

Corporations Act 2001

Constitution of
FROM THE GROUND UP LTD

A.C.N. #152 504 400

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Constitution of FROM THE GROUND UP LTD

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Constitution of FROM THE GROUND UP LTD

Corporations Act 2001

A public company limited by guarantee
Constitution of FROM THE GROUND UP LTD
A.C.N. 152 504 400

1 Interpretation

1.1 This Constitution

- (a) This Constitution contains clauses setting out the manner in which the Members of the Company have agreed to conduct the internal administration of the Company.
- (b) This Constitution takes the place of the replaceable rules contained in the Act.

1.2 Definitions

- (a) In this Constitution, unless the context otherwise requires:

Accounting Standards has the meaning ascribed to it in the Act;

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

ASIC means the Australian Securities and Investments Commission;

Auditor means the auditor for the time being of the Company;

Constitution means this constitution and any supplementary, substituted or amended constitution being in force from time to time;

Corporations Regulations means the Corporations Regulations 2001 or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as so modified, amended or re-enacted;

Chair means the person appointed to be the chair of meetings of Directors or the chair of meetings of Members (as applicable);

Director means any person formally and lawfully appointed as a director of the Company including an alternate director and a person duly appointed and for the time being acting as an attorney for a director;

Directors means all or any number of the Directors for the time being;

Guarantee means the maximum amount each Member agrees to pay to the Company in accordance with clause 2.3;

Managing Director means a Director or Directors appointed managing director in accordance with clause 4.3;

Member means a person admitted as a Member under clause 9.1(b);

Officer means an officer of the Company within the meaning of section 9 of the Act;

Register of Members means the register of members to be kept pursuant to the Act;

Secretary means any person formally and lawfully appointed as a secretary of the Company including any assistant or acting secretary or any substitute for the time being for the secretary; and

Subscription means the subscription fee payable by a Member pursuant to clause 9.1(d).

- (b) Words importing:
 - (i) persons include companies and corporations and vice versa;
 - (ii) the masculine gender include the feminine gender and vice versa; and
 - (iii) the singular number include the plural number and vice versa.
- (c) Division 8 of Part 1.2 (other than section 109X) of the Act applies in relation to this Constitution, so far as it is capable of application.
- (d) Sections 4 and 29, Parts III, IV, V, VII and VIII (other than sections 25A, 33(4)(b) and 34AB(b)) of the Acts Interpretation Act 1901 apply in relation to this Constitution, so far as they are capable of application.
- (e) Unless the context otherwise requires, an expression used in this Constitution that has a particular meaning in the Act has the same meaning in this Constitution.
- (f) This Constitution is subject to the Act and where there is any inconsistency between a clause of this Constitution and the Act, the Act shall prevail to the extent of the inconsistency.

2 Nature Of The Company

2.1 Public Company

The Company is a public company limited by guarantee.

2.2 Limitation of Company

- (a) The Company must not be operated for the purpose of the profit or gain of any Member.
- (b) The Company does not have the power to:
 - (i) issue shares of any kind; or

- (ii) apply, pay or transfer, whether directly or indirectly, any portion of the income and property of the Company for the benefit of, or to a Member, other than as provided in clauses 3.9 and 3.10.

2.3 Guarantee of Members

- (a) Each Member undertakes to contribute a maximum of \$10.00 to the Company for payment of:
 - (i) the debts and liabilities of the Company;
 - (ii) the costs, charges and expenses of any winding up; and
 - (iii) the adjustment of the rights of Members among themselves, in the event that the Company is wound up;
 - (iv) while the Member is a Member; or
 - (v) within one year after the Member ceases to be a Member.

2.4 Objects of the Company

The objects for which the Company is established are;

- (a) Provide direct relief to needy persons who are living in poverty, suffering, distress, or misfortune.
- (b) Assist persons in developing countries whose lives have been adversely affected or endangered by natural disasters such as earthquake, famine or conflict.
- (c) To empower and enable communities that are afflicted by poverty to create long term self sustainability and social transformation within their community;
- (d) Partner with Australian and "developing world" (as defined by AusAID) agents to deliver sustainable (environmental, economic and social) aid and development projects which will increase the capacity and alleviate the long-term poverty, suffering and disadvantage of needy people.
- (e) Work with indigenous and other 'developing world' community groups to provide assistance to needy persons through sustainable and accountable overseas aid and development projects and which complement the Australian government's overseas aid program.

