

RED EARTH CITY PTY LTD
A.C.N. 141 969 226

Company Constitution

Corporations Act

*A Proprietary
Company Limited by
Shares*

Latest Version 3.0

Amended by
Company
Shareholder
Members

17th Nov 2015

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Corporations Act
A Company Limited by Shares
Constitution of
RED EARTH CITY PTY LTD
A.C.N. 141 969 226

I. Preliminary

1. This document is the constitution of **RED EARTH CITY PTY LTD** (“the company”), which is a proprietary company limited by shares. The rules contained in the “Replaceable Rules” as set out in the Corporations Act 2001 shall not apply to the company but this constitution will apply to the company.
2. The company shall not engage in any activity (other than an offer to existing members of the company or employees of the company or a subsidiary of the company) that will compel disclosure to investors with ASIC under Chapter 6D of the *Corporations Act* 2001 (Cth) (“Corporations Act”).
3. The liability of the members is limited. All members of the company have liability limited to that amount, if any, that owes on their issued shares. The company shall have a minimum of one member. The company may not have more than 50 members who are not also group employees (where “member” includes joint holders of one share as a single member).
4. All words defined in the Corporations Act have the same meaning if used in this constitution unless the context otherwise requires.
5. The directors may pay out of the moneys of the company in their hands for formation and registration of the company and must vest the assets acquired by them.

II. Definitions and interpretation

6. In this constitution, unless the context otherwise requires:
 - Act** means the Corporations Act 2001 and expressions defined or used in the Act have the meanings in which they are defined in the Act.
 - Address of member** means the address of a member as stated in the register or if he or she has given notice in writing to the company of a changed address, the last address of which he or she has given such notice.
 - Alternate or Alternate director** means a person who holds office for the time being as an alternative director under this constitution.
 - Auditor** means the auditor for the time being of the company as defined in the Act.
 - Business day** means a day from Monday to Friday excluding public holidays in the jurisdiction where the company is registered.
 - Company secretary or secretary** includes an assistant and an acting company secretary.

Corporations Act means the *Corporations Act* 2001 (Cth) and any regulations made under it.

Call (or any amount called in respect of a share) includes any amount that must be paid at a fixed time or fixed times under the terms of issue of the share.

Default loan agreement means the terms set out in Schedule 2.

Directors include if sole director of the company, that director and in the case of there being two or more directors, those directors. The director of the company includes a number of them, as have authority to act for the Company acting as a body and includes an attorney for a director or as an alternative director.

Dividend includes interim dividends and bonus issues.

General meeting or **member meeting** means a meeting of the members of the company, and includes a meeting of a class of members.

Group employees means an employee of the company or its subsidiaries, if any.

Holder/Shareholder means the person registered as holder of the share.

Legal costs refers to legal costs incurred by a person as an officer of the company or its subsidiaries.

Liability includes an immediate, future or possible liability incurred by a person as an officer of the company or one of its subsidiaries.

Member means a person who is a shareholder.

Member present includes a member present by proxy or attorney - or, in the case of a corporation member, by a representative.

Notice includes a notice given by any means of written communication.

Officer means what it means in Sections 9 and 179(2) of the Corporations Act.

Person includes a legal entity, as well as an entity or group that is not a legal entity.

Personal representative in respect of a deceased person, refers to the executor, administrator or legal personal representative of the estate.

Present means when used in context of a shareholder in relation to a meeting means present in person or represented by a representative appointed pursuant to these terms or by attorney or by proxy.

Related body corporate means what it means in the Corporations Act.

Register refers to the register and any branch register of members under the Corporations Act.

Representative means a person authorised in accordance with Section 250D of the Corporations Act.

Share is a share in the company's issued capital.

Seal means the common seal of the company (if any).

Secretary means any person appointed to perform the duties of a secretary.

Written document includes a document in any form of written communication.

Interpretation

7. Expressions referring to writing shall unless the contrary intention appears be construed as including references to printing, photos and other modes of representing or reproducing word in a visible form;
 - a) Terms mentioned in this constitution in the singular shall include the plural and terms in the plural shall include the singular
 - b) References to one gender shall always include the other gender.
 - c) The word “person” includes corporations.
 - d) References to any officer of the company include any person acting for the time being as such officer.
 - e) The provisions contained in this constitution shall be read and construed subject to the provisions contained in shareholders agreement entered into between each of the members of the company, if any.
 - f) The headings and table of contents of this constitution shall not effect the construction of the terms of the constitution.

III. Powers of company

8. The company possesses all powers of a natural person, subject to any restrictions in the Corporations Act. The powers of the company may be exercised in any manner permitted by the Corporations Act. In particular, the company possesses the following powers:
 - a) the power to distribute property of the company amongst members in kind or otherwise;
 - b) the power to charge uncalled capital assets of the company as a security;
 - c) the power to grant a charge over company property, whether fixed or floating;
 - d) the power to issue and cancel shares, which shall include redeemable or non-redeemable preference shares, partly paid shares and bonus shares;
 - e) the power to grant options over shares that have not been issued;
 - f) the power to issue company debentures; and
 - g) to do any other thing that is permitted by the laws of the relevant jurisdiction or any other law (including the law of a foreign country).

IV. Issue of classes of shares to members

9. At any time, the directors may allot and issue unissued shares subject to clause 8, or grant options over unissued shares, on any condition and at any time they see fit, taking care to preserve any special rights conferred on existing shareholders. Consideration for such shares shall be as resolved by the directors. No director may issue bearer shares or stock. No director may convert shares to stock. Such share issues or allotments by the directors may be as fully or partly paid or as payment. The amount of calls or timing of calls to be paid may be differentiated as between individual shareholders. Conditions as to any special rights privileges, conditions, restrictions or limitations in regard to distributions, dividends, capital returns or voting, whether deferred, qualified, preferred, or guaranteed, may be imposed by the directors.
10. The directors may grant options on shares. Issued shares may be of any class authorised by this constitution (for table summary see Schedule 1).
11. The rights, privileges and conditions attaching to Ordinary, "A" and "B" Class shares are as follows:
 - a) They shall confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
 - b) They shall confer the right to attend any meeting of members and to exercise one vote for every share held.
 - c) They shall confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
 - d) Upon a winding up of the company they shall confer to the holders thereof the right to repayment of capital paid upon such shares.
 - e) Upon a winding up of the company they shall confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.
12. The rights, privileges and conditions attaching to "C" Class shares are as follows:
 - a) They shall confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
 - b) They shall not confer the right to attend any meeting of Members and to exercise one vote for every share held.
 - c) They shall not confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
 - d) Upon a winding up of the company they shall not confer to the holders thereof the right to repayment of capital paid upon such shares.
 - e) Upon a winding up of the company they shall not confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.
13. The rights, privileges and conditions attaching to "D" Class shares are as follows:
 - a) They shall confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
 - b) They shall confer the right to attend any meeting of members and to exercise one vote for every share held.
 - c) They shall not confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.

- d) Upon a winding up of the company they shall not confer to the holders thereof the right to repayment of capital paid upon such shares.
 - e) Upon a winding up of the company they shall not confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.
14. The rights, privileges and conditions attaching to “E” Class shares are as follows:
- a) They shall confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
 - b) They shall confer the right to attend any meeting of members and to exercise one vote for every share held.
 - c) They shall confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
 - d) Upon a winding up of the company they shall not confer to the holders thereof the right to repayment of capital paid upon such shares.
 - e) Upon a winding up of the company they shall not confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.
15. The rights, privileges and conditions attaching to “F” Class shares are as follows:
- a) They shall confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
 - b) They shall confer the right to attend any meeting of Members and to exercise one vote for every share held.
 - c) They shall confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
 - d) Upon a winding up of the company they shall confer to the holders thereof the right to repayment of capital paid upon such shares.
 - e) Upon a winding up of the company they shall not confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.
16. The rights, privileges and conditions attaching to “G” Class shares are as follows:
- a) They shall not confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
 - b) They shall not confer the right to attend any meeting of members and to exercise one vote for every share held.
 - c) They shall confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
 - d) Upon a winding up of the company they shall confer to the holders thereof the right to repayment of capital paid upon such shares.
 - e) Upon a winding up of the company they shall confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.
17. The rights, privileges and conditions attaching to “H” Class shares are as follows:
- a) They shall not confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.

