

**Corporations Act**  
**Constitution**  
of  
**Cotton Seed Distributors Ltd**

(ACN 000 568 730)

**(Includes all amendments up to and including those approved by the Members at the  
16 June 2015 AGM)**

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**Corporations Act**  
**A Company Limited by Guarantee**  
**and not having a Share Capital**  
**Constitution**

of

**Cotton Seed Distributors Ltd**

(ACN 000 568 730)

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## **1. Preliminary**

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### **1.1 Definitions**

In this Constitution, unless the context otherwise requires:

**"Act"** means the *Corporations Act*;

**"Board"** means the Directors acting as a board of directors;

**"Business Day"** means a weekday on which banks are open for normal banking business in Sydney;

**"Candidate"** means a candidate for election to membership of the Company pursuant to clause 2 of this Constitution;

**"chairman"** means the chairman of the Board;

**"Chief Executive Officer"** means the chief executive officer of the Company;

**"Company"** means Cotton Seed Distributors Ltd;

**"Constitution"** means this Constitution;

**"Contribution"** means the contribution of Members as referred to in clause 2.5 of this Constitution;

**"Directors"** means the directors of the Company from time to time and **"Director"** means any one of them;

**"general meetings"** means the annual general meeting and extraordinary general meetings;

**"Member"** means a member of the Company who has either signed this Constitution or has been admitted to membership of the Company pursuant to this Constitution;

**"Members' Register"** means the register of Members to be kept under the Act;

**"month"** means calendar month;

**"Office"** means the registered office for the time being of the Company;

**"related body corporate"** has the same meaning as in the Act;

**"Replaceable Rules"** means the provisions of the Act which would but for the Constitution apply as replaceable rules under section 135 of the Act;

**"resolution"** means a resolution other than a special resolution;

**"Seal"** means the common seal of the Company or, where appropriate, the duplicate seal or the official seal;

**"secretary"** means a person appointed as secretary of the Company from time to time;

**"special resolution"** means a resolution that has been passed by at least 75% of the Members entitled to vote on the resolution; and

**"in writing"** or **"written"** includes printing, lithography, photography and other means of representing or reproducing words in a visible form.

**"Vice-Chairman"** means the vice-chairman of the Board.

## 1.2 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include every gender;
- (c) references to the Act, any section, regulation or schedule of the Act or any other legislation are references to that law as amended, consolidated, supplemented or replaced;
- (d) headings are for convenience only and must be ignored in interpreting this Constitution; and
- (e) references to any person include references to any individual, company, body corporate, association, partnership, firm, joint venture, trust or government agency.

## 1.3 Constitution subject to the Act

This Constitution is subject to the Act and where there is any inconsistency between a clause and the Act, the Act prevails to the extent of the inconsistency.

## 1.4 Replaceable Rules not to apply

The Replaceable Rules are displaced by this Constitution and do not apply to the Company.

## 1.5 Objectives of the Company

- (a) The objectives for which the Company is established are:
- (i) to promote the development of the agricultural resources of Australia;  
and in furtherance of and as incidental or ancillary to that main objective:
  - (ii) to organise into an association persons interested in the encouragement and development of agriculture in all its branches and in particular, but without limiting the generality of the foregoing, the association of persons interested in the growing of cotton and the supply of planting cotton seed to cotton growers and the growing and the ginning marketing and utilisation of planting cotton seed;
  - (iii) to develop, or assist in the development of, and to supply to cotton growers in Australia, cultivars and planting seed suitable for Australian conditions;
  - (iv) to commercialise the use of germplasm and varieties licensed to or developed by the Company;
  - (v) to maintain any liaison with and to enter into any arrangement with any government, semi-government or local authority, business houses or undertakings, educational or scientific or research institutions or organisations, or any person, association or company whatsoever, which may be conducive to the main objective of the Company;
  - (vi) to provide a centre of information and advice and to edit and publish any newspaper, periodical, journal, annual or book and to provide for the delivery and holding of lectures, exhibitions, public meetings, field days, demonstrations and classes;
  - (vii) to establish, undertake, superintend, administer and contribute to any scientific, research or educational fund from which may be made donations or advances to scientific, research or educational institutions or organisations which may be, or are about to be, or have been, engaged in anything which may be conducive to the main objective of the Company, and to contribute to or otherwise assist any such institution or organisation; and
  - (viii) to best manage the Company's financial assets so as to promote the main objective of the Company.
- (b) Clause 1.5(a) does not limit the legal capacity and powers of the Company, as set out in section 124 of the Act.



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## **2. Membership**

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### **2.1 Condition precedent to nomination for membership**

No person shall be admitted to membership of the Company or continue as a Member unless that person is directly and regularly engaged, or to become engaged, in the growing or ginning of cotton, or in the regular provision of services or advice in the cotton industry, and such person may include land owners, sharefarmers, members of firms, nominees or directors of companies and other individuals or corporate bodies so engaged, or to become so engaged, whether within the State of New South Wales or in any other State or Territory of Australia.

### **2.2 Application for membership**

- (a) Candidates for election to membership of the Company must be nominated by a proposer and a seconder, each of whom are Members of the Company, and to whom the Candidate is personally known.
- (b) Each nomination shall be made on the form approved by the Board and provided by the secretary, and:
  - (i) must be signed by the proposer and seconder; and
  - (ii) must bear the signed consent of the Candidate.
- (c) Notwithstanding paragraphs (a) and (b), in the case of persons not personally known to Members, the Board may, after due inquiry, resolve by majority vote that a Candidate be deemed to be duly nominated.

### **2.3 Election to membership**

- (a) Election to membership of the Company shall be by the Board who shall vote by ballot.
- (b) No Candidate shall be elected to membership of the Company unless at least two-thirds of the Board present at the meeting vote in favour of the Candidate's election.
- (c) If a Candidate is elected to membership of the Company pursuant to paragraph (b), the secretary shall forward notice in writing to the Candidate notifying his or her election.
- (d) Upon receipt of notice pursuant to paragraph (c), the newly elected Member shall be deemed to have agreed to be bound by this Constitution.
- (e) All applications for membership of the Company may be granted or declined by the Board in its absolute discretion. Without limiting the generality of this clause, preference shall be given to persons nominated under clause 2.2 who are engaged in the growing or ginning of cotton, particularly where the nomination form shall therein state the property or properties, or the gin or gins, within Australia in which the nominated person has an interest.