2.5 Scope of Powers

Provided that its capacities and powers are exercised directly or indirectly in the furtherance of its objects, the Company shall have the legal capacity and powers set out in section 124 of the Act.

3 Directors

3.1 Number of Directors

The Company must have at least three and not more than ten Directors, at least two of which must reside in Australia, unless the Company in general meeting otherwise determines.

3.2 Company may appoint a Director

- (a) Subject to section 201E of the Act, the Company may appoint a person as a Director by resolution passed in general meeting.
- (b) Unless approved annually by special resolution at the Company's annual general meeting, a person shall not be appointed to act as a Director if that person has reached the age of 72 years.
- (c) Unless approved annually by special resolution at the Company's annual general meeting, a director who has reached the age of 72 shall not continue to act as a Director beyond the conclusion of the next annual general meeting held after the day in which the Director turns 72.

3.3 Directors may appoint other Directors

- (a) Notwithstanding the previous clause, the Directors may appoint a person as a Director, whether to fill a casual vacancy or to make up a quorum for a Directors' meeting, even if the total number of Directors otherwise present is not enough to make up that quorum.
- (b) If a person is appointed under this clause as a Director, the Company must confirm the appointment by resolution at its next annual general meeting. If the appointment is not confirmed, the person ceases to be a Director at the end of the annual general meeting.

3.4 Non-eligibility of Auditor

The Auditor is ineligible to be elected or appointed as a Director or alternate Director.

3.5 Period of appointment of Directors

Each Director shall hold office until they die, vacate the office in accordance with clause 3.13 or the term for which they are appointed or elected expires.

3.6 Alternate Directors

- (a) With the approval of the other Directors, a Director may appoint an alternate to exercise some or all of the Director's powers for a specified period.
- (b) If the appointing Director requests the Company to give the alternate notice of Directors' meetings, the Company must do so.
- (c) When an alternate exercises the Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Director.
- (d) The appointing Director may terminate the alternate's appointment at any time.

- (e) An appointment or termination of an alternate must be in writing. A copy of the appointment must be given to the Company.

3.7 Attorneys of Directors

- (a) Subject to the Act, any Director may appoint an attorney under power who need not be a Member to do specific acts or execute specific documents on behalf of the Director.
- (b) Every power of attorney authorising an attorney to act for a Director shall be deposited at the office of the Company, together with such evidence of due execution as the Directors may require, not less than one day before the attorney becomes entitled to act under it.
- (c) Every duly appointed attorney shall cease to be capable of acting if and when the Director who appointed the attorney vacates office as a Director or revokes the appointment.
- (d) Every duly appointed attorney shall, so long as that appointment continues, be entitled to exercise all the powers and discretions of the Director who appointed that attorney.

3.8 Other offices held by Directors

A Director may hold any other office or position of profit in the Company together with the directorship on such conditions including additional remuneration as may be agreed by the Directors.

3.9 Remuneration of Directors

- (a) Subject to Chapter 2E of the Act, the Directors are to be paid the remuneration that the Company determines by resolution.
- (b) The Company may pay a Director's travelling and other expenses that the Director properly incurs:
 - (i) in attending Directors' meetings or any meetings of committees of the Directors;
 - (ii) in attending any general meeting of the Company; and
 - (iii) in connection with the Company's business.

3.10 Remuneration of Directors for extra services

- (a) If the Company requests a Director to perform services in addition to those required by the Act, the Company may remunerate the Director in any manner the Company thinks fit.
- (b) Any remuneration paid as contemplated by clause 3.10 is in addition to remuneration paid under clause 3.9.

3.11 Director may resign

A Director may resign as a Director of the Company by giving written notice of resignation to the Company at its registered office.

3.12 Removal by Members

- (a) Subject to section 203D of the Act, the Company may, by resolution:
- (i) remove a Director from office; and
 - (ii) appoint another person as a Director in that Director's place.
- (b) If a Director was appointed to represent the interests of particular members, their removal under clause 3.12(a) has no effect until a replacement to represent the interests of those members has been appointed.