- b) They shall not confer the right to attend any meeting of members and to exercise one vote for every share held.
 - c) They shall not confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
 - d) Upon a winding up of the company they shall confer to the holders thereof the right to repayment of capital paid upon such shares.
 - e) Upon a winding up of the company they shall confer to the holders thereof the right to repayment of capital paid upon such shares.
 - f) Upon a winding up of the company they shall confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.
18. The rights, privileges and conditions attaching to “I” Class shares are as follows:
- a) They shall not confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
 - b) They shall not confer the right to attend any meeting of members and to exercise one vote for every share held.
 - c) They shall confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
 - d) Upon a winding up of the company they shall not confer to the holders thereof the right to repayment of capital paid upon such shares.
 - e) Upon a winding up of the company they shall confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.
19. The rights, privileges and conditions attaching to “J” Class shares are as follows:
- a) They shall not confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
 - b) They shall not confer the right to attend any meeting of members and to exercise one vote for every share held.
 - c) They shall confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
 - d) Upon a winding up of the company they shall confer to the holders thereof the right to repayment of capital paid upon such shares.
 - e) Upon a winding up of the company they shall not confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.
20. The rights, privileges and conditions attaching to “K” Class shares are as follows:
- a) They shall not confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
 - b) They shall not confer the right to attend any meeting of members and to exercise one vote for every share held.
 - c) They shall confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
 - d) Upon a winding up of the company they shall not confer to the holders thereof the right to repayment of capital paid upon such shares.

- e) Upon a winding up of the company they shall not confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.
21. The rights, privileges and conditions attaching to “L” Class shares are as follows:
- a) They shall not confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
 - b) They shall not confer the right to attend any meeting of members and to exercise one vote for every share held.
 - c) They shall not confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
 - d) Upon a winding up of the company they shall confer to the holders thereof the right to repayment of capital paid upon such shares.
 - e) Upon a winding up of the company they shall not confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.
22. The rights, privileges and conditions attaching to “M” Class shares are as follows:
- a) They shall not confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
 - b) They shall not confer the right to attend any meeting of members and to exercise one vote for every share held.
 - c) They shall not confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
 - d) Upon a winding up of the company they shall not confer to the holders thereof the right to repayment of capital paid upon such shares.
 - e) Upon a winding up of the company they shall confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.
23. The rights, privileges and conditions attaching to the redeemable preference shares are as follows:
- a) They shall entitle the holders thereof to receive notice of and to attend any meeting of the company's members but shall not confer any right to vote at such meetings except in one or more of the following circumstances:
 - (1) on a proposal to reduce the share capital of the company;
 - (2) on a proposal that affects rights attached to the redeemable preference shares;
 - (3) on a proposal for the disposal of the whole property, business and undertaking of the company;
 - (4) during the winding up of the company.
 - b) They shall confer to the holders thereof the right to receive from the profits of the company a non-cumulative preferential dividend at the rate of 5% per annum on the capital for the time being paid up thereon in priority to the payment of any dividend on any other share in the company.
 - c) Upon a reduction of capital or winding up of the company they shall as regards to return of paid up capital rank in priority to all other shares in the company, but they shall not confer any right to participate in any distribution of surplus assets or profits of the company.

- d) Subject to Sections 254J and 254K of the Law they shall, at the option of the company, be liable to be redeemed at the consideration paid for the redeemable preference share on or before 30 June 2050, by giving written notice to the holders at their respective registered addresses and each such notice shall be accompanied by the company's cheque for the amount payable to the holder to whom such notice is sent. The redemption shall take place on the seventh day after the date of posting such notice, and any redeemable preference shares not so redeemed on 30 June 2050 shall not thereafter be capable of being redeemed.
24. No share may be issued unless the directors first offer them to the existing holders of shares of that class. The company may pass a resolution at a general meeting authorising the directors to issue shares without complying with this rule.
- a) To the extent that is reasonably practicable, such an offer to a shareholder ought to be of a number of shares that is proportionate to the number of shares of that class already held.
 - b) The offer must give the shareholders a statement setting out terms of the offer, including the number of shares being offered and the period for which the offer shall remain open.
 - c) Shares not accepted within 21 days of the receipt of the offer shall then be issued to members wanting a number of shares exceeding their offer. If the number of shares is too small to cover the desired additional shares, then they shall be distributed as nearly as possible to the proportional numbers of additional shares demanded.
 - d) If the number of shares exceeds the desired additional shares, then the excess may be distributed to members or non-members as the directors see fit, insofar as the person is willing to meet the issue price.
 - e) Any shares so offered and not taken up may then be issued by the directors as they see fit. The price of issued shares shall be determined by the directors.
25. The directors may allot and issue redeemable or non-redeemable preference shares in accordance with the Corporations Act. The directors may convert preference shares into ordinary shares. The directors may issue preference shares that are liable to be redeemed, whether at the option of the company or not. No non-redeemable share may be converted to a redeemable share. All rights attached to the preference shares must be set out in this constitution or approved by special resolution if the rights deal with the following:
- a) voting;
 - b) capital repayment;
 - c) priority of payment of dividends and capital in relation to company property or other shares;
 - d) dividends, whether cumulative or non-cumulative; and
 - e) participation in surplus profits and assets.
26. A general meeting of shareholders may pass an ordinary resolution converting any of the company's shares to a larger or smaller number of shares and cancel the shares that have been forfeited under the terms on which the shares are on issue. The company, subject to the law may reduce its share capital in any manner and / or buy back its own shares.
27. No rights of holders of shares of classes with special rights are varied or cancelled by the mere creation of more shares that are equivalent to the shares of that class. No such rights of such holders may be varied or cancelled except by special resolution of the company and either the written consent of members holding at least 75% of that class of

shares, or a special resolution at a general meeting of members holding that class of shares.

28. Commission and brokerage may be paid by the company by paying shares and/or allotting shares in accordance with the Corporations Act.
29. All shareholders must be issued one share certificate, free of charge, for all the shares registered in their name and in the form stipulated by directors in accordance with the Corporations Act. Joint shareholders are entitled to only one share certificate between them, and delivery of the certificate to one of them counts as delivery to all of them.
30. Subject to the Corporations Act, directors may cancel and replace for a fee any share certificate that has become illegible, and must replace for a fee any destroyed or missing share certificate. The directors must also issue a replacement certificate for any share certificate that the company receives and cancels.
31. The company shall not recognise a person holding a share upon any trust except as provided by this constitution or by law. The company is not bound in any way to recognize any equitable, or any interest in any share except as a right of ownership of the registered holder.

V. Calls, lien & forfeiture of shares

32. Subject to the Corporations Act, amounts remaining unpaid on shares of the company may be called, whether by instalment or otherwise, by the directors at any time, unless a term of the issue stipulates the earliest permissible date for a call. Calls may be revoked or adjourned by the directors who made it.
33. Calls on unpaid amounts shall be made by the directors passing a resolution.
34. Members must comply with calls by paying the amount called, at the time and place specified. If the payments must be made at particular dates and in particular amounts, these conditions must be complied with. Joint holders are jointly and severally liable.
35. At least 10 business days' written notice of a call must be given to the relevant shareholder, unless the failure to give notice is accidental. Such written notice must specify the amount being called, and the time and place of the call. The mere fact that a member does not receive such notice of a call does not itself make the call invalid.
36. If an issue is subject to the condition that any amount is payable at allotment or a later defined time, then the amount is called without notice being required. In case of non-payment all the relevant provisions of this constitution as to payment of interest and expenses. Forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.
37. If a call is not paid at the stipulated time, then the member must pay expenses incurred because of this failure, and interest compounded daily at the annual rate set by directors (or if no such rate has been set, then at the Reserve Bank rate as published in the Australian Financial Review) until the date of actual payment. The directors have the right to waive interest.
38. The directors may commence legal action against any member to recover unpaid called amounts. Proceedings do not affect the company's right to forfeit shares. The only facts that have to be proven at the proceedings are:
 - a) the defendant is entered as holder of the relevant shares in the share register;
 - b) the minutes of the company record the resolution making the call; and
 - c) the relevant member received notice of the call, or the shares were issued subject to the condition that payment was required on or after a defined time.