- (f) The Board shall maintain a Members' Register wherein shall be entered the name of each Member, his or her address, and the property or properties, or the gin or gins, in which such Member has an interest.

## **2.4 Membership - General**

- (a) Members of the Company shall consist of the persons who have signed this Constitution, and all such other persons who may, from time to time, be elected to membership of the Company in accordance with clause 2.3 of this Constitution.
- (b) Every Member shall be bound to further, to the best of his or her ability, the objects, interests, influence and standing of the Company and shall observe the rules and regulations of the Company in force from time to time.

## **2.5 Members' Contributions**

- (a) The Company shall, in general meeting, from time to time prescribe a Contribution to be paid by Members upon admission to membership of the Company and in each fifth year (the first such contribution being payable in calendar 2005, the second in calendar 2010, and so on), regardless of when individual members were admitted to membership. The Contribution is AUD\$100 (or such other amount as the Members may from time determine by simple majority of votes) which shall become due on a day in each such fifth year as determined by the Board from time to time Provided that if a person is admitted to membership of the Company during the second or subsequent year in any such 5 year period (the first such 5 year period being calendar 2005 to calendar 2009 inclusive), then the Member shall within 5 Business Days of being notified pursuant to clause 2.3(c), pay to the Company that proportion of the Contribution in respect of that 5 year period which the number of years left in the period (including the year of admission) bears to 5 (thus a person admitted to membership in the fourth year of a 5 year period would have to pay the Company 40% of the Contribution in respect of that period).
- (b) If:
- (i) the Contribution of a Member remains unpaid for a period of two calendar months after it becomes due ("Defaulting Member"); and
  - (ii) the secretary has provided written notice to the Defaulting Member setting out the details of the default; and
  - (iii) the Defaulting Member has not paid his or her Contribution within 5 Business Day of receiving the notice under paragraph (ii),

the Defaulting Member shall cease to be a Member save only that if within 12 months of the date of cessation of membership the Defaulting Member pays the amount past due plus, if the next year's Contribution is due at the date of the payment, the next year's Contribution, the secretary shall readmit the Defaulting Member to membership without the requirement of an application or election in accordance with clauses 2.2 and 2.3.

## 2.6 Cessation of membership

- (a) A person will cease to be a Member if a Member resigns his membership of the Company by written notice to the secretary. A resigning Member remains liable for any accrued or ongoing obligations the Member may have under this Constitution.
- (b) The Board may declare a Member to have forfeited his membership of the Company if:
  - (i) the Member resolves to go into liquidation or calls a meeting of its creditors for the purpose of entering into liquidation (other than for the purpose of a solvent amalgamation or reconstruction), official management or any scheme of arrangement, whether formal or informal with its creditors; or
  - (ii) there is appointed to the whole or part of the property or undertaking of the Member an agent of a mortgagee, a receiver or a receiver and manager; or
  - (iii) there is appointed to the Member an inspector to investigate its affairs under any law of the Commonwealth or any its State or Territory; or
  - (iv) a provisional liquidator or liquidator is appointed to the Member and such appointment is not discharged within 14 days of the date of appointment; or
  - (v) without written consent from the Board there is a change in more than 50% of the control (as defined by the Act) of the Member;
  - (vi) any other event, or series of events whether related or not including, without limitation, any material adverse change in the business assets or financial circumstances of a Member occurs which in the opinion of the Board could affect the ability or willingness of that Member to perform, observe and fulfil all or any of its obligations under this Constitution;
  - (vii) the Member becomes bankrupt or makes any general assignment of his property or enters into any general composition for the benefit of or with his creditors;
  - (viii) the Member becomes an insane patient or an insane or incapable person or is convicted of a felony or misdemeanour;
  - (ix) the Member wilfully infringes the Constitution or any rules, regulations or directions of the Board, or, in the opinion of the Board, is guilty of conduct unbecoming of a Member, or otherwise prejudicial to the interests of the Company;
  - (x) for a continuous period of 12 months the Member ceases to be engaged in the growing or ginning of cotton or the provision of services or advice in the cotton industry as set out in clause 2.1;

- (xi) the Member is or becomes a competitor of the Company or an employee or officer of or consultant to a competitor of the Company;

provided that:

- (xii) any motion expelling any Member shall not be valid unless passed by a two-thirds majority of those Directors in attendance at the Board meeting at which such a vote is cast; and
  - (xiii) any Member coming under paragraph (vii) or (ix) shall have the right, before the Member shall be declared as forfeiting his membership, to provide to the Board a statement of the causes which led to his bankruptcy or the making of such assignment or composition, or provide an explanation of such infringement or conduct.
- (c) If in the opinion of the Board the conduct of a Member shall have been such as might warrant the Board taking action under clause 2.6(b), the Board may forthwith suspend such Member from the privileges of membership of the Company until such time as the Board shall have considered such conduct. The Board shall, however, forthwith cause preliminary inquiries to be made, and shall cause a full report to the Board to be prepared.

## **2.7 Cessation of Rights**

- (a) Subject to this clause, the rights and privileges of a Member cease when the Member ceases to be a Member, or when the Member's name is removed from the Members' Register.
- (b) Any Member who withdraws from the Company must make all of its Contributions which are due up to and including the date of its withdrawal from the Company. This paragraph survives winding up of the Company.
- (c) Any Member whose membership has been forfeited under clause 2.6(b) shall forfeit all rights in and claims upon the Company and its property.
- (d) A Member who has resigned, or whose membership has been forfeited under clause 2.6(b), shall not be entitled to a refund of the whole or any part of any Contribution previously paid by the Member.

