental, physical and environmental health and wellbeing;
 - 3.1.4 Generating local environmental and sustainability initiatives based on education programs to foster waste minimisation, water harvesting and conservation, and soil regeneration to empower healthy communities.
- 3.2** The principal object of the company set out in clause 3.1 is and will continue to be, achieved by:
- 3.2.1 Investing in grassroots education by implementing the Seed Harvest Spoon Early Childhood ‘Let’s get our Garden Started’ program to children aged 2 to 5 years, including a Community Information session to generate broader awareness, embedded practice and behavioural change.
 - 3.2.2 Delivering Seed Harvest Spoon’s Primary School Program to students aged 5 to 12 years, to enhance learning outcomes across curricula, integrate the garden/outdoor classroom as a utilised learning resource, support teaching staff to extend outdoor garden learning to the classroom to promote cultural change.
 - 3.2.3 Engage community groups in our learning programs to foster community resilience through healthy environments, education, social involvement and inclusion.

- 3.2.4 Promote sustainable practices in Early Childhood, schools and communities through education, partnerships and skill sharing with the goal to support the embedding of practices to reach sustainability targets.
- 3.2.5 Seek funding to implement learning programs and projects that target schools and communities identified by Census and Socio-Economic Indexes for Areas (SEIFA) as being socially and economically disadvantaged to foster health and education outcomes.
- 3.2.6 Engage community volunteers to support the environmental and health initiatives implemented by Seed Harvest Spoon to promote community partnership building, social cohesion and education.
- 3.2.7 Partner with recognised organisations that have similar philosophy and outcomes as Seed Harvest Spoon with the aim of collaboration and sustainability of projects.
- 3.2.8 Maintain the website of Seed Harvest Spoon as an education resource for the dissemination of information, stories, education programs, learning ideas and recommended resources.
- 3.2.9 Promote a broader community awareness and understanding of the objects projected by Seed Harvest Spoon in generating a regular newsletter, maintaining an up to date informative website, utilise social media avenues, create web videos of our projects, and seek media coverage where possible and appropriate.
- 3.2.10 Attendance, promotion and participation in targeted festivals, seminars, conferences and fairs through workshops, information stalls or talks that support the object of Seed Harvest Spoon stated in clause 3.1.
- 3.2.11 Engage children and communities in learning programs that are designed to target actions such as, healthy eating awareness and increased physical activity relating to obesity prevention recommended in the National Preventative Health Strategy, 2009 with the outcome of Australia – The healthiest country by 2020.

3.2.12 Filtering of health and wellbeing outcomes by increasing accessibility, availability and utilisation of locally grown seasonal food, and reduction of sedentary behaviour by encouraging physical activity through learning outdoors in the garden.

3.3 The assets and income of the company shall be applied solely in furtherance of the abovementioned objects and no portion shall be distributed directly or indirectly to the members of the company, by way of dividend, bonus or otherwise howsoever by way of profit to the members of the company, except as bona fide compensation for services rendered or expenses incurred on behalf of the company.

3.4 Notwithstanding anything contained in Clause 3.3, nothing contained in that Clause shall prevent 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 way of business, nor prevent the payment of interest at a rate not exceeding the rate fixed for the purposes of this Clause 3 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.

4. POWERS OF THE COMPANY

4.1 The Company has all the rights, powers and privileges and the legal capacity of a natural person including, all the powers of a body corporate, not limited to, but including the powers to:

4.1.1 issue debentures whether irredeemable or redeemable;

4.1.2 grant a floating charge over the company property;

4.1.3 arrange for the company to be registered or recognised as a body corporate in any place outside New South Wales;

- 4.1.4 do anything that it is authorised to do under any law (including a law of a foreign country);
- 4.1.5 acquire, hold and dispose of real and personal property;
- 4.1.6 lease the whole or any part of any land or building for the purpose of the company;
- 4.1.7 occupy, use and control any land or building owned or held under lease by any other person and made available to the company;
- 4.1.8 enter into contracts;
- 4.1.9 erect buildings;
- 4.1.10 purchase or take on hire, or to accept as a gift or on deposit or loan, and to dispose of or otherwise deal with furnishings, equipment and other goods; and
- 4.1.11 do anything incidental to any of the Company's objects.

4.2 Notwithstanding anything contained in this Constitution, any money or other property held by the Company upon trust or accepted by the Company subject to a condition, shall not be dealt with except in accordance with the obligations of the Company as trustee or as the person who has accepted the money or other property subject to the condition, as the case may be.

4.3 Company may have a common seal

- 4.3.1 The Company may, but need not, have a Seal. If the company does have a Seal it must have set out on it:
 - 4.3.1.1 If the company has its ACN in its name – the company's name; or
 - 4.3.1.2 otherwise, the company's name, the expression "Australian Company Number" or "ACN" and the company's ACN.