39. Payments made on a share before a call is made may be accepted by the directors. The directors may authorise the company to pay interest calculated as under clause 37 from the date at which the amount is paid until and including the date it would have been due under a call. The directors may repay any part of a prepaid amount, provided the member in question is given at least one month's notice of this intention.
40. The directors may serve a notice of forfeiture on any member who does not pay a call on time, requiring payment of the amount, interest and expenses. The directors may then resolve that the shares are forfeited if the notice is not complied with, along with any unpaid declared dividends in respect of those shares. The directors may annul such a forfeiture at any time. A notice of forfeiture must state the following:
 - a) a date and time no earlier than 10 working days after the service of the notice on or before which the payment is required, and the place where the payment must be made; and
 - b) the fact that the shares will be liable to be forfeited if the amount is not paid as required.
41. Upon forfeiture, the directors must enter it and its date in the share register. The company must give notice in writing to members holding forfeited shares. The mere failure to do so does not in itself affect the validity of the forfeiture. Such forfeiture shall include all dividends.
42. Forfeiture extinguishes all interests in the shares of the former member. The member has no claim against the company in respect of the shares. The member remains liable to pay the outstanding amount, as well as all calls, instalments, interest and expenses in respect of the forfeited share as of the time of forfeiture; and is also liable to pay interest commencing at the time of forfeiture until and inclusive of the date of payment of the amounts, calculated as in clause 37, if the directors see fit. The directors themselves have no obligation to enforce the repayment.
43. Sufficient evidence of forfeiture is the right and title of the company to sell, dispose and reissue the shares is provided by a certificate in writing issued by the company and signed by an officer stating that the share is forfeited and providing the date on which it was forfeited.
44. Forfeited shares may be sold or disposed of or reissued by the company in any way and by any means the directors see fit. The company may transfer the forfeited share to a person on receipt of consideration for it. The person becomes registered as the holder of that share, but has no responsibility over what is done with the consideration. Irregularities or invalidities in the initial forfeiture or the disposal procedure shall not affect such later entitlement to the share.
45. The person who lost the forfeited share shall be entitled to the balance of the proceeds of sale over the amount outstanding on the share if the share is disposed of under clause 44.
46. On each share registered to a member, the proceeds of sale of such a share, all dividends payable in respect of the share, unpaid due calls or instalments on the share, all amounts the company has paid under requirements of law in respect of the share or its forfeiture or sale, and all interest and expenses due and payable to the company in respect of the share, the company has a first and paramount lien. The directors may exempt a share from such a lien; and any registration of transfer of such a share waives the company's lien in respect of that share unless the directors decide otherwise.
47. If, under Australian or other law, the company becomes subject to any liability or requirement to make payment in respect of registered shares or amounts payable to members in respect of those shares (whether held solely or jointly), including payment of tax, then the company is entitled to an indemnity against it by the relevant members. This shall not affect any other rights the company has in respect of the liability or requirement.

48. The company shall have a lien on any such shares or amount of money for the amount of the liability or requirement, plus any interest calculated as per clause 37 from the time the company pays the liability or requirement until the member indemnifies the company. The directors may waive payment of interest under clause 37. The company may deduct any amount it owes to a member to the extent the member owes an amount due under such an indemnity.
49. Holders of shares over which the company holds a lien may not exercise any rights the holders have in respect of those shares.
50. The company may sell shares to enforce a lien in any way the directors see fit. Ten days' written notice must first be given to the relevant persons demanding payment of the amount due.
51. If shares are sold under lien, the directors may authorise a person to affect the transfer. The purchaser becomes registered as the holder of that share, but has no responsibility over what is done with the consideration. Irregularities or invalidities in the disposal procedure shall not affect entitlement to the share, nor is the purchaser under any obligation to pay an amount exceeding the amount agreed.
52. The balance of any proceeds under clause 51 over the amount in respect of which the lien was enforced (including expenses, and amounts that have become payable since the sale in relation to an event that occurred before the sale) must be paid to the person who was entitled to the shares before sale.

VI. Transfer and transmission of shares

53. Transfers of shares by a member may be by means of a written instrument of transfer in any usual form or in any other form approved by the directors and permitted by law. Such an instrument should be signed by the transferor and transferee.
54. A written instrument of transfer must be delivered to the company's registered office for registration accompanied by the certificate of the shares to which it relates and such other information as the directors properly require to show the right of the transferor to make the transfer and thereupon the company shall, subject to the powers vested in the directors by this Constitution, register the transferee as a Member. If the share certificate is lost or destroyed, evidence of this fact that is satisfactory to the directors should be produced.
55. If a member intends to transfer shares, he or she must notify the company in writing, along with the member's price for the shares. Parcels of shares to be transferred may be covered by one notice, separate notice then being deemed to have been given for the transfer of each parcel of shares.
56. Transfer notices may only be withdrawn with the approval of the directors.
57. The directors in their absolute and uncontrolled discretion may refuse to register a share transfer for any reason. The directors must always refuse registration if such a refusal is required by the Corporations Act or stamp duty or some other law.
58. The person who lodged the transfer must be given written notice within 30 days months after the refusal. The company must return the transfer to that person unless fraud is suspected. The mere failure to give notice of a refusal to register does not invalidate the refusal.
59. The registration of transfer may be suspended for a period determined by the directors but not longer than 30 days in one calendar year.
60. If a shareholder dies, and the shareholder does not own shares jointly, the company shall recognise only the legal personal representative of the deceased as entitled to the

deceased's interest in the shares. The personal representative is entitled to the same rights as the deceased shareholder, whether or not registered as the holder of the shares.

61. The personal representative may elect to be registered as the holder of the shares by giving written and signed notice to the company (upon which the company must register the personal representative as the holder of the shares); and may elect to transfer the shares to another person by giving a completed transfer form to the company (such a transfer being subject to the same rules as apply to share transfers generally).
62. If a shareholder dies, and the shareholder owns shares jointly, only the surviving joint holder of the appropriate shares shall be recognised by the company as being entitled to the deceased's interest in the shares. The estate of the deceased shall not then be released from any liability in respect of the shares.
63. A person entitled to be registered as shareholder upon the death of the original shareholder shall be entitled to receive payments in respect of the relevant shares, including dividends, to which the original holder would have been entitled had the holder not died. Before this takes place, the person must furnish the directors with any information they properly require. The person shall not be entitled to any of the other rights attached to the shares until registration of that person.
64. Subject to the *Bankruptcy Act 1966*, if a person becomes entitled to shares because of the shareholder's bankruptcy, and the person gives the directors of the company all information they reasonably require to establish the person's entitlement to be registered as the holder of the shares, that person may elect to be registered as the holder of the shares by giving written and signed notice to the company (upon which the company must register the personal representative as the holder of the shares); and may elect to transfer the shares to another person by giving a completed transfer form to the company (such a transfer being subject to the same rules as apply to share transfers generally).
65. If a person becomes entitled to shares due to the mental incapacity of a shareholder, that person may elect to be registered as the holder of the shares by giving written and signed notice to the company (upon which the company must register the personal representative as the holder of the shares); and may elect to transfer the shares to another person by giving a completed transfer form to the company (such a transfer being subject to the same rules as apply to share transfers generally), so long as the person gives the directors all reasonably required information for establishing that person's entitlement to be registered as holder of the shares. The person shall be entitled to the same rights as the original shareholder, whether or not registered as the holder of the shares.
66. The transferor of any shares in the company remains the holder of the shares until the registration of the transfer and the entering of the name of the transferee in the register in respect of the shares.
67. The directors may not refuse to register any share transfer or transmission of shares if:
 - a) the transfer and share certificate (if any) are lodged at the registered office; and
 - b) the fee (if any) for registration is paid; and
 - c) the directors have been given the reasonably required further information (if any) to establish the right of the transferor to make the transfer.
68. The directors may refuse to register a transfer of shares if:
 - a) the shares are not fully-paid; or
 - b) the company has a lien on the shares.

VII. Appointment, resignation & removal of directors

69. The company must always have at least one director. The number of directors of the company must never exceed 10. Any member (shareholder) of the company can also act as Director of the company. In a one member (shareholder) company the member must also act as Director of the company.
70. The names of the first directors shall be determined in writing by the persons specified in the application for the company's registration under the Law as persons who consent to become directors of the company.
71. Where a director of the company is its only director and only shareholder, the director may exercise all the powers of the company except those required to be exercised in general meeting.
72. A resolution at a general meeting of the company may change the maximum and minimum numbers of directors, so long as the minimum is always at least one.
73. If, at any time, the number on the board falls below the minimum under the constitution, any directors are to cease acting as directors immediately until such time as the number reaches the minimum, except with respect to the following powers:
 - a) acting in an emergency situation;
 - b) exercising the power to appoint directors; and
 - c) exercising the power to convene company general meetings.
74. The directors of the company may appoint a person as a director of the company. The company must confirm such an appointment by resolution passed at a general meeting within 2 months after the appointment is made. If the company does not confirm the appointment, the person ceases to be a director of the company upon the expiration of 2 months after the appointment was made.
75. The company may appoint a person as a director of the company by resolution passed by a general meeting. The appointment could be to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors does not at any time exceed 10.
76. Any director appointed by the existing directors must have his or her appointment confirmed by a resolution at a company general meeting within two months of the appointment, failing which the new director shall cease to be a director.
77. A director of the company may resign by giving written notice to the registered office of the company to that effect, upon which the resignation shall be effective either at the time specified in the notice, or at the time the notice was given, whichever is earlier.
78. The company may remove a person as director of the company by resolution passed by a general meeting and may by resolution appoint another person to replace that director.
79. In the following circumstances a director shall cease to be a director:
 - a) the director ceases to be of sound mind;
 - b) the director is removed, ceases to be a director or is prohibited from being a director by operation of the Corporations Act or an order made there under, or under this constitution;
 - c) the director enters an arrangement or composition with their creditors or a class thereof or becomes insolvent;
 - d) the director or their estate becomes liable to be dealt with under mental health law;