## **2.8 Guarantee by Members**

- (a) Each Member guarantees the debts and liabilities of the Company up to \$200.
- (b) Subject to paragraph (a), every Member of the Company undertakes to contribute to the assets of the Company in the event of its being wound up or otherwise dissolved:
  - (i) while he or she is a Member; or
  - (ii) within one year after he or she ceases to be a Member,
 for

- (iii) the payment of debts and liabilities of the Company;
- (iv) the costs, charges and expenses of winding up and dissolution; and
- (v) the adjustment of the rights amongst Members, if necessary.

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## **3. General Meetings**

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### **3.1 Annual general meetings**

- (a) Subject to the Act, a general meeting of the Company called the "annual general meeting" must be held at least once in every calendar year and no later than 5 months after the end of the financial year of the Company.
- (b) All other meetings of the Company will be called "extraordinary general meetings" and may, subject to clause 3.3, be convened at any time.

### **3.2 Deemed holding of annual general meeting**

An annual general meeting will be deemed to have been held if the Company has held a general meeting at which resolutions have been passed dealing with all matters required to be dealt with at an annual general meeting, but this does not affect the obligation to hold an annual general meeting as required by the Act or this Constitution.

### **3.3 Convening of extraordinary general meetings**

In relation to the convening of extraordinary general meetings:

- (a) the Board may convene extraordinary general meetings to be held at any place the Directors think fit;
- (b) an extraordinary general meeting must be convened by the Directors as soon as practicable following a requisition of Members in the manner provided for by the Act; and
- (c) Members have no right to call extraordinary general meetings of the Company except as provided by this clause.

### **3.4 Notice of general meetings**

Except as permitted by the Act, at least 21 days' notice in writing of every general meeting must be given to the Members entitled to attend, and the persons entitled under this Constitution to receive notices.

### **3.5 Contents of notice of general meetings**

Every notice convening a general meeting must:

- (a) set out the place, date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) set out the rights of and requirements for a Member to appoint a proxy;
- (c) be accompanied by an instrument of proxy in the form which complies with the Act and this Constitution, or in such other form as the Directors may from time to time prescribe or accept; and
- (d) otherwise comply with the requirements of section 249L of the Act.

### **3.6 Omission to give notice**

Except as prescribed by the Act, the accidental omission to give notice of a meeting to any Member or the non-receipt of notice of a meeting by any Member will not invalidate any of the proceedings at that meeting.

### **3.7 Members' motions**

Any Members who wish to move any motion at a general meeting shall give notice thereof in writing to the secretary not less than 10 Business Days before the date on which notice of the general meeting must be forwarded to Members pursuant to clause 3.4.

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## **4. Proceedings at General Meeting**

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### **4.1 Business at annual general meeting**

The business of an annual general meeting will be:

- (a) to receive and consider the annual financial report, directors' report and auditor's report as required by the Act;
- (b) to appoint Directors in place of any retiring Director or any Director whose office will be vacated by virtue of clause 8.1(b), 8.3 or 8.4, and determine the remuneration of the Board;
- (c) the appointment of an auditor or auditors if there is any vacancy in the office or if there would otherwise be a vacancy in the office after the annual general meeting; and
- (d) to transact any other business which may be properly brought before the meeting.

### **4.2 Quorum for general meeting**

No business will be transacted at any general meeting unless a quorum is present at the beginning of the business. A quorum is constituted by 5 Members of the Company present in person.

### **4.3 Representative of body corporate**

Subject to clause 5.2(c), where:

- (a) a person present at a meeting is authorised to act at the meeting as the representative of a Member which is a body corporate, under an authority given by the body corporate under Section 250D of the Act; and
- (b) the person is not otherwise entitled to be present at the meeting,

the body corporate will, for the purposes of this Constitution, be deemed to be present in person at the meeting.

### **4.4 No quorum**

If a quorum is not present within 30 minutes after the time appointed for the meeting, any meeting convened on a requisition of Members will be dissolved but any other meeting will be 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 Directors may appoint by notice to the Members entitled to attend. If at the adjourned meeting a quorum is not present, the meeting will be dissolved.

### **4.5 Chairman of general meeting**

The Chairman shall act as chairman at every general meeting, provided that in the Chairman's absence, the Vice-Chairman shall take the chair. If neither the Chairman nor the Vice-Chairman is present at any meeting within 15 minutes after the time appointed for holding the meeting, or if the Chairman or Vice-Chairman is unwilling to act, the Members present may elect a chairman for the purpose of the general meeting.

### **4.6 Powers of chairman**

At any general meeting, a declaration by the chairman that a resolution or special resolution has been carried or carried by a particular majority or not carried, and a recording of that declaration in the minute book, will be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against that resolution or special resolution.

### **4.7 Adjournment of general meeting**

The chairman of a general meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but only business left unfinished at the original meeting may be transacted at the adjourned meeting.

### **4.8 Notice of adjourned meeting**

If any general meeting is adjourned for more than 10 days, a notice of the adjournment must be given to Members of the Company entitled to attend, in the same manner as notice was or ought to have been given of the original meeting. In the case of all other adjournments, it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

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## **5. Voting**

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### **5.1 Resolution determined by majority**

At a general meeting, unless otherwise required by this Constitution or the Act:

- (a) subject to paragraph (b), all resolutions submitted to the meeting will be decided by a special resolution;
- (b) resolutions at the annual general meeting regarding the annual financial report, the Directors' report, the auditor's report and appointment of auditors, the election of the Board and fixing the remuneration of the Board shall be decided by simple majority of votes;
- (c) in the first instance, voting will be on a show of hands. A poll may be demanded before or upon the declaration of the results of the show of hands on any question by any 5 Members present in person or by proxy and entitled to vote. The chairman must decide in each case the manner in which a poll will be taken, and the result of the poll will be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairman or on a question of adjournment will be taken immediately. Any dispute relating to the admission or rejection of a vote must be determined by the chairman and the chairman's determination made in good faith will be final and conclusive.