4.3.2 If the Company has a Seal, the directors must provide for the safe custody of the Seal, which may only be used on the authority of the directors or of a committee of the directors authorised by the directors.

4.4 Agent exercising the company's power to make contracts

Subject to the operation of a law that requires a particular procedure to be complied with in relation to the contract, the company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the company's express or implied authority and on behalf of the company. The power may be exercised without using a common seal.

4.5 Execution of documents by the company

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

4.5.1.1 2 directors; or

4.5.1.2 a director and a secretary.

4.5.2 If the Company has a Seal, the company may execute a document if the Seal is fixed to the document and the fixing of the Seal witnessed by:

4.5.2.1 2 directors; or

4.5.2.2 a director and a secretary.

5. INCOME AND PROPERTY OF THE COMPANY

5.1 Income and Property of the company

All income and property of the company must be solely applied towards the promotion of the objects of the company.

5.2 Payments in good faith

Nothing in this Constitution prevents the company from making payment in good faith:

- 5.2.1 of reasonable and proper remuneration to any employees of the company;
- 5.2.2 to any member of the company in relation to any contract, right or claim in which that member is interested or which arises other than by virtue of the member's membership of the company;
- 5.2.3 of reasonable interest on any money lent to the company by any member of the company; or
- 5.2.4 of reasonable or proper rent for premises let by any member to the company.

6. MEMBERSHIP

6.1 Number of Membership

- 6.1.1 The number of Members shall be not less than one nor more than the maximum number (if any), which the Board may from time to time prescribe.
- 6.1.2 The First Members shall be Members of the Company.
- 6.1.3 The Members of the Company shall consist of such persons, as the Directors shall admit to Membership in accordance with the provisions of this Constitution.

6.2 Admission to Membership

- 6.2.1 Every person who, at the date of registration of the Company, is a Member of the Company and has paid his Subscription for the current Membership Year, continues to be a Member of the Company.
- 6.2.2 A person who is not a Member of the Company at the time of registration of the Company (or who was a Member at that time but

has ceased to be a Member) shall not be admitted to Membership unless:

6.2.2.1 he applies for Membership in accordance with Clause 6.2.3; and

6.2.2.2 his admission as a Member is approved by the Directors.

6.2.3 Every person seeking admission to Membership of the Company must:

6.2.3.1 sign a written application addressed to the Secretary, in the form prescribed by the Board;

6.2.3.2 specify the class of Membership sought and such other particulars as the Board may either generally or, in particular case, require;

6.2.3.3 provide the undertaking referred to in Clause 6.4; and

6.2.3.4 give or leave the application, undertaking and payment for the first year's Subscription with, or for, the Secretary of the Company.

6.2.4 As soon as practicable after receipt of an application referred to in Clause 6.2.3, the Secretary must refer the application, or notice to the Directors.

6.2.5 On an application, nomination or notice being referred to the Directors, the Directors shall determine, in their absolute discretion, whether to approve or to reject the application, nomination or notice.

6.2.6 The Directors may decline to accept an application for Membership or nomination or notice with respect to a Nominee, without assigning any reason.

6.2.7 Upon an application being approved by the Directors, the Secretary must, as soon as practicable:

6.2.7.1 if the applicant is a natural person – notify the applicant in writing that he has been approved for Membership; and

- 6.2.7.2 if the applicant is not a natural person – notify the applicant and its Nominee in writing that the applicant has been approved for Membership and that the Nominee has been approved as its authorised representative.
- 6.2.8 An applicant for Membership becomes a Member and is entitled to exercise the rights of Membership when his name is entered into the Register.
- 6.2.9 The Secretary must, within 28 days after approval by the Directors and receipt of the amounts referred to in Clause 6.3 enter the applicant’s name in the Register, and, if the applicant is not a natural person, the Nominee’s name.
- 6.2.10 If an application, nomination or notice has been rejected by the Directors, the Secretary must, as soon as practicable:
 - 6.2.10.1 notify the applicant in writing that his application or nomination or notice has been rejected; and
 - 6.2.10.2 return to the applicant the first year’s Subscription (if any), which accompanied the application.

6.3 Subscription

- 6.3.1 Subject to following provisions of this Clause 6.3, the Subscription for each Membership Year shall be such amount (if any) as may be determined by the Directors from time to time.
- 6.3.2 The Directors shall be entitled to determine, in their absolute discretion, that the Subscription payable in any Membership Year by any class of Members may be different to the Subscription payable by any other class of Members.
- 6.3.3 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 shall be appointed according to the number of days remaining in that Membership Year.