- e) the directors declare the director's office vacant for the reason that he or she fails to attend director meetings for six consecutive months without some special leave from the other directors; or
 - f) the director fails to pay any call on the director's shares until a month or some longer period allowed by the directors has passed since that call.
80. Directors of the company shall be paid the remuneration that is decided upon by a resolution of a general meeting of the company, or by resolution of the directors until such time as the general meeting can reasonably pass such a resolution.
81. The company may pay directors' expenses, including travel and accommodation expenses, where the director incurs such expenses in attending directors' meetings, committee meetings, general meetings, or otherwise in connection with the company's business.
82. If the directors do not set different fee amounts for different directors, then all the fees must be equal. Directors' fees accrue daily.
83. Directors are entitled to be remunerated for other work (including professional work) for the company, and are entitled to hold another office with the company. The exception is that no director may hold an office of auditor or do auditing work for the company.
84. If a director of the company has a material personal interest in a matter that relates to the affairs of the company, that director shall notify the other directors of the company of that interest in accordance with Section 191(1) of the Corporations Act if Section 191 of the Corporations Act so requires.
85. If a director of the company has a material personal interest in a matter that relates to the affairs of the company, and:
- a) the director does not need to disclose the nature and extent of that interest under Section 191 of the Corporations Act; or
 - b) the director discloses, at a director meeting, the nature and extent of the interest and its relation to the affairs of the company, in accordance with Section 191 of the Corporations Act; then:
 - (1) the director is permitted to vote on matters relating to the interest;
 - (2) the transactions relating to that interest may proceed;
 - (3) the director may benefit from the transaction, and does not have to account to the company for any profits arising therefrom;
 - (4) the director shall not be disqualified from office for the reason only that such a personal interest exists; and
 - (5) the company is not permitted to avoid the transaction for the reason only that such a personal interest exists.
86. General notice that a director is an officer or member of any specified firm or corporation or has some interest therein may be given by the director at the registered office. That notice thereafter becomes effective as disclosure of that interest in any subsequent matter involving the company and that firm or corporation; but only to the extent that the director's interest does not at that subsequent time exceed the interest stated in that general notice. The general notice must accurately set out the extent and nature of the interests, as well as their existence.
87. A person who is a director of the company, at the time the company incurs any liability in the course of acting or purporting to act as a trustee, shall be liable to discharge the whole or part of that liability under the following circumstances:

- a) the company is unable to discharge the liability in whole or in part;
- b) the company is not entitled to indemnity out of the trust property because:
- c) the company has breached trust;
- d) the company acted beyond the scope of its powers as trustee; or
- e) some term of the trust deed otherwise denying the right to an indemnity to the company in whole or in part.

Any such liability shall be individual and joint, with the company and with anyone else liable under this clause.

VIII. Powers and duties of directors

88. All business and all activities of the company shall be managed by or under the direction of the board of directors, whose names are in Schedule 1. No management by the directors shall be otherwise than in accord with the Corporations Act and with lawful resolutions of the company. All powers of the company may be exercised by the board, except where the Act or this constitution requires such powers to be exercised in general meeting.
89. The directors have the following specific powers:
- a) the power to issue shares;
 - b) the power to borrow or raise money for the company; and
 - c) the power to secure payments, including by way of charge on all the company's assets and undertakings, present and future, or by mortgage or debenture.
90. The directors of the company are permitted to delegate any of their powers. Such delegation must be recorded in the company's minute book. The delegate must exercise the power in accordance with the directions of the relevant director. The directors may continue to exercise those powers themselves. The exercise of that power shall be as effective when exercised by a delegate as if it were exercised by the relevant director, including the power to sub-delegate that power.
91. Delegation of powers, whether by power of attorney or otherwise, may be to any of the following persons:
- a) a committee of directors;
 - b) another director of the company;
 - c) an employee of the company; or
 - d) any other person.
92. All negotiable instruments, and all receipts of money paid to the company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, where there is one director, by that director, and where there are two or more directors by any two directors or in such other manner as the directors determine.
93. If the directors or any of them or any person become personally liable for the payment of any sum due from the company, the directors may execute or cause to be executed any charge or security over or affecting the whole or any part of the assets of the Company in order to secure the directors or persons so becoming liable from any loss in respect of such liability.

IX. Alternate directors

94. Any director of the company may, with the approval of the other directors, appoint an alternate director to exercise some or all of the director's powers for any specified period. The appointment must be in writing. The alternate must be given notice of directors' meetings if the appointing director so requests.
95. The exercise of powers by an alternate director shall be just as effective as if the powers were exercised by the director for whom they act as alternate director.
96. An alternate director need not be paid any remuneration by the company beyond reasonable travelling, accommodation and similar expenses incurred in attending meetings of directors, meetings of members, meetings of committees of directors, or otherwise in connection with company business.
97. An alternate director is never the agent of the appointing director and remains personally responsible for their conduct. The alternate director may exercise the same powers on the same conditions as the appointing director, including voting powers at meetings, and has all the same rights as the appointing director.
98. If the appointing director so requests, their alternate may be entitled to notice of director meetings. Resignation of alternate director takes place immediately upon notice being given to the registered office. The appointment of the alternate director ceases if the appointing director ceases to be a director in the company. The other directors may dismiss the appointment of alternative director in a general meeting after giving the appointing director a notice before the general meeting.

X. Company secretary

99. A company secretary holds the office of company secretary only on the terms and conditions determined by the directors, including terms of remuneration. The company secretary acts as in accordance with the Corporations Act and acts as the company's public officer.
100. At any time, without cause, the directors may remove a company secretary or vary or revoke the appointment of the company secretary.

XI. Managing director

101. The directors of the company may appoint one or more of their number to the office of managing director (MD) of the company. The directors of the company are permitted to decide upon the period and terms (including as to remuneration) of the appointment. For so long as MD is the director of the company, he will be the chairperson of every meeting of members of the company.
102. The MD of the directors of the company may confer any powers exercisable by the directors. Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the directors.
103. Any person may be appointed by the directors as temporary MD upon the MD being unable to act in that office. Multiple MDs shall hold the office jointly.
104. The resignation, disqualification or removal of an MD shall take place in similar manner as with other directors, with any necessary modifications. Any removal of an MD from office must accord with any employment contract between the company and the MD. The appointment of any MD shall automatically terminate if he ceases to be a director of the company.

105. The powers of the MD shall be those powers entrusted to the MD by the directors of the company. The directors shall not be excluded from exercising any of their powers merely because that power has been entrusted to the MD.
106. The directors are permitted to revoke or vary the appointment of an MD, at any time, with or without cause.

XII. Execution of documents

107. Any 2 directors of the company, or director and company secretary, or 1 director who is a sole director or who is both a director and company secretary, may sign, draw, accept, endorse or otherwise execute a negotiable instrument or other documents.
108. At any time, the director(s) may determine that a negotiable instrument or other documents may be signed, drawn, accepted, endorsed or otherwise executed in a different manner.
109. A company seal may be used by the directors. The directors are responsible for the safe-keeping of the seal. A duplicate of the seal must be an exact facsimile and include the words "SHARE SEAL" on its face. If multiple duplicates are to be used in different places, then the duplicates must also include the name of the location where it is to be used on their faces.

XIII. Inspection of books

110. The name of the company must be displayed prominently at all places of business open to the public and at the registered office. The first page of all negotiable instruments and public documents of the company must display the name and ACN of the company except where the Corporations Act permits otherwise.
111. The registered office of the company shall be at any place decided on by the directors. At this location the name of the company and the words "REGISTERED OFFICE" must be displayed.
112. It is the company's responsibility to ensure that all minutes of general meetings, director meetings and director committee meetings are signed within a reasonable time, either by the chairperson of that meeting or that chairperson of the subsequent meeting.
113. Minute books must be kept by the company, recording:
 - a) member meetings, their proceedings and resolutions;
 - b) director meetings, their proceedings and resolutions;
 - c) director committee meetings, their proceedings and resolutions;
 - d) resolutions passed by members without a meeting;
 - e) resolutions passed by directors without a meeting; and
 - f) declarations made by a sole director.

Books containing minutes of proceedings of meetings of the company members and resolutions passed by members without a meeting will be open for inspection by any member without a charge.

114. All minutes of the passing of resolutions without a meeting must be signed by a director, again within a reasonable time. Declarations made by a sole director must be signed by the sole director within a reasonable time.