3.13 Vacation of office

A Director vacates office if the Director:

- (i) ceases to be a Director or becomes prohibited from being a Director by virtue of any provision of the Act;
- (ii) resigns their office by written notice to the Company;
- (iii) for more than six months is absent without permission of the other Directors from meetings of the Directors held during that period;
- (iv) has a material personal interest in a matter that relates to the affairs of the Company (other than as a Member) and fails to disclose details of that interest in accordance with clause 3.14 or the Act; or
- (v) is removed from the office of Director by a resolution of the Company in accordance with clause 3.12.

3.14 Material personal interest - Director's duty to disclose

- (a) Unless an exception under section 191 of the Act applies, if a Director has a material personal interest in a matter that relates to the affairs of the Company, the Director must give the other Directors notice of the interest.
- (b) The notice required by clause 3.14(a) must:
- (i) include details of:
 - (A) the nature and extent of the interest; and
 - (B) the relation of the interest to the affairs of the Company; and
 - (ii) be given at a Directors' meeting as soon as practicable after the Director becomes aware of their interest in the matter.

3.15 Director may give standing notice about an interest

A Director with a material personal interest in a matter that relates to the affairs of the Company may give standing notice of this ongoing interest in accordance with the Act.

3.16 Voting and completion of transactions in which a Director has a material personal interest

A Director who has a material personal interest in a matter that is being considered at a Directors' meeting shall not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless:

- (c) the interest does not need to be disclosed under section 191 of the Act; or
- (d) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature of their interest in the matter and its relation to the affairs of the Company; and
 - (ii) states that the Directors are satisfied that the interest should not disqualify the Director from voting or being present.

3.17 Financial Benefits to related parties

The Company shall not give a financial benefit to a related party of the Company unless it is authorised in accordance with the Act.

4 Management Of Business By Directors

4.1 Powers of Directors

- (a) Subject to the Act and to any provision of this Constitution, the business of the Company is to be managed by or under the direction of the Directors.
- (b) The Directors may exercise all of the powers of the Company except any powers that any provisions of the Act or this Constitution require the Company to exercise in general meeting.

4.2 Negotiable instruments

- (a) Any two Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (b) The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

4.3 Managing Director

- (a) The Directors may appoint one or more of themselves to the office of Managing Director of the Company for a period and on the terms (including as to remuneration) as the Directors see fit.
- (b) A person ceases to be Managing Director if they cease to be a Director.
- (c) The Directors may confer on a Managing Director any of the powers that the Directors can exercise.
- (d) The Directors may revoke or vary:
 - (i) the appointment of the Managing Director; or
 - (ii) any of the powers conferred on the Managing Director.

4.4 Delegation to committees

- (a) The Directors may delegate any of their powers to a local board, a committee of Directors, a Director, an employee of the Company or any other person.
- (b) The delegate must exercise the powers delegated to it in accordance with any directions of the Directors.
- (c) The effect of the delegate so exercising a power is the same as if the Directors exercised it.
- (d) The Directors may, by power of attorney, appoint any company, firm, person or body of persons to be the attorney of the Company for:
 - (i) any period; and
 - (ii) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors under this Constitution.

5 Directors' Meetings

5.1 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if all of the Directors 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 Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director signs.

5.2 Calling Directors' meetings

A Directors' meeting may be called by a Director giving reasonable notice individually to every other Director.

5.3 Use of technology

- (a) A Directors' meeting may be called or held using any technology consented to by the Directors.
- (b) Any consent may be a standing consent.
- (c) A Director may only withdraw their consent within a reasonable period before the meeting.

5.4 Chairing Directors' meetings

- (a) The Directors may elect a Director to chair their meetings.
- (b) The Directors may determine the period for which the Director is to be the Chair.
- (c) The Directors must elect a Director present to chair a meeting, or part of it, if:
 - (i) a Director has not already been elected to chair the meeting; or
 - (ii) a previously elected Chair is not available or declines to act as Chair for the meeting or part of it.

5.5 Quorum at Directors' meetings

Unless the Directors determine otherwise, the quorum for a Directors' meeting is two Directors and the quorum must be present at all times during the meeting.

5.6 Passing of Directors' resolutions

- (a) A resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- (b) The Chair has no casting vote in addition to any vote they have in their capacity as a Director.

6 Meetings Of Members

6.1 Calling of meetings of Members by a Director

A Director may call a meeting of Members.