6.3.4 The Subscription shall be payable by each Member, in advance at the commencement of each Financial Year, addressed to the Treasurer, or to such other person as the Board shall, from time to time, determine for that purpose.

6.4 Undertaking

6.4.1 Every Member shall provide an undertaking, in writing, in accordance with the provisions of Clause 6.4.2.

6.4.2 Every Member of the Company undertakes to contribute to the property of the Company in the event of the Company 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 contributors among themselves such amount as may be required, not exceeding, in any event, \$25.00 per Member.

6.5 GST

6.5.1 All payments that are required to be made by a Member under this Constitution (including but not limited to Subscriptions) are exclusive of GST.

6.5.2 If any payment referred to in Clause 6.5.1 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 shall be increased by the prevailing rate of that GST and the Member shall pay that increased amount to the Company at the same time and in the same manner as all other payments required to be made.

6.5.3 The Company must issue to the Member a tax invoice for the increased amount referred to in Clause 6.5.2 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

Subject to this Constitution, all Members are entitled to all the rights and privileges of Membership of the Company.

7.2 Transferability

A right, privilege, or obligation of a person by reason of his Membership:

7.2.1 is not capable of being transferred or transmitted to another person; and

7.2.2 terminates upon the cessation of his Membership whether by death or resignation or otherwise as more particularly set out in Clause 10.

7.3 Variation of Rights

If at any time the Directors exercise the powers under Clause 6.1.5, the rights, restrictions or obligations of Members or any class of Members may be varied with either:

7.3.1 the written consent of not less than 75% of the existing Members; or

7.3.2 the sanction of a special resolution passed at a separate general meeting of the existing Members.

8. REGISTER OF MEMBER

8.1 Information in Register

- 8.1.1 The Secretary must keep and maintain a Register containing:
- 8.1.1.1 the name and address of each Member;
 - 8.1.1.2 the date on which each Member's name was entered in the register;
 - 8.1.1.3 in the case of a Member who is not a natural person, the name and address of the Nominee;
 - 8.1.1.4 the class of Membership; and
 - 8.1.1.5 any other information which the Directors considers necessary.

8.2 Inspection and copies

- 8.2.1 The Register shall be available for inspection, free of charge, by any Member upon request.
- 8.2.2 A Member may make a copy of entries in the Register.

9. DEFAULT BY MEMBERS

- 9.1** If a Member fails to pay the whole or any part of his Subscription in any Membership Year, for more than 60 days after the due date for payment then:

- 9.1.1 all of the rights and privileges of that Member shall be suspended until the Subscription, or such part thereof which

is payable and remains outstanding, is paid or until his Membership has been determined in accordance with the provisions of Clause 9.2; and

9.1.2 the Treasurer or Secretary shall give notice to that Member requiring payment of the Subscription, or such part of the Subscription which is payable and remains outstanding.

9.2 If any Member fails to pay his Subscription in accordance with Clause 9.1, or any part thereof which is payable and remains outstanding for more than 60 days after service of the notice to the Member in accordance with Clause 9.1.2, then the Member shall cease to be a Member pursuant to Clause 11 and the Treasurer or 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:

10.1.1 he resigns his Membership as provided in Clause 11.1; or

10.1.2 the provisions of Clauses 9.1 and 9.2 or the succeeding provisions of this Clause 10 become applicable to that Member.

10.2 Continuing liability

A Member who resigns his Membership continues to be liable for any 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 for any sum not exceeding \$25.00 for which he may become liable as a Member under Clause 6.4.2.

11. RESIGNATION OF MEMBER

- 11.1** A Member who has paid all moneys due and payable by that Member to the Company may resign from the Company by first giving one month's notice in writing to the Secretary of his intention to resign and upon the expiration of that period of notice, the Member shall cease to be a Member.

12. GENERAL MEETINGS

12.1 Annual General Meeting

- 12.1.1 The annual general meeting of the Company shall, subject to the Law, be held not later than the last day of the fifth month following the Company's financial year end for the purposes of:
- 12.1.1.1 the election of the Directors;
 - 12.1.1.2 the consideration of the financial reports of the Company, the Directors' report and the auditor's report; and
 - 12.1.1.3 such other business as may be properly transacted at the annual general meeting.
- 12.1.2 The annual general meeting of the Company must be held in accordance with the provisions of the Law and this Constitution.

12.2 General meetings

All general meetings other than the annual general meeting will be called general meetings.

12.3 Calling and holding general meetings

- 12.3.1 The Chairperson may in addition to the annual general meeting, whenever he thinks fit, call a general meeting and

general meetings will be called on such requisition, or in default, may be convened by such requisitionist as provided by the Law.

