



CONSTITUTION OF CERES EARTH LIMITED

A company limited by guarantee

ACN - 660 812 948

ABN - 60 133 437 610

Adopted 24th August 2022 upon company registration

(per resolutions passed at CERES Inc Special General Meeting on 3rd May 2022)

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PRELIMINARY

1. NAME OF THE COMPANY

The name of the company is CERES EARTH Limited (the **Company**) (ABN 60 133 437 610 / ACN 660 812 948).

2. TYPE OF COMPANY

The Company is a not-for-profit public Company limited by guarantee which is established to be, and to continue as, a charity.

3. LIMITED LIABILITY OF MEMBERS

The liability of members is limited to the amount of the guarantee in Clause 4.

4. THE GUARANTEE

4.1 Each member must contribute an amount not more than \$1 (the GUARANTEE) to the property of the Company if the Company is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

4.1.1 debts and liabilities of the Company incurred before the member stopped being a member, or

4.1.2 costs of winding up.

5. DEFINITIONS

In this constitution, words and phrases have the meaning set out in Clauses 78 and 80.

CHARITABLE PURPOSES AND POWERS

6. OBJECT

6.1 The Company's object is to pursue the following charitable purpose(s):

6.1.1 The Company is established to be a charity with the principal purpose of protecting and enhancing the natural environment, including by providing information and education to increase understanding of human impacts on the natural environment.

6.1.2 The Company will pursue the principal purpose stated in Clause 6.1.1 by enabling community-based learning and action to create environmentally beneficial, socially just, economically sustainable, culturally enriching and spiritually nurturing ways of living together.

6.1.3 The Company will establish and maintain a public fund to be called the CERES Environmental Fund (the FUND) for the specific purpose of supporting the achievement of the principal purpose of the Company as expressed in Clause 6.1.1. The Fund will be managed in accordance with the rules set out in Clause 72.

7. POWERS

7.1 Subject to Clause 8, the Company has the following powers, which may only be used to carry out its purpose(s) set out in Clause 6:

7.1.1 the powers of an individual, and

7.1.2 all the powers of a Company limited by guarantee under the Corporations Act.

8. **NOT-FOR-PROFIT**

8.1 The Company must not distribute any income or assets directly or indirectly to its members, except as provided in Clauses 8.2 and 77.

8.2 Clause 8.1 does not stop the Company from doing the following things, provided they are done in good faith:

8.2.1 paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company, or

8.2.2 making a payment to a member in carrying out the Company's charitable purpose(s).

9. **AMENDING THE CONSTITUTION**

9.1 Subject to Clause 9.2, the members may amend this constitution by passing a Special Resolution.

9.2 The members must not pass a Special Resolution that amends this constitution if passing it causes the Company to no longer be a charity.

MEMBERS

10. **MEMBERSHIP AND REGISTER OF MEMBERS**

10.1 The members of the Company are:

10.1.1 Initial Members; and

10.1.2 any other person that the directors allow to be a member, in accordance with this constitution.

10.2 The secretary must establish and maintain a register of members. The register of members must be kept by the secretary and must contain for each member:

10.2.1 name;

10.2.2 address;

10.2.3 email address;

10.2.4 date the member was entered on to the register;

10.2.5 date the relevant membership fee was last paid; and

10.2.6 in the case of former members, the date of ceasing to be a member.

10.3 The Company must give current members access to the register of members at the address of the Company.

- 10.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.
- 10.5 Members may write to the Secretary to request that their personal information on the register of members be restricted if they have special circumstances. The Secretary will agree to the request if satisfied that there are special circumstances and will write to the member outlining their decision.

11. **WHO CAN BE A MEMBER**

Any individual is eligible to apply to be a member of the Company under Clause 12.

12. **CATEGORIES OF MEMBER**

12.1 The Company has the following categories of membership:

12.1.1 individual membership, and

12.1.2 any other categories of membership determined by the Board by Regulation (which may include non-voting members).

13. **HOW TO APPLY TO BECOME A MEMBER**

13.1 A person may apply to become a member of the Company by submitting to the secretary:

13.1.1 a completed application form in writing in the form set out in Annexure A (or such other form prescribed by the Board from time to time);

13.1.2 pay the relevant membership fee set out in Clause 17;

13.1.3 pay the guarantee under Clause 4 if required; and

14. **DIRECTORS DECIDE WHETHER TO APPROVE MEMBERSHIP**

14.1 As soon as practicable after receipt of an application for membership form, the secretary or their nominee must refer the application to the Board.

14.2 The directors must consider an application for membership within a reasonable time after the secretary receives the application.

14.3 If the directors approve an application, the secretary must as soon as possible:

14.3.1 enter the new member on the register of members, and

14.3.2 write to the applicant to tell them that their application was approved, and the date that their membership started (see Clause 15).

14.4 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.

15. **WHEN A PERSON BECOMES A MEMBER**

Other than Initial Members, an applicant will become a member when they are entered on the register of members.