115. Any minute that is recorded and signed in accordance with the constitution shall constitute evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.
116. Proper financial records and accounts must be maintained by the directors. Financial and directors' reports must be distributed as specified in the Corporations Act.
117. A register of mortgages and charges specifically affecting the property of the company must be kept by the company as stipulated in the Corporations Act.
118. No member who is not a director is entitled to any information concerning the business, trading or customers of the company, or any confidential information of the company. A member may be authorised to inspect the books of the company by the directors of the company or by a resolution passed at a general meeting of the company.

XIV. Director meeting

119. Any director may, by giving reasonable written or oral notice to all other directors, call a directors' meeting at any time. Directors may have meetings, adjourn meetings and regulate the meetings in any way they see fit.
120. No defect in the appointment to or continuance in any office of any person, and no person's disqualification from or disentitlement to vote, shall cause any action done by that person at a director meeting or committee or by that person claiming to act as director or under the company's power of attorney, to be invalid, provided this is not discovered until after the action is taken.
121. A sole director may pass resolutions by means of a written record of that resolution signed by the sole director.
122. Where there is more than one director of the company, the directors may pass a resolution without a director's meeting being held. All the directors entitled to vote on the resolution must sign a document containing a statement that they favour the resolution set out in the document. All directors must be given reasonable notice of the resolution. If separate copies of such a document are signed, they must all be identical in the wording of the resolution and the statement. The resolution shall be passed at the time that the last of the directors signs the resolution. The minutes of the meetings of directors must duly note the resolution.
123. Upon consent by a majority of directors, director meetings may take place using some technological medium. This consent may only be withdrawn a reasonable time before such a meeting is to take place. A technological medium used for such a meeting must be capable of giving all participants a reasonable opportunity to participate in the meeting.
124. The location of the meeting shall be deemed to be the place where the largest number of participants is located; or if there is no such place, then the place where the chair is located. Upon any failure of the technology such as to deprive any director of a reasonable participation, then the chair must announce the adjournment of the meeting until the problem is fixed, or, if the problem is not fixed within one hour, then until such a date and time as the chair believes all the directors will be able to participate.
125. A director's meeting of the type detailed in clause 124 may not be held if any director withdraws their consent to the meeting at least 48 hours before the meeting.
126. Any director who leaves a meeting of the type detailed in clause 124 but does not obtain the express consent of the chair before doing so, shall be presumed to have been present throughout the meeting, but only for the purpose of deciding whether the quorum was met.
127. The directors may appoint one of their number as a chair for directors' meetings. The directors may determine the period for which the director is to be the chair. Where a

chair is unavailable or declines to act for any part of a directors' meeting, or no chair has been elected for the meeting, the directors must elect a director present to be the chair.

128. In case of an equality of votes, the chairperson of the meeting has a casting vote in addition to any vote he may have in his capacity as a director.
129. If a director who was not given notice of a meeting waives the requirement of notice after the meeting, then the resolutions of that meeting are valid.
130. Notwithstanding anything contained in the Constitution to the contrary, where the company acts as trustee of a Superannuation Fund, the directors shall convene meetings and the voting rights at those meetings shall be exercised in accordance with the SIS Act or otherwise in accordance with the procedures listed in the fund's trust deed.
131. The quorum for directors' meetings is two directors unless the directors determine otherwise. The quorum must be present at all times during the meetings. If there is one director the quorum is met with that one director.
132. Where the company acts and while the company continues to act as trustee of a superannuation fund, such number of directors as is required to comply with the SIS Act or as is otherwise applicable to the superannuation fund will form a quorum for directors.
133. At any director meeting, the following rules apply:
 - a) a resolution of the directors must be passed by a majority of the votes cast by those directors entitled to vote on the resolution;
 - b) an alternate director who is also a non-alternate director has one vote for him or herself and one vote for each of their absent appointers;
 - c) the chair shall have one casting vote in addition to any vote they have in their capacity as a director; and
 - d) if there is only one director, resolutions must be passed in accordance with Section 248B of the Corporations Act.
134. Minutes of the director meetings must be kept by the directors as stipulated in the Corporations Act, recording the following details:
 - a) the names of directors (including alternates) present at each meeting;
 - b) proceedings, resolutions and orders;
 - c) declarations of interest made by and notices of interest given by any director; and
 - d) any other matter that the Corporations Act requires to be recorded in the company books.

If a company has only one director, he or she does not have to record the name of directors present.

Director committee meetings

135. Any of the powers of the directors may be delegated to a committee of specified directors, which must comply with any conditions those directors set on their powers. Rules applicable to director meetings apply also to committees, unless the committee consists of one director. Directors may revoke this delegation. Any power properly exercised by the committee counts as having been exercised by the directors.

136. The rules applicable to minutes of director meetings apply to committee minutes, with any necessary modifications. If the committee consists of one person, then a minute signed by that person counts as a minute of the committee.

XV. General meetings

137. At any time a director may call a general meeting of the members of the company. A general meeting shall be convened by the directors on request of the Members in accordance with Section 249D of the law. Members of the company may convene a meeting in accordance with the Corporations Act (Section 249E and 249F). Directors may not compulsory convene an annual general meeting of the company.
138. Technological media may be used to allow a meeting to take place in multiple locations simultaneously, provided the medium allows all the participating members reasonable opportunity to participate in the meeting, and allows the chair to be fully aware of the proceedings. The technology must permit all participating members to vote by means of a show of hands or poll. Such a meeting is deemed to take place where the largest number of members is located; or, if there is no such place, then the place where the chair is present. Upon any failure of the technology such as to deprive any member of a reasonable participation, then the chair must announce the adjournment of the meeting until the problem is fixed, or, if the problem is not fixed within one hour, then until such a date and time as the chair believes all the members will be able to participate.
139. Those persons entitled under the Corporations Act to receive a notice of a general meeting must be given at least 21 days' notice, unless consent for shorter notice is given in accordance with the Corporations Act. Shorter notice may be given for an annual general meeting if all members entitled to vote at the meeting agree beforehand.
140. Notice of a general meeting must specify:
- a) the time and location of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
 - b) the general nature of the intended business to be transacted;
 - c) details of special resolutions intended to be passed;
 - d) any technological medium to be used;
 - e) the right to appoint proxies if a member is entitled to 2 or more votes;
 - f) that any member who appoints 2 proxies must specify what proportion of the member's votes each proxy will be appointed to exercise; and
 - g) any further information stipulated by the Corporations Act.

Even if such notice is not given, or is not received, to any person entitled to the notice, the validity of the proceedings or resolutions passed at the proceedings shall not be affected, so long as this failure was accidental.

141. The directors have the power to cancel any meeting that was convened by them. If a meeting was convened by members, then the directors may only cancel it if they receive a signed notice from all the relevant members withdrawing the request for a meeting.
142. The directors have the power to change the venue at which a general meeting is to be held, or to postpone the meeting. The meeting that was adjourned is restricted from transacting any business other than that set out in the notice for the original meeting. In addition, upon cancellation or adjournment of a meeting, the directors must make at least a bona fide effort to give notice of this fact to each person entitled to receive such notice. Such a notice must state the new time and/or venue for the meeting. Even if such notice is not given, or is not received, to any person entitled to the notice, the

validity of the cancellation or adjournment shall not be affected, so long as this failure was accidental.

143. Where a meeting is adjourned, notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.
144. The quorum for a general meeting is 2 members. The quorum must be present at all times during the meeting. If a quorum does not turn up at a general meeting within 30 minutes after the time set out in the notice for the meeting, the meeting shall be adjourned to the time, date and place specified by the directors. If no date is specified, the date shall be the same day in the next week. If no time is specified, the time shall be the same time as the adjourned meeting. If no place is specified, the place shall be the same place as the adjourned meeting. If the Company has only one Member, that Member may pass a resolution by the member recording it and signing the record.
145. This subsequent meeting must be dissolved automatically if a quorum fails to turn up within 30 minutes of the appointed time of the meeting.
146. The directors may appoint an individual as a chair for general meetings. Where a chair is unavailable or declines to act for any part of a general meeting, or no chair has been elected for the meeting, the directors must elect an individual present to be the chair.
147. The members at a general meeting must elect a member who is present to chair the meeting or any part of it if a chair has not previously been elected by the directors for that meeting, or an elected chair has declined to act for is unavailable to act for the meeting or part of the meeting.
148. There can be no motion of dissent from a ruling of the chair at a general meeting, whose rulings on any matter are final, so long as such rulings relate to the order of business, procedure and conduct of that general meeting.
149. The chair of a general meeting must adjourn the meeting if the members who are present with a majority of votes at the meeting agree or direct that the chair should do so.
150. A resolution passed at an adjourned meeting shall be deemed to be passed on the day of that adjourned meeting. If the adjournment of a meeting is for 30 days or more, then notice must be given of the adjourned meeting and the business to be transacted at the meeting. Such notice must be in the form required for a general meeting. Only business from the original meeting shall be transacted at the adjourned meeting.
151. Each member of the company entitled to attend and vote at a general meeting may attend a general meeting. Each member of a class of members who is entitled to attend and vote may attend a general meeting or a meeting of the class of members. Such entitlements are all subject to any rights or restrictions attaching to classes of shares held by the members at the time. A member who is a corporation may vote by means of an individual representative. A member who is an individual may vote by proxy or attorney. No persons other than members, members of a class of members, proxies or attorneys of members or individual representatives of a corporate member may vote at general meetings or meetings of a class of members.
152. At a general meeting of the company's members a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before a vote is taken or before or immediately after the declaration of the result of the show of hands) demanded by the chairperson or by at least two members entitled to vote in the resolution or by a member or members with at least 5% of the votes that may be cast on the resolution on a poll.
 - a) A demand for a poll may only be withdrawn prior to the poll.
 - b) A poll demanded on the election of a chair or on adjournment must be taken immediately; all other polls may be taken in whatever manner and at whatever time the chair directs.