12.3.2 Every requisition made by Members must:

12.3.2.1 be in writing; and

12.3.2.2 state any resolution to be proposed at the general meeting; and

12.3.2.3 be signed by the Members making the request; and

12.3.2.4 be given to the Chairperson or, in his absence, be left at the office of the Company.

12.4 Notice of general meetings

Subject to the provisions of the Law relating to special resolutions and agreements for shorter notice, written notice must be given of all annual general meetings and general meetings in accordance with the provisions of the Law, specifying:

12.4.1 the place, date and time for the meeting (and, if the general meeting is to be held in two or more places, the technology that will be used to facilitate this);

12.4.2 the general nature of the business of the meeting;

12.4.3 if a special resolution is to be proposed:

12.4.3.1 an intention to propose the special resolution; and

12.4.3.2 the special resolution itself;

12.4.4 if a Member is entitled to appoint a proxy that:

12.4.4.1 the Member has a right to appoint a proxy; and

12.4.4.2 that the proxy must be another Member of the Company.

12.6 Business at annual general meeting and general meetings

All business shall be deemed special that is transacted at a general meeting and all that is transacted at an annual general meeting shall also be deemed special with the exception of:

12.6.1 the consideration of the financial reports, Directors' reports and auditor's reports;

- 12.6.2 the appointment of the auditor and the fixing of his remuneration;
and
- 12.6.3 the election of the Directors.

12.7 Resolutions without general meetings

- 12.7.1 Subject to the Law, any resolution of the Company determined on without any general meeting and evidenced in writing under the hand of the Members who for the time being are entitled to vote (whether personally, or by proxy, or attorney appointed as provided in this Constitution) shall be as valid and effectual as a resolution duly passed at a general meeting of the Company if the document recording the resolution is signed by the required majority under the Law.
- 12.7.2 Any resolution passed in accordance with the provisions of Clause 12.7.1 may consist of identical copies of the document recording the resolution and accompanying information, each signed by one or more Members or their respective proxies, attorneys.

13. PROCEEDINGS AT GENERAL MEETINGS

13.1 Purpose

A meeting of members must be held for a proper purpose.

13.2 Time and place for meetings of members

A meeting of members must be held at a reasonable time and place.

13.3 Technology

The Company may hold a meeting of its members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

13.4 Quorum

- 13.4.1 No business may be transacted at any general meeting unless a quorum of two of the members entitled to vote is present at the time when the meeting proceeds to business. A quorum is constituted by:

- 13.4.2 If within 15 minutes from the time appointed for a general meeting a quorum is not present:
 - 13.4.2.1 the meeting, if called on the requisition of Members, shall be dissolved; and
 - 13.4.2.2 in any other case:
 - 13.4.2.1.1 the meeting stands adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the directors may determine; and
 - 13.4.2.2.2 if at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the members present (being not less than two) shall constitute a quorum.

13.5 Decisions at meetings

- 13.5.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the results of the show of hands) demanded by:
 - 13.3.1.1 the Chairperson; or
 - 13.3.1.2 if there only three Members, at least two Members entitled to vote on the resolution; or
 - 13.3.1.3 a Member or Members with at least 5% of the vote that may be cast on the resolution on a poll and unless a poll is demanded, a declaration by the Chairperson that a resolution has on a show of hands been carried, or carried unanimously, or by a particular majority, or

lost and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

13.3.2 The demand for a poll may be withdrawn.

13.3.3 If a poll is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairperson directs and the result of the poll shall be the resolution of the matter in respect of which the poll was demanded but a poll demanded on the election of a Chairperson or on a question of adjournment shall be taken forthwith.

13.3.4 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

14. VOTES OF MEMBERS

14.1 Voting at meetings of Members

A Member may, subject to any special rights or restrictions imposed on or attaching to a class of Membership and subject to the provisions of Clause 14.3 vote in person or by proxy or by attorney or, if a corporation, by its Nominee or other representative and on a show of hands or on a poll every such Member shall have one vote.

14.2 Voting by committee or trustee

A Member who is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under any relevant law relating to mental health may vote whether on a show of hands or on a poll by his committee or by the trustee or by

such other person as properly has the management of his estate and any such committee trustee or other person may vote by proxy or attorney.

14.3 Entitlement to vote

No Member shall be entitled to vote at any general meeting if any Subscription owing by that Member shall be more than one month in arrears at the date of the meeting.

14.4 Objection to right to vote

No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairperson of the meeting, whose decision on such objection shall be final and conclusive.