### **5.2 Votes**

- (a) On a show of hands every person present as a Member and entitled to vote will have one vote.
- (b) Subject to paragraph (c), on a poll, every person present as a Member and entitled to vote will have one vote, and if a Member entitled to vote also holds proxies from other Members, will have in addition one vote for each such proxy.
- (c) No Member other than the chairman is entitled to hold proxies, or act as representative, for more than 3 Members.

### **5.3 Chairman's vote**

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

### **5.4 Resolutions without meetings**

Any resolution, other than a resolution to remove an auditor under section 329 of the Act, may be proposed by the Board and passed without a general meeting being held if:

- (a) the Board sets out the proposed resolution, and directions as to the method of voting, in a written notice to all Members who would have been entitled, if present, to vote at a meeting held on the date of the notice; and



- (b) at least 75% of the Members entitled to vote on the resolution (or being corporations, their duly authorised representatives or attorneys) sign a document stating that they are in favour of the resolution set out in the document, and return the signed document to the Company in accordance with the voting directions in the Board notice referred to in clause 5.4(a).

Identical copies of the document may be distributed for signing by different Members. The resolution is passed when the last Member required to constitute the requisite 75% majority signs and returns the document in accordance with clause 5.4(b)

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## **6. Proxies**

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### **6.1 Appointment of Proxy**

A proxy appointed under this Clause 6 must be a Member of the Company.

### **6.2 Instrument appointing proxy**

- (a) The instrument appointing a proxy must be in writing signed by the appointor or by the appointor's attorney properly authorised in writing, or, if the appointor is a body corporate, under its common seal or signed by at least 2 of its officers.
- (b) The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

### **6.3 Deposit of proxy with Company**

- (a) The instrument appointing a proxy and the original power of attorney (if any) under which it is signed or a certified copy of the power of attorney must be received by the Company at least 48 hours before the time for holding the meeting by delivery to the Company's registered office, by facsimile received at a fax number at the Company's registered office or otherwise by any other means permissible under section 250B(3) of the Act.
- (b) No instrument appointing a proxy will be valid for more than 12 months from the date of its execution unless it states that it is valid for all meetings until revoked, except that any instrument may be used at any adjournment of the meeting for which it was originally intended.

### **6.4 Validity of vote given in accordance with proxy**

Subject to clause 5.2(c), unless the Company has received written notice before the start of the meeting at which a proxy votes, of a matter listed in (a) – (d) below, a vote cast by the proxy will be valid even if, before the proxy voted:

- (a) the appointor Member dies; or
- (b) the appointor Member is mentally incapacitated; or
- (c) the appointor Member revokes the proxy's appointment; or

- (d) the appointor Member revokes the authority under which the proxy was appointed by a third party.

## **6.5 Form of proxy**

- (a) Every instrument of proxy must specify the appointor Member's name and address, the Company's name, the proxy's name or the name of the office held by the proxy and the meetings at which the proxy may be used, and must otherwise comply with the provisions of section 250A of the Act.
- (b) The instrument of proxy may be worded so that a proxy may vote as he or she thinks fit in relation to any resolutions that come before any or a specific general meeting of the Company and /or so that the proxy may vote as he or she thinks fit, or must vote as he or she is directed to vote, either for or against each of the resolutions to be proposed.

## **6.6 Entitlement to vote**

A proxy is not entitled to vote on a show of hands.

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# **7. Directors**

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## **7.1 Number of Directors**

The Board shall comprise no fewer than 5 and not more than 10 Directors, being:

- (a) up to 7 Directors elected by the Members; and
- (b) up to 3 Directors appointed by the Board pursuant to clause 7.12.

## **7.2 Election of office-bearers**

At the first Board Meeting following the annual general meeting, the Board shall elect from among their number:

- (a) one Chairman; and
- (b) one Vice-Chairman; and
- (c) one secretary (unless a secretary already holds office under clause 9.4) ;

who shall have tenure until the next annual general meeting, unless their office is vacated pursuant to clause 8.4.

## **7.3 Residence of Directors**

At least two thirds of the Directors must be natural persons who ordinarily reside within Australia, and in no circumstances can the number of Australian-resident Directors be less than three.

## **7.4 Consent**

Before being appointed as a Director a person must give the Company a signed consent to act as Director which must be retained by the Company.

## **7.5 Appointment of Directors**

Appointments of Directors will be in accordance with clauses 7.6, 7.10, 7.11, 7.12 or 8.2, whichever applies.

## **7.6 Directors may fill casual vacancies**

The Directors have the power at any time to appoint a person qualified under clause 7.7 as a Director to fill a casual vacancy. Casual appointments will hold office until the expiry of the term specified by the Board at the time of appointment or until the former Director who created the casual vacancy would otherwise have been required to vacate his or her office in accordance with clause 8, whichever first occurs.

## **7.7 Qualification for appointment as a Director**

Except as provided in clause 7.12, Directors must be Members.

## **7.8 Auditor cannot be Director**

Subject to the Act, an auditor of the Company or partner or employee or employer of an auditor of the Company must not be appointed a Director of the Company.

## **7.9 No alternate Directors**

No Director may appoint a person to act as an alternate Director.

## **7.10 Nominations and election of Directors by Members**

- (a) Nominations for the election of Directors by Members must be made in writing signed by 2 Members of the Company and must include the consent in writing of the nominee director. The nomination must be delivered to the secretary at least 45 days before the annual general meeting. Nominee directors must be qualified to act as Directors under clause 7.7 of this Constitution.
- (b) If the number of nominations in writing is equal to or less than the number of offices to be filled then the Members nominated shall, if duly qualified, be deemed to be elected.
- (c) If the number of nominations is less than the number of offices to be filled then the Board may appoint a person as Director to fill the casual vacancy pursuant to clause 7.6.
- (d) If the number of written nominations submitted is greater than the number of offices to be filled, a secret ballot for election shall be taken pursuant to clause 7.11 of this Constitution.