153. At a general meeting:
- a) each member has one vote on a show of hands; and
 - b) each member has one vote for each share they hold on a poll (unless the shares are of a particular class whose rights supersede this).
154. In the case of an equality of votes on a resolution, by show of hands or on a poll, the chairperson of the meeting of the company's members at which the show of hands takes place or at which the poll is demanded, has a casting vote in addition to any vote the chairperson may have in his capacity of being a member.
155. If a share is held jointly, and more than one holder of that share attempts to vote in respect of that share, the vote that counts is the vote of the member whose name appears first in the register of members' counts.
156. A challenge to the right to vote at a general meeting must be made only at that meeting. The chair determines the challenge, and the chair's decision is final.
157. Members who are minors, or of unsound mind, or whose estates are, liable to be dealt with in any way under any law relating to mental health, may vote instead by the person or body who has management or guardianship of the person or the estate. If this second person or body wishes to vote by a representative or proxy, they must first satisfy the directors that they themselves have the right to vote under this clause.
158. No member is entitled to vote or be present at a general meeting if they have not yet paid in full all calls and other payable amounts in respect to their shares.
159. If a vote is allowed by the chair, then it shall be deemed valid for all purposes. All objections to any person's right to vote or the validity of any person's vote at a general meeting must be raised at that meeting. Any such objection shall be referred to the chairperson of the meeting, whose decision is final. A vote not disallowed pursuant to any objection is a valid vote for all purposes.
160. The chair must inform the general meeting if any proxy votes have been received in respect of that meeting, and how the proxy votes are to be cast. The chair must inform the general meeting of this before any vote is taken at that meeting.
161. Subject to any rights or restrictions attached to any class or classes of shares:
- a) at any meeting each member is entitled to vote may vote in person or by proxy or by a representative or by attorney; and
 - b) on a show of hands every person present who is a member or a proxy or an attorney or a representative of a member has one vote and on a poll every person present in person or by proxy or attorney or by a representative has one vote for each share he holds.
162. A declaration by the chair of the result of a vote by show of hands shall be conclusive evidence of the result, provided the declaration reflects the show of hands and proxy votes. The chair and minutes do not need to state the number or proportion of votes recorded in favour or against a resolution, but only the result. A resolution is passed if the number of votes cast in favour of the resolution exceeds the number of votes cast against the resolution, subject to the Corporations Act.
163. Persons who are not members may attend and address a general meeting on the invitation of the chair. A company with a sole member may pass resolutions by the member recording the resolution in writing signed.
164. The members may pass a resolution without a general meeting being held. All the members entitled to vote on the resolution must sign a document containing a statement that they favour the resolution set out in the document. All members must be given

reasonable notice of the resolution. If separate copies of such a document are signed, they must all be identical in the wording of the resolution and the statement. Where shares are jointly held, the joint members must sign the same statement. The resolution shall be passed at the time that the last of the members signs the resolution. The minutes of the general meetings must note the resolution.

165. However, the following may not be resolved by circular:

- a) resolutions to remove or replace directors; or
- b) resolutions to remove auditors under Section 329 of the Corporations Act.

166. A member of a company entitled to attend and cast a vote at a general meeting may appoint an individual or body corporate as their proxy, to attend the meeting and vote for the member. An appointment of a proxy may specify the number or proportion of votes that the proxy may cast.

- a) An instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney duly authorised in writing or, if the appointor is a body corporate, either under seal or in accordance with the Law or under the hand of an officer or attorney duly authorised.
- b) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote in the resolution except as specified in the instrument.
- c) An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

167. Members entitled to cast 2 or more votes may appoint 2 proxies, but no more than 2. The 2 proxies may then exercise half the votes of the member unless the appointment specifies otherwise. Any proxy vote that is a fraction of a vote is disregarded.

168. The following is a form that may be used for proxy appointments:

PROXY FORM [Company name and ACN]
Meeting Date Place Time
I/We, [names and addresses of member(s)] am/are a member/members of [company name and ACN]. I/We appoint the following person/persons as proxy/proxies to vote at the specified meeting and any adjournments on my/our behalf:
[name and address of proxy or office of proxy]
I/We appoint the following alternate person/persons as proxy/proxies to vote at the specified meeting and any adjournments on my/our behalf if the appointed proxy/proxies is/are unable to vote:
[name and address of proxy/proxies]
The following are instructions regarding the voting of the proxy/proxies:
[instructions]
Signed, [signature/signatures of member/members making appointment]

169. The member who has appointed a proxy may also revoke that appointment at any time by providing notice to the company in writing. The mere attendance of the member at the same meeting with their proxy does not itself revoke the appointment; however, the proxy is not permitted to vote in such a situation unless the appointing member refrains from voting.
170. No authority to exercise a member's voting rights at a general meeting shall be valid unless the company's registered office or other place specified in the notice of meeting is given at least 48 hours' notice before the appointed commencement of the relevant meeting or adjourned meeting. Faxed documents may be sent. Any proxy or power of attorney must be accompanied by the authority under which the proxy was signed or a certified copy of the relevant power of attorney.
171. At a general meeting, anyone appointed to exercise the voting rights of a member shall have the same rights to speak and vote as the appointing member, except at such times when the appointing member is physically present at the meeting. Proxies or other appointed persons must obey directions when voting. If no direction exists, the person may vote only if they are separately entitled to vote on the resolution. Such persons are permitted to demand a poll as if they were members.
172. Votes by persons having the authority of a member shall not have their validity affected by the following unless the registered office is notified of the fact at least 48 hours in advance of the commencement of the relevant meeting or adjourned meeting:
 - a) the death of the appointing member;
 - b) the loss of mental capacity of the appointing member;
 - c) the bankruptcy or liquidation of the appointing member;
 - d) the revocation of the authority by the appointing member; or
 - e) any transfer of shares.
173. If all the joint holders of any share appoint a single proxy, then that proxy's vote shall be counted to the exclusion of the votes of any other proxy of those joint holders. The chair may require evidence from a proxy that he or she is in fact the person named in the form, a failure to provide which may be grounds for excluding that proxy from voting.
174. The same rules applicable to general meetings shall apply to meetings of members of a class of shares, with any necessary modifications, except to the extent that the matter is dealt with specifically by any rules for such class meetings.
175. If all the members entitled to vote on a resolution have signed a document containing a statement that they are in favour of that resolution of the Members in terms set out in the document, a resolution in those shall be deemed to have been passed at a meeting of the company's members held on the day on which the document was signed.

XVI. Purpose

176. The purposes of Red Earth City Pty Ltd are:

To instigate, enable and incubate the production of Burning Man activities throughout Australia which will bring experiences to people in grand, awe-inspiring and joyful ways that lift the human spirit, address social problems and inspire a sense of culture, community and cultural engagement, where the organisation has a number of purposes, which values:

Interactivity - We value art that prompts the viewer to act. We like art that can be experienced in more ways than visually. We are fans of art that is meant to be touched, heard or experienced, as well as viewed; art that requires human interaction to complete the piece, that prompts people to interact with one another, that responds to participants and to its environment.

Community - We value art that builds community through education, collaboration and activism. We see that when an art project arises from the need of a community, it belongs to the public and exists for the benefit of all. When a work is freely accessible to the public, civic in scope and inclusive by nature, it challenges the traditional perspectives on art. When an interactive artwork becomes part of a community, it demands the stewardship of its citizens, engendering ownership, responsibility and pride.