15. PROXIES

15.1 Member's entitlement to appoint proxy

15.1.1 Each Member entitled to attend and cast a vote at a meeting of Members may appoint an individual as his proxy.

15.1.2 The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing.

15.1.3 A proxy need not a Member of the Company.

15.1.4 A Member shall be entitled to instruct his proxy to vote in favour of or against any proposed resolutions and unless so instructed the proxy may vote as he thinks fit.

15.2 Instrument of appointment

15.2.1 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially-certified copy of that power or authority, must be received by the Company not less than 48 hours before the time for holding the general meeting or

adjourned general meeting at which the person named in the instrument proposes to vote (unless a shorter period is specified in the notice of general meeting to which the proxy relates) and, in default, the instrument of proxy shall not be treated as valid unless otherwise determined by the Chairperson.

15.2.2 For the purposes of Clause 15.2.1, an instrument appointing a proxy must be received by the Company at any of the following:

15.2.2.1 the office of the Company; or

15.2.2.2 a fax number at the office of the Company; or

15.2.2.3 a place, fax number or electronic address specified for that purpose in the notice of meeting.

15.2.3 An instrument appointing a proxy may be in any usual form or in any other form, which the Directors may approve.

15.3 Authority to demand poll

Any instrument appointing a proxy confers authority to demand or join in demanding a poll.

16. BOARD OF DIRECTORS AND EXECUTIVE

16.1 Number of Directors and Executive

16.1.1 Subject to the Law, the number of members of the Board shall be not less than five and shall comprise:

16.1.1.1 The two Founders, who shall be permanent members of the board; and

16.1.1.2 other persons, elected by and from among the Members in accordance with Clause 17 and who shall hold one of the offices on the Executive referred to in Clause 16.1.2.

16.1.2 The Executive shall comprise:

16.1.2.1 the Chairperson; and

16.1.2.2 other persons, appointed by the Board from among the Members.

16.2 Term of office

With the exception of the Founders, each member of the Board shall hold office:

16.2.1 in the case of a member of the Executive – for a period of three years from the date of his election but is eligible for re-election for a further 2 terms; and

16.2.2 in any other case – for a period of two years from the date of his appointment but is eligible for re-appointment for a further 2 terms.

16.3 Increase or reduction in number of Directors

The Company may, from time to time, by resolution passed at a general meeting of Members:

16.3.1 increase or reduce the number of Directors; or

16.3.2 determine the qualifications or experience necessary for eligibility as a Director.

16.4 Remuneration of Directors

16.4.1 The Directors (excluding those who are salaried employees of the Company) shall be honorary.

16.4.2 No Directors (excluding those who are salaried employees of the Company) will be entitled to any remuneration for their services but will be entitled to be paid all travelling and other expenses properly incurred by them in attending, participating and returning from meetings of the Directors, or any committee established by the Directors, or annual general meetings, or general meetings of Members of the Company, or otherwise, in connection with the business of the Company.

16.4.3 All payments made to Directors under Clause 16.4.2 must be approved by the Board.

16.5 Removal of Director

The Company may, by resolution of which notice in accordance with the Law has been given, remove any Director before the expiration of his term of office and may, by resolution, appoint another person in his place.

17. ELECTION OF DIRECTORS

The election of Directors, excluding Directors who are required to retire in accordance with Clause 16.2 but are to be considered for re-election, will take place in the following manner:

- 17.1** any Member wishing to serve as a Director and, where applicable, to hold a position on the Executive referred to in Clause 16.1.2 must be nominated by any two other existing Members;
- 17.2** the written nomination, signed by the nominee and his proposer and seconder, must be lodged with the Secretary at least 14 days before the annual general meeting at which the election is to take place;
- 17.3** a list of the candidates' names in alphabetical order with the proposers' and seconders' names will be posted in a conspicuous place at the office of the Company for not less than seven days immediately preceding the annual general meeting at which the election is to take place;
- 17.4** if the number of candidates standing for election exceeds the number of vacancies, balloting lists shall be prepared containing the names of the candidates in alphabetical order and each Member present (excluding the candidates) at the annual general meeting shall be entitled to vote for any number of such candidates not exceeding however the number of vacancies to be filled on the Directors; and
- 17.5** in the event that there shall not be a sufficient number of candidates nominated, the Directors may fill the remaining vacancy or vacancies from the Members as they think fit.

18. DISQUALIFICATION OF DIRECTORS

18.1 Vacation of office

The office of Director shall be vacated if the Director:

- 18.1.1 ceases to be a Director pursuant to any provision of the Law;
- 18.1.2 becomes bankrupt or makes any arrangement or composition with his creditors generally;
- 18.1.3 becomes prohibited from being a Director by reason of any order made under the Law;
- 18.1.4 becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under any relevant law relating to mental health;
- 18.1.5 resigns his office by notice in writing to the Company;
- 18.1.6 ceases to be a Member;
- 18.1.7 is removed from office pursuant to this Constitution; or
- 18.1.8 is absent without permission of the Board from three consecutive meetings of the Board.