## **7.11 Secret ballot for election of Directors**

Where a secret ballot for election of Directors to the Board is necessary, it shall be taken in the following manner:

- (a) a list of all Members nominated shall be given to each Member ("ballot paper"). The ballot paper shall provide for a number to be allocated to each Member nominated. In order of preference, the voting Member shall allocate numbers to the names of the Members nominated on the ballot paper. The Board may determine the method to be adopted for determining the result of the election;
- (b) the chairman of the general meeting at which an election is to take place shall appoint 2 of the Members present as scrutineers to examine the ballot papers and report the result to the general meeting;
- (c) if so requested by a Member, the respective number of votes recorded for the candidates shall be declared by the chairman of the meeting. Should a recount be asked for at the meeting by a Member, such recount shall be made by 2 other scrutineers appointed by the chairman and shall be duly declared at that meeting or any adjournment thereof; and
- (d) if 2 or more candidates secure an equal number of votes and it is necessary to exclude any one or more of them, a further ballot shall be taken in accordance with paragraphs (a) – (c).

## **7.12 Appointment of Directors by the Board**

At the discretion of the Board, the Board by simple majority vote may appoint to the Board up to 3 Directors (one of whom may be the Chief Executive Officer, who may then be designated the "Managing Director"), whose tenure will be governed by clause 8, provided that for so long as the Chief Executive Officer is not a Director appointed under this clause, the Board may only appoint up to 2 Directors pursuant to this clause.

In making an appointment of someone other than the Chief Executive Officer, the Board shall have regard to the following matters:

- (a) technical, professional or administrative skills important to the Board;
- (b) special or topical experience which may be required by the Board; and
- (c) other factors necessary to achieve a balanced and effective Board.

One only of the Directors appointed under this clause need not be a Member. A Director appointed under this clause who is not a Member, shall be ineligible for appointment to any of the offices referred to in clause 7.2.

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## **8. Directors' Tenure of Office**

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### **8.1 Directors' tenure of office**

- (a) Subject to the Act, each Director will hold office until removed in accordance with this Constitution or until the Director's office is vacated in accordance with this Constitution.
- (b) Each Director elected by the Members must retire at the third Annual General Meeting subsequent to his or her appointment.
- (c) The Directors to vacate their offices under paragraph (b) will do so in the following order:
  - (i) the Directors with the longest current term of office; and
  - (ii) if necessary, by lot from among Directors ranking equally in their current terms of office.
- (d) A Director appointed by the Board pursuant to clause 7.12:
  - (i) will hold office for such period (in the case of Directors other than the Chief Executive Officer or Managing Director, not exceeding 3 years) as may be determined by the Board, but will be eligible for reappointment by the Board under clause 7.12 and (if a Member) for election or re-election to the Board by the Members;
  - (ii) may be removed from office by a resolution of the Board passed at a meeting convened with notice of its purpose.

### **8.2 Retiring Director eligible for re-appointment**

Subject to clause 8.4, a Director who retires or whose office is vacated under this Constitution is eligible for appointment or re-appointment to the Board.

### **8.3 Removal of Director by the Company**

The Company in general meeting may by special resolution remove any Director at any time.

### **8.4 Vacation of office**

- (a) If a Member of the Board:
  - (i) dies; or
  - (ii) fails to attend (or participate in, pursuant to clause 9.2) 4 consecutive Board meetings without leave of absence,

his office shall be declared vacant by the Board, who may, at their discretion, appoint a successor to hold office until the next annual general meeting.

- (b) The office of Director will be automatically vacated if the Director:
- (i) not being a non-Member Director appointed by the Board pursuant to clause 7.12, ceases to be a Member of the Company;
  - (ii) resigns his office by notice in writing to the Company;
  - (iii) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
  - (iv) becomes bankrupt or enters into an arrangement or composition with all or a substantial number of his or her creditors, or enters into any other form of insolvency administration;
  - (v) in the opinion of all his co-Board Members, becomes incapable either physically or mentally of carrying out his duties as a Board Member;
  - (vi) is removed from office by resolution of the Company at a general meeting;
  - (vii) vacates office or is prohibited from being a Director in accordance with any of the provisions of the Act or any order made under the Act.
- (c) A Director whose office is vacated under paragraphs (iii), (iv) or (v) will not be eligible for re-election until the disability (or disabilities) referred to is (or are) removed.

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## **9. Proceedings of Directors**

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### **9.1 Board meetings and quorum for board meetings**

- (a) The Directors may meet for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit but must meet at least once in every 3 month period.
- (b) Subject to paragraph (c), the quorum will be half of the Directors elected or appointed to the Board. If the number of Directors falls below 4, the Directors may act for the sole purpose of filling the casual vacancy or vacancies pursuant to clause 7.6.
- (c) The quorum of the Board shall be half of the Directors, rounded up to the nearest whole number where there is an odd number of directors;
- (d) A quorum must be present to vote on all resolutions, but a quorum shall be deemed to be present notwithstanding that one or more Directors comprising the quorum absents from voting, for any reason.

## **9.2 Conduct of board meetings**

A Directors' meeting may be called or held by telephone or by using any other technology consented to by all the Directors which enables all participants to hear and participate in the proceedings. If a Director is unable to attend a board meeting in person, he may, if a majority of the other Directors present at that or a previous meeting consent, participate in the meeting by telephone or any other technology approved by the other Directors, and will be deemed to have been present at the meeting and to have formed part of a quorum until the close of the meeting or until their link to the meeting is earlier disconnected. If any Director so participating in a meeting intends to leave the meeting, or disconnect their link to it, prior to the close of the meeting, they must announce their intention to do so to the chairman.

## **9.3 Convening of board meeting and place of meeting**

The Board must meet whenever a meeting is called by at least 3 Directors provided that not less than 14 working days' written notice has been given to the other Directors.

## **9.4 Secretary**

The Directors must appoint one or more secretaries of the Company in accordance with the Act. A secretary must be ordinarily resident in Australia. A secretary may be, but need not necessarily be, a Director. The Directors may also appoint acting and assistant secretaries. Any such appointment may be for such term, at such remuneration and on such conditions as the Directors think fit and any person so appointed may be removed by the Directors. The secretary or secretaries must ensure that minutes are kept which record all resolutions and proceedings of all meetings of the Board.