6.2 Calling of general meetings

- (a) If requested by Members entitled under section 249D(1) of the Act to call a general meeting of the Company, the Directors must call and arrange to hold a general meeting.
- (b) Members with at least 5% of the votes that may be cast at a general meeting of the Company may call and arrange to hold a general meeting in accordance with section 249F of the Act.
- (c) A court may order a meeting of Members to be called in accordance with section 249G of the Act if it is impracticable to call the meeting in any other way.

6.3 Annual general meetings

- (a) Unless the Company has only one Member and subject to any extension of time granted under the Act, the Company:
 - (i) shall hold an annual general meeting within 18 months after its registration; and
 - (ii) shall hold an annual general meeting at least once in each calendar year and within 5 months after the end of its financial year.

6.4 Amount of notice of meetings

Subject to the Act, at least 21 days notice must be given of a meeting of Members.

6.5 Notice of meetings

- (a) Written notice of the meeting of Members must be given individually to each Member entitled to vote at the meeting and to each Director.
- (b) Notice to joint Members must be given to the joint Member first named in the register of Members.
- (c) The Company may give the notice of meeting to a Member:
 - (i) personally;
 - (ii) by sending it by post to the address of the Member in the register of Members or the alternative address (if any) nominated by the Member;
 - (iii) by sending it to the facsimile number or electronic mail address (if any) nominated by the Member; or
 - (iv) by any other means authorised by the Act.
- (d) A notice of meeting sent by post is taken to be given three days after it is posted.
- (e) A notice of meeting sent by facsimile or electronic mail is taken to be given on the business day after it is sent.

6.6 Auditor entitled to notice and other communication

- (a) The Company must give its Auditor:
 - (i) notice of general meeting in the same way that a Member is entitled to receive notice; and
 - (ii) any other communication relating to the general meeting that a Member is entitled to receive.

6.7 Notice of adjourned meetings

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more.

6.8 Members' resolutions

The Members may propose a resolution to be moved at a general meeting only in accordance with the provisions of Division 4 of Part 2G.2 of the Act.

6.9 Time and place for meetings of Members

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

6.10 Technology

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

6.11 Quorum

- (a) A quorum for a meeting of Members shall be one Member or 20% of Members, whichever is the greater, and such quorum shall be present during the meeting at all times.
- (b) In determining whether a quorum is present, individuals attending as proxies or body corporate representatives are to be counted.
 - (i) If a Member has appointed more than one proxy or representative, only one of them is to be counted.
 - (ii) If an individual is attending both as a Member and as a proxy or representative, they are to be counted only once.
 - (iii) A meeting that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is to be adjourned to a date, time and place as the Directors specify.
 - (iv) If the Directors do not specify one or more of those requirements, the meeting is adjourned to:
 - (A) if the date is not specified, the same day of the week;
 - (B) if the time is not specified, the same time; or
 - (C) if the place is not specified, the same place.
- (c) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting shall be dissolved.

6.12 Chairing meetings of Members

- (a) The Directors may elect an individual to Chair meetings of the Members.
- (b) The Directors at the meeting of Members must elect an individual present to Chair the meeting (or part of it) if an individual has not already been elected by the Directors to Chair it or, having been elected, is not available to Chair it or declines to act for the meeting (or part of it).
- (c) The Members present at a meeting of the Members must elect a Member present to Chair the meeting (or part of it) if:

- (i) a Chair has not previously been elected by the Directors to chair the meeting;
or
- (ii) a previously elected Chair is not available or declines to act as Chair for the meeting (or part of the meeting).
- (d) The Chair must adjourn the meeting if the Members present with a majority of votes at the meeting agree or direct that the Chair must do so.

6.13 Auditor's right to be heard at meetings of Members

The Auditor is entitled to attend and be heard at meetings of Members.

6.14 Proxies and body corporate representatives

- (a) A Member who is entitled to attend and cast a vote at meetings of Members may appoint a proxy or, if the Member is a body corporate, a representative, to attend and cast a vote at that meeting.
- (b) Any proxy or representative appointed under clause 6.14(a) must be appointed in accordance with Division 6 of Part 2G.2 of the Act and shall have the rights set out in that Division.

6.15 Voting at meetings of Members

- (a) Subject to any rights or restrictions attached to any class of Members, at a meeting of Members, each Member has one vote.
- (b) The Chair shall not have a casting vote.