19. ALTERNATE DIRECTORS

19.1 Appointment of Alternate Directors

A Director may, with the approval of the other Directors (which approval is not to be unnecessarily withheld), appoint any person to be an Alternate Director in his place during such period as he thinks fit.

19.2 Rights of Alternate Director

Any person while he holds office as an Alternate Director shall be entitled to notice of meetings of the Directors and to attend, vote and exercise all the powers of the appointer in his place.

19.3 Vacation of office

An Alternate Director shall automatically vacate office if his appointer vacates office as a Director or terminates the appointed Alternate's appointment.

19.4 Notice of appointment or removal

Any appointment or removal under this Clause 19 shall be effected by notice in writing to the Company and to the person concerned under the hand of the Director who makes the appointment or removal.

20. POWERS AND DUTIES OF THE DIRECTORS

20.1 Management of Company

20.1.1 Subject to this Constitution and the Law, the affairs of the Company shall be managed by the Directors.

20.1.2 The Directors:

20.1.2.1 shall control and manage the business and affairs of the Company;

20.1.2.2 may, subject to this Constitution and the Law, exercise all such powers and functions as may be exercised by the Company other than those powers and functions that are required by this Constitution or the Law to be exercised by general meetings of the Members; and

20.1.2.3 subject to this Constitution and the Law, has power to perform all such acts and things as appear to the Directors to be essential for the proper management of the business and affairs of the Company.

20.2 Validity of acts of Directors

No regulation made by the Company in general meeting shall invalidate any prior act of the Directors, which would have been valid, if that regulation had not been made.

20.3 Powers of Directors

Without limiting the generality of Clauses 4, 20.1.1 and 20.1.2, the Directors:

- 20.3.1 may make rules, regulations and by-laws for the conduct, administration and management of the Company and may from time to time alter, modify and revoke such rules, regulations and by-laws and make new or additional rules, regulations and by-laws but so that such rules, regulations and by-laws shall not be inconsistent with any of the provisions of this Constitution nor result in the Company ceasing to comply with any special conditions applicable to the Company under the Tax Act;
- 20.3.2 have the power to do all things necessary or convenient to be done for or in connection with the performance of its functions;
- 20.3.3 may, in addition to all other general and special powers possessed by them from time to time, borrow in the name and for all or any of the purposes of the Company or in connection with its business any sum or sums of money for such period and at such rate or rates of interest and otherwise upon such terms and conditions as the Directors may think fit and so that:
 - 20.3.3.1 any sum or sums of money so borrowed may be raised or secured by mortgage charge or pledge of the whole or any part of the real or personal estate revenues property undertaking choses in action debts or effects of the Company including unpaid calls and uncalled capital or by deposit receipts debentures debenture stock bonds trusts deeds personal covenant or otherwise as the Directors may from time to time think fit without such security;
 - 20.3.3.2 every such mortgage charge or other security may be in such form and contain such powers of sale and other powers trusts and provisions and may be accompanied

by such collateral further and other security as the
Directors may think fit; and

- 20.3.4 may invest any funds belonging to or vested in the Company;
- 20.3.5 may from time to time by power of attorney appoint any Company, corporation, firm, person or body of persons (whether nominated directly or indirectly by the Directors) to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these regulations) and for such period and subject to such conditions as it may think fit any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in him; and
- 20.3.6 may open any banking account and operate the bank account in the ordinary course of business.

20.4 Negotiable instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) by any two Directors or in such other manner as the Directors may from time to time determine.

21. PROCEEDINGS OF THE DIRECTORS

21.1 Directors' Meetings

The Directors:

- 21.1.1 shall meet at least once in each year at such place and such time as the Directors may determine for the dispatch of business;

21.1.2 may adjourn and otherwise regulate their meetings as they think fit using any technology consented to from time to time by all the Directors; and

21.1.3 may from time to time invite any person they consider necessary or appropriate to attend at any meeting of the Directors but a person invited to attend any such meeting shall not be entitled to vote.

21.2 Notice of meeting

Written notice of each Directors' meeting must be given to each Director at least two business days before the date of the meeting.

21.3 Decisions at Directors' Meetings

21.3.1 Subject to this Constitution, questions arising at any meeting of the Directors shall be decided by a majority of votes.

21.3.2 The Chairperson shall have a deliberative vote and a second or casting vote.

21.4 Calling Directors' Meetings

21.4.1 A Director may, and the Secretary on the requisition of a Director must, at any time, summon a meeting of the Directors.