## **9.5 Responsibilities of the Board**

The Board is responsible for, and has the sole power in respect of, the policy, practices, overall management and operation of the Company including ensuring enduring value is created, improving the performance of the Company through strategy formulation and policy making, monitoring the Company's performance, ensuring that performance is in the Members' interests and meets agreed goals and objectives (this includes complying with all relevant legal requirements and appropriately managing risk), and recruiting and overseeing the Chief Executive Officer or Managing Director. The Board may delegate any such responsibilities to committees or otherwise as it may determine.

## **9.6 Board meeting competent to exercise all powers**

A meeting of the Directors at which a quorum is present may exercise all or any of the powers and discretions vested in or exercisable by the Directors generally.

## **9.7 Resolution passed deemed to be determination of board**

Any resolution properly passed at a duly convened meeting of the Directors at which a quorum is present will be deemed to be a determination by the Board for the purposes of this Constitution.

## **9.8 Chairman of board meetings**

- (a) The Chairman and in his absence the Vice-Chairman shall be chairman at all meetings of the Board.
- (b) When neither the Chairman nor Vice-Chairman is present, the Board shall elect a chairman from among the Directors present.

## **9.9 Questions to be decided by majority**

Questions arising at any meeting will be decided by a majority of votes of Directors present and entitled to vote. The Chairman will have a casting vote as well as a deliberative vote.

## **9.10 Resolution in writing**

A resolution in writing of which notice has been given to all Directors entitled to receive notice of a meeting of the Directors and which is signed by, or approved by an electronic mail message to the Chairman to that effect from, a majority of Directors entitled to attend and vote at meetings of the Directors is valid as if passed at a meeting of the Directors duly convened and held. Copies of the document may be distributed for signing or electronic mail approval by different Directors but each copy must have identical wording. The resolution is passed when the last Director, or the last Director required to form the majority necessary to pass the resolution, signs the document or approves the resolution by sending an electronic mail message to that effect to the Chairman.

## **9.11 Committee powers and meetings**

The Directors may delegate any of their powers to a committee of Directors and may revoke any such delegation. Any committee must exercise the powers delegated to it in accordance with any directions of the Board. The meetings and proceedings of any committee consisting of 2 or more Directors will be governed by the provisions of this Constitution regulating the meetings and proceedings of the Directors so far as they are applicable and are not superseded by any direction made by the Board under this clause.

## **9.12 Validity of acts of Directors**

All acts done by any meeting of the Directors or by a committee of the Directors are valid even if it is afterwards discovered that there was some defect in the appointment or election of any Director or that any Director was disqualified or had vacated office or was otherwise not entitled to vote or act.

## **9.13 Regulations**

The Board may from time to time make such regulations consistent with the Constitution as it considers conducive to the good management and effective working of the Company. All such regulations shall be binding on Members and officers of the Company, provided that every such regulation shall be passed by a majority of two-thirds of the Directors present at the meeting, all Members shall be given written notice of such regulations, and such regulations shall be kept posted on the Company's website.



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## **10. Directors' Contracts**

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### **10.1 Operation of Corporations Act**

This clause 10 is subject to the provisions of the Act regarding disclosures of directors' material personal interests, a Director being present at meetings at which matters in which the Director has a material personal interest are being considered, voting on such matters, and related party benefits and transactions.

### **10.2 Directors not disqualified from holding office or contracting with Company**

Notwithstanding any rule of law or equity:

- (a) no Director shall be disqualified by virtue of his office from holding any office or place of profit (other than as auditor) with the Company or with any company promoted by the Company or with any corporation in which the Company is a shareholder or in which the Company is otherwise interested;
- (b) no Director shall be disqualified by virtue of his office from contracting with the Company (whether as vendor, purchaser or otherwise); and
- (c) no contract referred to in paragraph (b) or any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested shall be avoided and no Director shall be liable to account to the Company for any profit arising from such a contract or arrangement or from any office or place of profit referred to in paragraph (a) by reason only of that Director holding that office or of the fiduciary relations established by it.

### **10.3 Director may hold office or act in professional capacity**

Subject to the Act, a Director:

- (a) may hold any office in connection with the Company's business except that of auditor; and
- (b) may act individually or through the Director's firm in a professional capacity for the Company (except as auditor) and shall be entitled to remuneration for professional services as though the Director were not a Director.

### **10.4 Director may vote on contract in which he is interested**

Subject to clause 10.5 and Section 195 of the Act, a Director may vote in respect of any contract or arrangement in which the Director is interested (whether directly or indirectly) and may be counted in a quorum, may affix the Seal and may otherwise act in respect of such contract or arrangement.

## **10.5 Director not deemed to be interested in certain contracts or arrangements**

A Director shall not be deemed to be interested (whether directly or indirectly) or to have been at any time interested in any contract or arrangement or proposed contract or arrangement:

- (a) relating to any loan to the Company, merely by reason of the fact that the Director has guaranteed or joined in guaranteeing the repayment of such loan or any part of such loan; or
- (b) made or to be made with a corporation which under any provision of the Act is deemed to be related to or associated with the Company, merely by reason of his being a director of that corporation.

## **10.6 Directors to declare interest**

Any Director who is directly or indirectly interested in any contract or arrangement or proposed contract or arrangement with the Company must declare the nature of the interest at the meeting of the Directors at which the contract or arrangement is first considered (if the interest then exists) or, in any other case, at the first meeting of the Directors held after the interest is acquired. A general notice by a Director that the Director is a member of any specified corporation or firm and is to be regarded as interested in any contract which may be made with that corporation or firm after the date of that notice shall be deemed to be a sufficient declaration of interest in relation to any contract so made provided the notice complies with the provisions of the Act and in particular Section 192 of the Act.