6.16 Objections to right to vote

A challenge to a right to vote at a meeting of Members:

- (a) may only be made at the meeting; and
- (b) must be determined by the Chair whose decision is final.

6.17 How voting is carried out

- (a) A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded.
- (b) On a show of hands, a declaration by the Chair is conclusive evidence of the result.
- (c) Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.

6.18 Matters on which a poll may be demanded

- (a) A poll may be demanded on any resolution other than resolutions concerning:
 - (i) the election of the Chair; or
 - (ii) the adjournment of the meeting.

- (b) A poll may be demanded in accordance with section 250L of the Act.

6.19 When and how polls must be taken

A poll must be taken when and in the manner the Chair directs.

7 Directors' And Members' Minutes

7.1 Minutes

- (a) The Company must keep minute books in which it records:
- (i) proceedings and resolutions of Members' meetings;
 - (ii) proceedings and resolutions of Directors' meetings, including committee meetings;
 - (iii) resolutions passed by Members without a meeting; and
 - (iv) resolutions passed by Directors without a meeting.
- (b) The Company must ensure that the minutes of a meeting are signed by the Chair of the meeting or the Chair of the next meeting within a reasonable time after the meeting.
- (c) The Company must ensure that resolutions passed without a meeting are signed by a Director within a reasonable time after the resolution is passed.

7.2 Members' access to minutes

Members are entitled to gain access to the minute book of meetings of Members in accordance with the Act.

8 Secretary

8.1 Appointment

- (a) The Company must have a Secretary or Secretaries, at least one of which is ordinarily resident in Australia.
- (b) The Secretary shall be appointed by the Directors on such terms, at such remuneration and upon such conditions as the Directors think fit.

9 Members

9.1 Membership

- (a) Number of Members
- (i) There must be at least one Member.
 - (ii) The Directors may set a limit on the maximum number of Members.
- (b) Admission to membership

- (i) The Directors may admit any person as a Member on the terms and conditions they prescribe from time to time.
- (ii) Each Member shall sign an undertaking to be bound by the Constitution.
- (c) Classes of Members

The Directors may:

 - (i) establish different classes of Members; and
 - (ii) prescribe the qualifications, rights and privileges of persons to become a Member of a class.
- (d) Subscription

Each Member shall pay an annual subscription fee of \$1.00 to the Company or such other amount as the directors determine at a date nominated by the Directors.
- (e) Address of Member
 - (i) Each Member shall provide to the Secretary details of an address in Australia where the Company can send notices.
 - (ii) If a Member fails to provide an address in Australia, the address of the Member is deemed to be the registered office of the Company.

9.2 Cessation Of Membership

- (a) Events leading to cessation

A Member ceases to be a Member if they:

 - (i) die;
 - (ii) resign in writing;
 - (iii) become of unsound mind or become liable to be dealt with in any way under the law relating to mental health;
 - (iv) are convicted of an indictable offence; or
 - (v) if they are a company, have a receiver or a receiver and manager appointed to its assets or some of them, or passes a resolution or takes or any action having the effect of its winding up or has such action taken against it.
- (b) Non-payment of Subscription

If any Subscription of a Member remains unpaid, the Member will be debarred from all privileges of membership provided that the Directors may, if they think fit, reinstate the Member on payment of all arrears.
- (c) Effect of cessation

A Member who ceases to be a Member continues to be liable for:

- (i) any Subscription and all arrears due and unpaid at the date of cessation;
 - (ii) all other moneys due by them to the Company; and
 - (iii) the Guarantee.
- (d) Power of Directors in respect of a Member's conduct
- (i) If any Member:
 - (A) wilfully refuses or neglects to comply with the provisions of the Constitution; or
 - (B) is guilty of any conduct which, in the opinion of the Directors, is unbecoming of a Member or prejudicial to the interests of the Company,

the Directors have the power to censure, fine, suspend or expel the Member from the Company pursuant to a Directors' resolution.
 - (ii) At least one week before the meeting of the Directors at which a resolution under clause 9.2(d)(i) is passed, the Company shall provide the Member with:
 - (A) notice of the meeting;
 - (B) the allegations against them;
 - (C) the intended resolution; and
 - (D) advice that the Member shall, at the meeting and before the passing of the resolution, have an opportunity to give, orally or in writing, any explanation of defence they may think fit.
- (e) Any Member referred to in clause 9.2(d)(i) may, by notice in writing lodged with the Secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Directors, elect to have the question dealt with by the Company in general meeting.
- (f) If an election is made under clause 9.2(e):
- (i) a general meeting must be convened and the resolution considered; and
 - (ii) if the resolution is passed by a majority of two-thirds of those present and voting (such vote to be taken by ballot), the Member concerned shall be dealt with accordingly.