21.4.2 Additional and special meetings of the Directors may be called and held by the Chairperson or by any two Directors.

21.5 Quorum

The quorum necessary for transaction of the business of the Directors may be fixed by the Directors and, unless fixed, will be two thirds of the total number of Directors for the time being, rounded up to the nearest whole number.

21.6 Vacancy

The continuing Directors may act notwithstanding any vacancy in their body but, if and so long as their number is reduced below the number fixed pursuant to this Constitution as the specified number of Directors, the continuing Directors may act

in the event of an emergency or for the purpose of increasing the number of members of the Directors to that number or of summoning a general meeting of the Company but for no other purpose.

21.7 Chairperson

The Chairperson shall preside at every meeting of the Directors or, if there is no Chairperson or, if at any meeting he is not present within 15 minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be Chairperson of the meeting.

21.8 Validity of actions

All acts of the Directors undertaken at any meeting of the Directors, or by any person acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of that Director, or person so acting, or that they or any of them were disqualified, be as valid as if every member or other person had been duly appointed and was qualified to be a Director.

21.9 Resolutions without meetings

21.9.1 Subject to the Law, any resolution of the Company determined on without any meeting of Directors and evidenced in writing under the hand of the Directors for the time being entitled to receive notice of a meeting of the Directors and to vote, shall be as valid and effectual as a resolution duly passed at a meeting of Directors if the document recording the resolution is signed by the required majority.

21.9.2 Any resolution passed in accordance with the provisions of Clause 21.9.1 may consist of identical copies of the document recording the resolution and accompanying information, each signed by one or more Directors.

22. COMMITTEES

22.1 Establishment

The Directors may:

- 22.1.1 establish such committees, as it considers necessary for the purposes of the Company;
- 22.1.2 delegate any of its powers and or functions to any such committee and define the powers, duties and functions of each committee so established;
- 22.1.3 determine the procedure of each committee and the appointment or election of its officers;
- 22.1.4 change any of the powers, duties and functions of a committee; and
- 22.1.5 remove any member of a committee or dissolve a committee.

22.2 Delegation of powers

- 22.2.1 Any committee established by the Directors in accordance with Clause 22.1, shall in the exercise of the powers delegated to that committee conform to any regulations that are imposed on it by the Directors.
- 22.2.2 The Directors may appoint one or more advisory boards consisting of such persons as the Directors thinks fit. Any such advisory boards shall act in an advisory capacity only and in the exercise of the powers so delegated, conform to any regulations that are imposed on them by the Directors.

22.3 Eligibility of members

A member of a committee or advisory board established by the Directors in accordance with Clauses 22.1 and 22.2.2, need not be a Director or a Member.

23. PROCEEDINGS OF COMMITTEES

23.1 Committee Meetings

Each committee or advisory board established by the Directors shall meet at such times and places as determined by the members of those committees or advisory boards.

23.2 Chair and functions and powers

Each committee or advisory board:

23.2.1 shall elect one of their number to chair its meetings and if no person is elected or, if at any meeting the person so elected is not present within 15 minutes after the time appointed for holding the meeting, the members present may choose one of their number to chair the meeting; and

23.2.2 may elect one of their number to undertake such functions, duties and responsibilities as may be delegated by that committee or advisory board to that person, subject always, to the approval by the Directors.

23.3 Decisions at committee or advisory board meetings

Questions arising at any meeting shall be determined by a majority of votes of the members present and, in the case of an equality of votes at any such meeting, the person appointed to chair any such meeting shall have a deliberative vote and a second or casting vote.

23.4 Proceedings of committee or advisory board

Without limiting the generality of Clauses 23.1 to 23.3 (both inclusive), the provisions of Clause 20 have effect, with such modifications, as may be necessary, in relation to meetings of any committee or advisory board.

24. SECRETARY

24.1 Appointment

24.1.1 The Directors will appoint a Secretary in accordance with the Law for such period and on such terms as the Directors thinks fit and the Directors may revoke any such appointment.

24.1.2 The Secretary may (but need not be) be a Director or a Member.

24.2 Minutes and books

24.2.1 The Secretary shall keep minutes and books to record:

24.2.1.1 all appointments of officers;

24.2.1.2 the names of the Directors present at each meeting of the Directors;

24.2.1.3 the names of the members of any committee of the Company present at each meeting of a committee;

24.2.1.4 all resolutions and proceedings at all meetings of the Members of the Company and of the Directors and each committee and of all resolutions determined on without meetings; and

24.2.1.5 of all other matters required by the Law.

24.2.2 Except in the case of documents deemed to constitute minutes in accordance with the provisions of the Law and resolutions signed in accordance with the provisions of Clause 21.9, all minutes shall be signed by the Chairperson of the meeting at which the proceedings were held or by the Chairperson of any succeeding meeting.