## **10.7 Directors to declare potential conflicts**

Any Director who holds any office or possesses any property which might (whether directly or indirectly) create duties or interests in conflict with his duties or interests as a Director must declare the fact of his holding such office and the nature and extent of any conflict at the first meeting of the Directors held after the Director becomes a Director or (if already a Director) at the first meeting of the Directors held after the relevant facts came to the Director's knowledge.

## **10.8 Secretary to record declarations of Directors**

It shall be the duty of the secretary or secretaries to ensure that any declarations made or notices given by a Director under this Constitution are recorded in the minutes of the meeting.

## **10.9 Effect of failure to make or record disclosures**

Failure to make or to record any disclosures will not render voidable or void any contract, transaction or arrangement to which the disclosure relates.

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## **11. Powers of Directors**

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### **11.1 Powers of Directors**

Subject to the Act and this Constitution, the business of the Company will be managed by the Directors, who may pay all expenses incurred in promoting and forming the Company and may exercise all such powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Company in general meeting.

### **11.2 Powers to borrow or raise money**

Without limiting the previous clause, the Directors may from time to time borrow or raise any sum or sums of money or incur other financial obligations for the purposes of the Company and may give or take security over the repayment of such sum or sums or the payment, performance or fulfilment of any debts, liabilities, contracts or obligations incurred or undertaken by the Company on such terms and conditions as they determine.

### **11.3 Security over Company's assets**

Subject to the Act, if any Director or any other person becomes personally liable (whether as surety or otherwise) for the performance of any of the Company's obligations, the Directors may, despite that interest, execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the liability.

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## **12. Appointment of attorney**

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The Directors may at any time by power of attorney under the Seal appoint any person or persons 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 this Constitution) and for such period and subject to such conditions as the Directors think fit. Any appointment may be made in favour of any company or any fluctuating body of persons nominated by the Directors and any power of attorney may contain provisions for the protection or convenience of the attorney or attorneys and of persons dealing with the attorney or attorneys.

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## **13. Directors' Remuneration**

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### **13.1 Remuneration of Directors**

Remuneration for services rendered as Directors (excluding any remuneration payable to any Director under any executive service contract with the Company or a related body corporate) shall be recommended by the Board and determined by the Company at the annual general meeting on a simple majority of votes.

## 13.2 Expenses of Directors

The Directors may be paid all travelling and other expenses incurred by them in attending and returning from meetings of the Directors, any committee of the Directors or any general meetings of the Company or otherwise in connection with the business of the Company, as permitted by the Company in general meeting.

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## 14. Minutes and Registers to be kept

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### 14.1 Minutes

The Directors must ensure minutes of Directors meetings, Board committee meetings, general meetings of Members, and other resolutions passed by the Directors or Members are prepared within one month of the relevant meeting or the passing of the relevant resolution, which minutes must contain details of, as applicable:

- (a) the names of the Directors present at each meeting of the Directors and of any committee of Directors;
- (b) all declarations made or notices given by any Director (either generally or specially) of his or her interest in any contract or proposed contract or of his or her holding of any office or property whereby any conflict of duty or interest may arise;
- (c) all orders made by the Directors and committees of Directors;
- (d) all resolutions and proceedings of general meetings of the Company, meetings of the Directors and meetings of any committee of the Directors; and
- (e) resolutions passed by Members or Directors without a meeting.

Minutes of all general meetings of the Company, meetings of the Directors and meetings of any committee of the Directors must be signed by the chairman of the meeting or by the chairman of the next succeeding meeting and once signed will constitute evidence of the matters stated in the minutes.

### 14.2 Registers

In accordance with the Act, the Directors must set up and maintain:

- (a) a Members' Register;
- (b) a register of charges;
- (c) if the Company issues debentures, a register of debenture holders; and
- (d) any other registers required to be kept under the Act.

The registers may be kept either in a bound or loose leaf book or on computer. If a register is kept on computer, its contents must be capable of being printed out in hard copy.

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## **15. The Seal**

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If the Company has a Seal, the Directors must provide for the safe custody of the Seal. The Seal must be used only by the authority of the Board or a committee of the Directors with authority from the Board to authorise the use of the Seal. Every document to which the Seal is affixed must be signed by a Director and countersigned by another Director, a secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

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## **16. Negotiable Instruments**

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All cheques, bills of exchange, promissory notes and other negotiable instruments must be signed, drawn, accepted, made or endorsed (as the case may be) for and on behalf of the Company by such persons and in such manner as the Directors may determine.

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## **17. Accounts**

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### **17.1 Accounting records**

The Directors must 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 financial reports to be prepared and to permit preparation of any other documents required by the Act or this Constitution. The records must be kept:

- (a) in such manner to enable them to be conveniently and properly audited;
- (b) for 7 years after the completion of the transactions or operations to which they relate; and
- (c) at such place as the Directors think fit and at all times be open to inspection by the Directors.

### **17.2 Reports to be laid before annual general meeting**

At the annual general meeting, the Directors must lay before the Company the applicable reports as required by the Act including:

- (a) a general purpose financial report in accordance with Australian accounting standards which gives a true and fair view of the of the financial performance and position of the Company; and
- (b) a report by the Directors with respect to the state of the Company's affairs, and the auditors' report on the general purpose financial report.

The financial report, directors' report and auditor's report must comply with all applicable provisions of the Act.

### **17.3 Financial year**

The Company's financial year closes on 31 March of each year.

### **17.4 Annual Report to Members**

The Directors must cause copies of the reports referred to in clause 17.2:

- (a) to be placed on the Company's website at least 21 days before the Annual General Meeting, with a communication to members with the notice of the Annual General Meeting, that copies are or will be available on the website, and
- (b) to be mailed to each member who requests a hard copy.

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## **18. Audit**

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### **18.1 Auditors**

- (a) Auditors of the Company must be appointed and may be removed, and their remuneration, rights and duties will be regulated, in accordance with the Act.
- (b) The Directors shall cause the general purpose financial report in respect of each financial year of the Company to be audited by the auditors of the Company in accordance with the Act, not less than 28 days before before the Annual General Meeting.