Education - We value art that goes beyond artistic expression; we value art that educates. We support projects that prioritise collaboration with local youth and educators. We know that, with guidance and support, the creation of art is a most powerful tool to educate youth about the pressing concerns of their times, including issues around the environment, renewable energy, and climate change.

Activism - We value art that causes people to reflect on the larger community. We see art as a way to connect individuals, and call them to action. We commend art that challenges individuals to re-examine their everyday lives and their role in their immediate and larger community. We support art that educates about the alternatives to consumerism and the reduction of environmental impact. Through art, we seek to promote the use of renewable resources, environmental justice and social responsibility.

- a) To create a national organisation called Red Earth City.
- b) To create and operate the Red Earth City organisation with 2 (two) independent standing committees for the conduct of:
 - (i) Burning Seed; and
 - (ii) Burning Man Australia;which are formed to manage the business and affairs of the company in their respective areas of responsibility, with equal powers.
- c) To recognise Burning Seed as an Australian regional Burning Man event.
- d) To recognise Burning Man Australia as a space to facilitate the discussion, expression and manifestation of the Burning Man philosophies and principles.
- e) To form a Burning Seed Town Council and Burning Man Australia Community Board to engage certain roles by way of contract or employment which fulfil certain essential ongoing requirements that go beyond the scope of volunteers to maintain the viable, ongoing and safe operation of activities.

- f) To form a Burning Seed Team Leads Committee to organise the day to day operations of conducting a safe Burning Seed event, that can make further recommendations to the Burning Seed Town Council, to whom it is responsible to, particularly for all financial, budget, insurance and legal matters.
- g) To reimburse peoples out of pocket expenses that may be incurred on behalf of the organisation, this also includes members of the Burning Man Australia Community Board, the Burning Seed Town Council and the Burning Seed Team Leads Committee.
- h) To ensure there be transparency of the finances of the company and the organisation formed here by the company to the wider Burning Man Community.
- i) To keep the language as clear and simple as possible within the company and the organisation to the wider community.
- j) To operate the company and its organisation in a non-profit manner, where:
 - (i) the income is solely applied to promoting its purposes;
 - (ii) profit is not distributed to any director, officer, committee member, advisory or sub committee member, council member, board member, employee, contractor, or other persons connected with this organisation, or any private individual;
 - (iii) upon winding up, voluntary or involuntary, all its assets must be distributed to a similar non-profit organisation.
- k) To facilitate over the next 3 years or earlier, the formation of an open and inclusive restructuring committee group, with representation from the company's directors and any members of its two 2 peak standing committees, to undertake a process of broad community engagement and rigorous internal examination, to make recommendation to the directors of the Red Earth City Pty Ltd, for the transition of the company and its national organisation, to a nationally registered charitable not for profit entity or group of entities, or subsidiary of an entity of this nature, where provision is made in each and any of the new entities for a public fund allowing registration with the Register of Cultural Organisations (ROCO), allowing then for the application for Deductible Gift Recipient status using one or a combination of the following commonly used incorporated legal structures;
 - (i) companies limited by guarantee;
 - (ii) incorporated associations; or
 - (iii) non-trading co-operatives;

that is best suited for the community and the current national organisation, to achieve the ongoing pursuit of the purposes of the company, Burning Seed and Burning Man Australia.

XVII. Income and Property of Company

177. The income and property of the Company will only be applied towards the promotion of the purposes of the Company in clause 176.

178. No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:
- a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
 - b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

XVIII. Payments To Directors

179. No payment will be made to any Director of the Company other than the payment of:
- a) out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
 - b) any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service;
 - c) any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company; and
 - d) an insurance premium in respect of a contract insuring a director to which subsection 212(1) of the Corporations Law refers or the provision of a financial benefit to a director to which subsection 212(2) of the Corporations Law refers.

XIX. Notice and payments

180. Notice from the company to members may be given by the following methods:
- a) personal service on the member;
 - b) posting it to the member's address as shown on the share register, or at any alternative address for notice that is supplied by the member; and
 - c) faxing or sending the notice electronically to any electronic address or fax number for notice that has been supplied by the member.
181. Notice to the first named joint holder in the share register is deemed to be given to all that holder's joint holders.
182. If a person becomes entitled to shares when a member dies or becomes bankrupt or becomes entitled to the shares under any law relating to mental health, then notice may be given to that person by the following means:
- a) personal service on the person;
 - b) posting it to any address supplied by the person; and
 - c) by any means that would have been permissible in serving notice on the original member.

183. The following persons must be given notice of a general meeting:
- a) all members;
 - b) all directors; and
 - c) all persons who become entitled to shares when a member dies or becomes bankrupt or become entitled to the shares under any law relating to mental health.

XX. Winding up

184. In the event of the company being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes which is not carried on for the profit or gain of its individual members. Such institutions and/or companies to be determined by the Members by majority vote at or before the winding up or dissolution, or in default of such determination, by a member of a Court of competent jurisdiction.

XXI. Indemnity

185. The company must indemnify any officer and former officer of the company, and also any employee, auditor, authorised agent or adviser of the company if a general meeting so approves, against expenses, losses or liabilities incurred in a relevant capacity. Such indemnities are only applicable if:
- a) expenses, losses and liabilities in question are to persons other than the company or a related body corporate, and does not arise from mala fides; and
 - b) any liability in question must be for costs and expenses where the person gained a judgement in their favour, or was acquitted, in civil or criminal proceedings; or where the person has been granted relief under the Corporations Act in an application in relation to such proceedings.
186. The directors have the discretion to cause the company to enter into and pay for a policy insuring an officer or former officer of the company against a liability incurred in a relevant capacity, subject to the Corporations Act. The following liabilities may not be insured against:
- a) those arising from wilful breaches of duty to the company; and
 - b) those arising from contraventions of the Corporations Act.
187. Anyone entitled to an indemnity under clause 185 may not be indemnified by the company as well, except to the extent that the insurance policy fails to fully indemnify the person.
188. If clause 185 is deleted or changed, then it only continues to apply in relation to any acts or omissions from before that date.

XXII. Loans to members

189. The company may loan amounts to members by way of a resolution passed by the directors.
190. Unless a written agreement by both the company and member involved states otherwise, such loans shall be governed by the Default Loan Agreement as per schedule 2. The member continues to be bound by the Default Loan Agreement even upon ceasing to be a member.
191. If a person or associate becomes a member only after borrowing money from the company, then the Default Loan Agreement will likewise apply from the date of registration, unless a written agreement by both the company and member involved states otherwise.
192. “Associate” and “Loan” in the preceding two clauses shall have the same meaning as in the Default Loan Agreement.

Schedule 1

Names and usual residential addresses of initial directors

Philip Raymond Smart
47 Braye St MAYFIELD NSW 2304 Australia

Richard James Martin
Unit 10 / 8-12 Weir St Balwyn VIC 3103 Australia

Robin Mark Macpherson
18 Woodville Ave GLEN HUNTLY VIC 3163
AUSTRALIA

Classes of shares & Rights and restrictions attaching to shares

Right to receive notice of and to attend any meeting of the Company's Members	Right to attend any meeting of Members and to exercise one vote for every share held	Right to participate in any dividends declared and payable on the class of share held	Upon winding up right to repayment of capital paid upon such shares	Upon winding up right to participate in any distribution of surplus assets or profits
ORD	ORD	ORD	ORD	ORD
A	A	A	A	A
B	B	B	B	B
C				
D	D			
E	E	E		
F	F	F	F	
		G	G	G
			H	H
		I		I
		J	J	
		K		
			L	
				M

Redeemable Preference Shares as per clause 23 of this constitution

Schedule 2

Default Loan Agreement

LOAN FACILITY AGREEMENT made at
on / /

PARTIES

BETWEEN:

RED EARTH CITY PTY LTD (the "Lender")
A.C.N. 141 969 226

AND:

The member or members ("Borrower")

RECITALS:

The Lender has agreed to provide a loan facility to the Borrower in accordance with this Agreement.

THE PARTIES AGREE:

Definitions for Default Loan Agreement

In this Agreement, unless the context or subject matter otherwise require:

Act means the Income Tax Assessment Act 1936 and 1997, as amended, consolidated, rewritten or re-enacted from time to time, and includes any regulations made pursuant to that Act;

Advance means any advance or loan made to the Borrower by the Lender after the date of this Agreement;

Agreement means this loan facility agreement (including the recitals);

Amalgamated loan means the total of all the loans made under this agreement that are made in a particular year of income and are not repaid by the end of that year.

Associate means what it means in Division 7A of the ITAA 1936.