10 Accounts And Audit

10.1 Accounting records

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

- (b) The records shall be kept:
 - (i) in such manner as to enable them to be conveniently and properly audited;
 - (ii) for seven years after the completion of the transactions or operations to which they relate; and
 - (iii) at the Company's registered office or at such other place as the Directors think fit.
- (c) The records shall at all times be open to inspection by the Directors.

10.2 Accounts

- (a) Each financial year, the Company shall prepare a financial report and a Directors' report in accordance with the Act.
- (b) The financial report for each financial year shall consist of:
 - (i) the financial statements for the year;
 - (ii) the notes to the financial statements; and
 - (iii) the Directors' declaration about the statement and the notes.
- (c) The financial statements for the year will consist of:
 - (i) a profit and loss statement for the previous financial year of the Company;
 - (ii) a balance sheet at the date to which the profit and loss account is made up;
 - (iii) a statement of cash flows for the year; and
 - (iv) if required by the Accounting Standards, a consolidated profit and loss statement, balance sheet and statement of cash flows.
- (d) The notes to the financial statements shall consist of:
 - (i) disclosures required by the Corporations Regulations;
 - (ii) the notes required by the Accounting Standards (if any); and
 - (iii) if required, any other information necessary to give a true and fair view of the financial position and performance of the Company.
- (e) The Directors' declaration made pursuant to clause 10.2(b) is a declaration by the Directors:
 - (i) that the financial statement, and the notes required by the Accounting Standards, comply with the Accounting Standards;
 - (ii) that the financial statements and the attached notes give a true and fair view of the financial position and performance of the Company;

- (iii) whether, in the Directors' opinion, there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable; and
- (iv) whether, in the Directors' opinion, the financial statement and attached notes are in accordance with the Act.

10.3 Auditor

The Company shall appoint an Auditor to audit the Company's financial statements in accordance with the Act.

11 Winding Up

11.1 Rights of Members on winding up

If the Company is wound up or dissolved, the Members have no right to participate in any distribution or payment of the assets or property of the Company.

11.2 Distribution of assets

- (a) If the Company is wound up or dissolved, the assets and property available for distribution after satisfaction of all debts and liabilities shall be given or transferred to some other institution or institutions:
 - (i) which has objects similar to the objects of the Company; and
 - (ii) whose constitution prohibits the distribution of its income and property to an extent at least as great as that imposed by clause 2.2(b)(i).
- (b) For the purposes of clause 11.2(a), the Directors shall identify the institution or institutions at the time of dissolution.
- (c) If the Directors fail to identify the institution or institutions under clause 70.1, the Supreme Court of Victoria shall make that determination.

12 Indemnity

12.1 Indemnity

Subject to Part 2D.2 of the Act, a person who is or has been an officer (as defined in the Act) or auditor of the Company is indemnified (to the maximum extent permitted by law), out of the assets of the Company against any liability incurred by the person as such an officer or auditor:

- (a) to another person (other than the Company or a related body corporate) unless the liability:
 - (i) is for a pecuniary penalty order made under section 1317G of the Act or a compensation order made under section 1317H of the Act; or
 - (ii) arises out of conduct involving a lack of good faith; and
- (b) for legal costs and expenses incurred by the person, unless the costs and expenses are incurred:

- (i) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under section 199A(2) of the Act;
- (ii) in defending or resisting criminal proceedings in which the person is found guilty;
- (iii) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
- (iv) in connection with proceedings for relief of the person under the Act in which the court denies the relief.

12.2 Insurance

Except to the extent precluded by the Act (including under section 199B), the Company may pay or agree to pay a premium in respect of a contract insuring the person who is or has been an officer (as defined in the Act) or auditor of the Company or of a related body corporate of the Company against any liability:

- (a) incurred by the person as such an officer or auditor which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Act; or
- (b) for costs and expenses incurred by the person in defending proceedings as such an officer, whether civil or criminal and whatever their outcome.