### **18.2 Approval of accounts**

Accounts of the Company when prepared by the Directors will be conclusive except as regards any error identified within 3 months after the date of preparation. If any error is identified within this period, the accounts must immediately be corrected and will then be conclusive.

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## **19. Notices**

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### **19.1 Service of notices on Members and Directors**

A notice may be given by the Company to any Member either personally, by facsimile or electronically to the relevant facsimile number or electronic address of the Member as shown on the Member's Register, by sending it by post addressed to the Member at the address shown in the Member's Register or otherwise by any other method, including by advertisement, as the Directors determine. A notice may be given to any Director either personally, or by sending it by post or by facsimile or electronically, addressed to the Director, to the relevant postal address, facsimile number or electronic mail address of the Director as notified in writing from time to time by the Director to the Company.

## **19.2 Posting notices to overseas Members**

In the case of a Member whose registered address is outside Australia, a notice sent by post must be sent by pre-paid airmail in an envelope.

## **19.3 Notice deemed to be served**

Any notice by advertisement will be deemed to have been served on the day of publication of the newspaper containing the advertisement. Any notice sent by post will be deemed to have been served on the day following the day on which the notice is posted unless sent by airmail to an address outside the country in which it was posted, in which case it will be deemed to have been served on the fifth day following the day on which it is posted. A notice sent by facsimile or electronic mail will be deemed to have been served on the same day that it is sent provided that in the case of a notice sent by facsimile, the sender shall have received a facsimile transmission report which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee, and in the case of a notice sent by electronic mail, the sender has not received an email transmission report which indicates that the email was not transmitted, or not transmitted in its entirety, to the email address of the addressee.

## **19.4 Service by post**

To prove service by post, it is sufficient to prove that the notice with required postage was properly addressed and posted. A certificate in writing signed by any manager, secretary or other officer of the Company that the notice was properly addressed and posted will be conclusive evidence of such matters.

## **19.5 Notices to Members whose whereabouts unknown**

Where:

- (a) the Company has a genuine reason to believe that a Member is not known at the address shown for that Member in the Members' Register;
- (b) the Company has subsequently made an enquiry at that address as to the whereabouts of the Member; and
- (c) the enquiry either elicits no response or a response indicating that the Member's present whereabouts are unknown,

all future notices will be deemed to be given to the Member if the notice is exhibited in the office for a period (not including weekends and public holidays) of 48 hours and will be deemed to be duly served at the end of that period. This clause will apply unless and until the Member informs the Company of a registered place of address or that the Member has resumed residence at the Member's address shown in the Member's Register or notifies the Company of a new address to which the Company may send the Member notices (which will be deemed to be the Member's registered address).

## **19.6 Notice to deceased or bankrupt Members**

Any notice or document given to a Member in accordance with clauses 19.1 and/or 19.2 will be deemed to have been properly given despite the Member's death or bankruptcy and

whether or not the Company has notice of death or bankruptcy, until some other person is registered in place of the Member.

## **19.7 Signing of notices**

The signature to any notice to be given by the Company may be written or printed.

## **19.8 Counting of days**

Where a given number of days' notice or notice extending over any other period is required to be given, the day on which notice is deemed to be given will be included in the number of days or other period.

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# **20. Winding Up**

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## **20.1 Winding up of the Company**

The Company shall not be voluntarily wound up or dissolved except at a general meeting of the Company specially convened for the purpose at which a resolution carried by a majority of four-fifths of the Members' present is passed.

## **20.2 Distribution of assets**

- (a) In the event of the Company being wound-up or dissolved, the amount which remains after such dissolution and the satisfaction of all debts and liabilities shall be paid and applied by the Company in accordance with its powers to any entity (or entities) which has similar objects and which has rules prohibiting the distribution of assets and income to its members, as determined under paragraph (b).
- (b) The Company in general meeting shall determine the entity (or entities) to which the assets or income of the Company shall be distributed in the event of being wound up or dissolved.

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# **21. Indemnity and insurance**

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## **21.1 Indemnity of officers of the Company**

- (a) The Company indemnifies each officer of the Company or a subsidiary out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or a subsidiary or in or arising out of the discharge of the duties of the officer.
- (b) In any case where the Board considers it appropriate the Company may execute a documentary indemnity to the relevant extent in any form in favour of any officer of the Company or a subsidiary.
- (c) Where the Board considers it appropriate, the Company may to the extent permitted by law:



- (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company or of a subsidiary against any liability incurred by the officer in or arising out of the conduct of the business of the Company or of the subsidiary or in or arising out of the discharge of the duties of the officer; and
  - (ii) bind itself in any contract or deed with any officer of the Company or a subsidiary to make the payments.
- (d) In this clause:
- (i) **officer** means a person who is or has been a Director, secretary, or executive officer (including the Chief Executive Officer) of the Company;
  - (ii) **executive officer** means a person who is concerned in, or takes part in, the management of the Company (regardless of the person's designation and whether or not the person is a director of the Company).
  - (iii) **duties of the officer** includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company or, where applicable, by a subsidiary of the Company, to any other corporation;
  - (iv) **to the relevant extent** means:
    - (A) to the extent the Company is not precluded by law from doing so, with particular reference to sections 199A and 199B of the Act;
    - (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
    - (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation;
  - (v) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

## 21.2 Insurance

To the extent permitted by law the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been a Director or other officer of the Company or of a subsidiary of the Company other than a liability arising out of:

- (a) conduct involving wilful breach of duty in relation to the Company; or
- (b) a contravention of section 182 or 183 of the Act.

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## 22. General

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The income and property of the Company whensoever derived shall be applied solely towards the promotion of the objectives of the Company, as set out at clause 1.5 of this Constitution, and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise by way of profit or gain to the Members, provided that nothing herein shall prevent the payment in good faith of remuneration to any officer or employee of the Company or to any Member in return for any services actually rendered to the Company or reasonable and proper rent for premises let by any Member to the Company pursuant to the provisions of this Constitution.

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