Authorised Representative means:

1. in respect of a party which is a corporation:
 - a) a company secretary or director or any officer of the corporation whose title or office includes the words "manager" or "director"; or
 - b) a person acting with the title or in the office of manager or director; and
2. in respect of each party, a solicitor of that party or a person nominated by Notice to the other party as an authorised representative;

Claim means, in relation to a person, a claim, demand, remedy, suit, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent;

Company means the company of whose constitution this Schedule forms part.

Controller has the meaning given in Section 9 of the Corporations Act;

Due Date in relation to an Advance, is defined in this agreement when the advance is to be repaid.

ITAA 1936 means the *Income Tax Assessment Act 1936* (Cth), as amended from time to time.

Insolvency Provision means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

Interest Rate, in relation to a year, is defined in this agreement;

Jurisdiction means the state/territory of New South Wales;

Loan means any of the following:

1. an advance of money;
2. a provision of credit or of some other financial accommodation;
3. a payment of an amount for or on behalf of or at the request of the borrower where there is an express or implied obligation to repay the amount;
4. a transaction which in substance effects a loan of money; or
5. it includes any of these that is deemed to have been made under the ITAA 1936.

Member means any person who is a member of the company at the relevant time.

Notice means a written notice, consent, approval, direction, order or other communication;

Obligation means any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability;

Outstanding Balance means, on any day, the aggregate of all money owing or payable actually or contingently by the Borrower to the Lender under this Agreement on that day;

Principal Sum means the total of all Advances made by the Lender to the Borrower;

Term, in relation to an Advance, is defined as the period of the advance as specified in this agreement

Year means the Lender's year of income as defined in the Act.

Interpretation

In the interpretation of this Agreement, unless the context or subject matter otherwise require:

1. singular includes plural and vice versa;
2. any gender includes every gender;
3. a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
4. references to months are references to calendar months;
5. headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;
6. a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

The facility

The Term

The term for each Advance shall be deemed to have commenced on the date the Advance was made, and the Due Date for each Advance shall be one business day before the date on which the Term expires.

Interest

A member must pay interest at the benchmark interest rate as defined in the ITAA 1936 Sec 109N(2) from 1 July following the loan being made by the company to that member. The Interest Rate must be determined afresh at the beginning of each Year, but thereafter remains constant throughout the Year. Interest shall be calculated daily by applying the Interest Rate to the Outstanding Balance (less any Advances made during the current Year). Interest shall become payable on the last day of each Year.

Minimum repayments

Members must at least meet the annual minimum repayments, with interest by its due date or as defined in Section 109E(5) of the ITAA 1936, by 30th June every year.

Repayment

All loans must be repaid by the member to the company by the end of the term, including any interest, by no later than 7 years from the date the loan was made or deemed to have been made under the ITAA 1936 Section 109N(3)(b).

The Borrower shall make one repayment in respect of the entire Outstanding Balance on or before the last day of each Year. The amount of this repayment shall be the minimum amount necessary to prevent the Outstanding Balance being treated as a dividend by reason of Section 109E of the Act.

The parties acknowledge that unless and until Section 109E of the Act is amended, or any regulations are made hereunder, the amount referred to in paragraph above is the minimum yearly repayment worked out in accordance with Section 109E(6) of the Act.

Capitalising interest

If any interest is due on a loan and unpaid, the company may choose to capitalise it. This capitalised portion counts as part of the loan, backdated to the date the interest became due.

Security

Reasonable security for obligations of members to the company may at any time be requested by the company.

Costs

All costs reasonably incurred by the company in connection with this agreement, and any security the member offers or provide under this agreement, must be paid by the member to the company. This shall include stamp duty costs.

Default

Acceleration of amounts

In the following circumstances the company may choose to treat loans to the member as payable automatically and immediately (including any interest):

1. An amount payable under this agreement is not paid by the member.
2. Any of the member's property is assigned to the benefit of creditors or a class of creditors.
3. Any legal process causes the member's interest under this agreement to be attached or taken in execution.

4. Any assets of the member are taken possession of by a mortgagee or similar, or steps are taken toward the taking of such possession, or the assets have a power of sale exercised over them by the mortgagee or similar.
5. A major part of the conduct of the business of the member is ceased or suspended or such action is threatened, except where the company has approved of an amalgamation or solvent reconstruction for the purpose of which such action takes place or is to take place.
6. The assets of the member are disposed of, or such action is threatened, except where the company has approved of an amalgamation or solvent reconstruction for the purpose of which such action takes place or is to take place. This only applies if the member is a company.
7. The member becomes subject to the enforcement or enforceability of a security interest.
8. Some form of execution for more than \$1,000, including a distress or attachment, is levied or enforced against the member.
9. The member is granted legislation-based protection against creditors, or takes steps to gain such a grant.
10. The member becomes insolvent or commits an act of bankruptcy.
11. An administrator of the member is appointed or the member passes a resolution to appoint one.
12. A winding up order is made against the member.
13. An order appointing a liquidator or provisional liquidator of the member is made.
14. An order is made or a resolution is passed for the member to enter into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them, except for the purposes of a solvent reconstruction or amalgamation previously approved by the company.
15. The member is unable to pay its debts, or states that it is unable to do so, or is taken under applicable legislation to be unable to do so, unless this is the result of a failure to pay a claim or debt that is the subject of a dispute in good faith.
16. The member stops or suspends payment of its debts or a class of its debts, or threatens to do so.
17. Any part of the member's assets or undertakings has a receiver, receiver and manager, controller, administrator or similar appointed to it.
18. The company reasonably deduces that the member is the subject of an event of a type described in Section 459C(2) from any statement the member makes, or the member is in fact subject to such an event.
19. Any other occurrence that has a substantially similar effect or is analogous to any events listed above.

General

Warranties

The Borrower warrants to the Lender that:

1. it has full legal capacity and power to enter into, exercise its rights and perform its obligations under this Agreement;
2. all conditions and things required by applicable law to be fulfilled or done in order:
 - a) to enable it lawfully to enter into, and exercise its rights and perform its obligations under, this agreement;
 - b) to make this agreement admissible in evidence in the courts in this jurisdiction;
 - c) have been fulfilled or done;

3. this Agreement constitutes its valid and legally binding obligations, enforceable against it in accordance with their respective terms except to the extent limited by equitable principles and laws affecting creditors' rights generally;
4. no litigation, arbitration or administrative proceedings are taking place, pending or, to the knowledge of the borrower, threatened against it or any of its property which, if adversely determined, could have, either separately or in aggregate, a material adverse effect on it;

Payment

If the company so wishes, it may inform the member in writing that payment under this agreement must be made in a specified way.

Liability

Where a member comprises multiple persons, any obligations imposed by this agreement on that member shall be imposed on those persons individually and jointly. A breach by any one of those persons is deemed to be a breach by all of them.

Costs

The Borrower shall pay to the Lender all stamp duty payable on or in respect of this Agreement, all legal and other costs, charges and expenses incurred or paid by the Lender relating to the negotiation, preparation, execution and enforcement of this Agreement.

Waiver

A waiver of the exercise of a right or performance of a duty under this agreement may only occur when and to the extent that it is specifically waived in writing by the lender. A right may only be waived by Notice, signed by the party (or its Authorised Representative) to be bound by the waiver.

Severability

If anything in this agreement is unenforceable, then it is severed to that extent. All provisions not severed are unaffected by this severance. Provisions in this agreement are to be interpreted in a manner that makes them enforceable.

Assignment

No party shall be entitled to assign its rights or obligations under this Agreement without the prior written consent of the other parties, which consent may be given or withheld, or given on conditions, in the absolute discretion of the other parties.

Notices

Notices given under this Agreement shall be:

1. in writing; and
2. signed by the party giving the Notice or by that party's Authorised

Notices must be either:

1. delivered by hand;
2. posted by pre paid security or certified mail; or
3. transmitted by facsimile.

Jurisdiction

This agreement shall be governed by the law of New South Wales. Each party submits to the jurisdiction of the courts of New South Wales. No party may argue, on the basis of forum non conveniency or any other basis that the courts of New South Wales should not exercise jurisdiction.

Variations

No variation of this Agreement or consent to a departure by a party from a provision, shall be of effect unless it is in writing, signed by the parties or by the party giving it. Any such variation or consent shall be effective only to the extent to or for which it may be made or given.

Liability of parties

If a party consists of more than one person:

1. an obligation of those parties is a joint obligation of all of them and a several obligation of each of them;
2. a right given to those parties is a right given jointly and severally to each of them, and if exercised by one of them, is deemed to be exercised jointly; and
3. a representation, warranty or undertaking made by those parties is made by each of them.

Warranty of authority

Each person signing this Agreement on behalf of another person warrants that so far as he or she is aware he or she has the authority to do so.

Execution

I (name of member) agree to abide to the terms and conditions of this Loan Agreement

Member's Signatures

Witness Signatures

Directors Signature

Witness Signature