25. TREASURER

- 25.1** The Directors may appoint a Treasurer for such period and on such terms as the Directors think fit and the Directors may revoke any such appointment.
- 25.2** The Treasurer may (but need not) be a Director or a Member.

26. ACCOUNTS

- 26.1** The books of account and other records of the Company shall be kept at the registered office of the Company or at such other place or places as determined by the Directors.
- 26.2** The Directors shall keep or cause to be kept proper books of account and other records of the Company and shall distribute copies of financial reports as required by the Law and shall, from time to time, determine whether and to what extent and at what times and places and under what conditions or regulations the records, accounts and books of the Company, or any of them, shall be open to the inspection of Members not being Directors.
- 26.3** No Member shall have any right of inspecting any record, account or book or paper of the Company except as conferred by statute or as authorised by the Directors or by the Company in general meeting.
- 26.4** The financial year of the Company shall be 30 June in each year unless otherwise determined by the Members.

27. AUDIT

A properly qualified auditor or auditors shall be appointed and his or their duties shall be regulated in accordance with the provisions of the Law.

28. NOTICES

28.1 Method of giving notice

A notice may be given by the Company to any Member:

- 28.1.1 personally;
- 28.1.2 by sending it by post to him at his registered address or to the address (if any) supplied by him to the Company for the giving of notices to him; or
- 28.1.3 by sending it to the fax number or electronic address (if any) nominated by the Member.

28.2 Service of notice

- 28.2.1 Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing prepaying and posting a letter containing the notice and to have been effected, in the case of a notice of a meeting, on the day after the date of its posting and in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- 28.2.2 A notice of meeting sent by fax or other electronic means is taken to be given on the business day after it is sent.
- 28.2.3 Notwithstanding the provisions of Clause 28.1, the Directors may, in their absolute discretion, give a notice by any other means as shall ensure expeditious receipt of the notice. Service of the notice shall be deemed to be effected if the mode of service of the notice is properly addressed and paid for and lodged for delivery or transmission with a

competent person, authority or body and to have been effected at the time at which in the ordinary course that mode of service of the notice would be delivered.

28.3 Notice to joint Members

A notice may be given by the Company to joint Members by giving the notice to the joint Member first named in the Register.

28.4 Persons entitled to notice

28.4.1 Notice of every general meeting shall be given in any manner hereinbefore authorised to:

28.4.1.1 every Member except those Members who have not supplied to the Company an address for the giving of notices to them;

28.4.1.2 the auditor for the time being of the Company; and

28.4.1.3 such other persons as required by the Law.

28.4.2 No person other than as referred to in Clause 28.4 shall be entitled to receive notices of general meetings.

29. WINDING UP

29.1 If on the winding up or deregistration of the Company there remains, after satisfaction of all its debts and liabilities, any surplus assets of the Company, the remaining surplus assets shall not be paid to or distributed among the Members of the Company but shall be transferred to one or more:

29.1.1 institutions having objects similar to the objects of the Company and which has rules that prohibit the distribution of its assets and income to its Members; or

29.1.2 Eligible Charities; or

- 29.1.3 funds, charitable at law, which comply with the requirements of item 2 of the table in section 30-15 of the Tax Act.
- 29.2** 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 29 must be made in accordance with those conditions.
- 29.3** The identity of such Eligible Charity shall be determined by the Board at or before the time of winding up or deregistration of the Company and (where applicable) approved by the Chief Judge of the Equity Division of the Supreme Court of New South Wales or such other judge of that court as may handle or acquire jurisdiction in the matter.

30. INDEMNITY AND INSURANCE

30.1 Indemnification of officers

- 30.1.1 The Company may indemnify a person who is, or has been, an officer of the Company, to the full extent permissible by law, out of the property of the Company, against:
- 30.1.1.1 any liability incurred by that person as an officer of the Company; and
 - 30.1.1.2 legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company; except in respect of a liability or legal costs for which the Company is prohibited from indemnifying the officer pursuant to the Law.
- 30.1.2 For the avoidance of doubt, Clause 30.1.1 will not apply so as to enable the Company to indemnify a person who is, or has been, an officer of the Company to the extent that the law precludes the giving of such an indemnity.

30.2 Insurance premium

The Company may pay a premium for a contract insuring a person who is, or has been, an officer of the Company against:

30.2.1 any liability incurred by that person as an officer of the Company; and

30.2.2 any liability for costs and expenses incurred by that person in defending proceedings relating to that person acting as an officer of the Company, whether civil or criminal, and whatever their outcome, except any liabilities in respect of which the Company is prohibited from doing so pursuant to the Law.