16. **WHEN A PERSON STOPS BEING A MEMBER**

- 16.1 A person immediately stops being a member if they:
- 16.1.1 die
 - 16.1.2 are wound up or otherwise dissolved or deregistered (for an incorporated member)
 - 16.1.3 resign, by writing to the secretary
 - 16.1.4 cease to have legal capacity;
 - 16.1.5 are expelled under Clause 19;
 - 16.1.6 fail to pay the annual membership fee when it becomes payable under Clause 17, or
 - 16.1.7 have not responded within 3 months to a written request from the secretary that they confirm in writing that they want to remain a member.

17. **MEMBERSHIP FEES**

- 17.1 The annual membership fee is the fee determined by the Board by Regulation from time to time.
- 17.2 Each member must pay to the Company the amounts determined under this Clause 17 (including under the Regulations).
- 17.3 The voting and other entitlements of members who have not paid the membership fee by the date for payment are suspended until the membership fee is paid.
- 17.4 Subject to Clause 4.1 and except for the annual membership fee, there are no other amounts to be paid in respect of membership of the Company.

DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES

18. **DISPUTE RESOLUTION**

- 18.1 The dispute resolution procedure in this Clause applies to disputes (disagreements) under this constitution between a member or director and:
- 18.1.1 one or more members
 - 18.1.2 one or more directors, or
 - 18.1.3 the Company.
- 18.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under Clause 19 until the disciplinary procedure is completed.
- 18.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 18.4 If those involved in the dispute do not resolve it under Clause 18.3, they must within 10 days:
- 18.4.1 tell the directors about the dispute in writing

- 18.4.2 agree or request that a mediator be appointed, and
- 18.4.3 attempt in good faith to settle the dispute by mediation.
- 18.5 The mediator must:
 - 18.5.1 be chosen by agreement of those involved, or
 - 18.5.2 where those involved do not agree:
 - (a) for disputes between members, a person chosen by the directors, or
 - (b) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the Company has its registered office.
- 18.6 A mediator chosen by the directors under Clause 18.5.2(a):
 - 18.6.1 may be a member or former member of the Company
 - 18.6.2 must not have a personal interest in the dispute, and
 - 18.6.3 must not be biased towards or against anyone involved in the dispute.
- 18.7 When conducting the mediation, the mediator must:
 - 18.7.1 allow those involved a reasonable chance to be heard
 - 18.7.2 allow those involved a reasonable chance to review any written statements
 - 18.7.3 ensure that those involved are given natural justice, and
 - 18.7.4 not make a decision on the dispute.
- 19. **DISCIPLINING MEMBERS**
- 19.1 In accordance with this Clause, the directors may resolve to warn, suspend or expel a member from the Company if the directors consider that:
 - 19.1.1 the member has breached this constitution, or
 - 19.1.2 the member's behaviour is causing, has caused, or is likely to cause harm to the Company.
- 19.2 At least 14 days before the directors' meeting at which a resolution under Clause 19.1 will be considered, the secretary must notify the member in writing:
 - 19.2.1 that the directors are considering a resolution to warn, suspend or expel the member
 - 19.2.2 that this resolution will be considered at a directors' meeting and the date of that meeting
 - 19.2.3 what the member is said to have done or not done

- 19.2.4 the nature of the resolution that has been proposed, and
- 19.2.5 that the member may provide an explanation to the directors, and details of how to do so.
- 19.3 Before the directors pass any resolution under Clause 19.1, the member must be given a chance to explain or defend themselves by:
 - 19.3.1 sending the directors a written explanation before that directors' meeting, and/or
 - 19.3.2 speaking at the meeting.
- 19.4 After considering any explanation under Clause 19.3, the directors may:
 - 19.4.1 take no further action
 - 19.4.2 warn the member
 - 19.4.3 suspend the member's rights as a member for a period of no more than 12 months
 - 19.4.4 expel the member
 - 19.4.5 refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this Clause), or
 - 19.4.6 require the matter to be determined at a General Meeting.
- 19.5 The directors cannot fine a member.
- 19.6 The secretary must give written notice to the member of the decision under Clause 19.4 as soon as possible.
- 19.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 19.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this Clause.

GENERAL MEETINGS OF MEMBERS

20. GENERAL MEETINGS CALLED BY DIRECTORS

- 20.1 The Board may call a General Meeting.
- 20.2 50 or more members entitled to cast a vote at a General Meeting may, by notice (or notices) signed by those members to the Board, call a General Meeting.
- 20.3 If the Board receives a request from members under clause 20.2, the Board must:
 - 20.3.1 within 21 days of the members' request, give all members notice of a General Meeting, and
 - 20.3.2 hold the General Meeting within 2 months of the members' request.

- 20.4 The members who make the request for a General Meeting must:
- 20.4.1 state in the request any resolution to be proposed at the meeting
 - 20.4.2 sign the request, and
 - 20.4.3 give the request to the Company.
- 20.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

21. **GENERAL MEETINGS CALLED BY MEMBERS**

- 21.1 If the directors do not call the meeting within 21 days of being requested under Clause 20.2, 50% or more of the members who made the request may call and arrange to hold a General Meeting.
- 21.2 To call and hold a meeting under Clause 21.1 the members must:
- 21.2.1 as far as possible, follow the procedures for General Meetings set out in this constitution
 - 21.2.2 call the meeting using the list of members on the Company's member register, which the Company must provide to the members making the request at no cost, and
 - 21.2.3 hold the General Meeting within three months after the request was given to the Company.
- 21.3 The Company must pay the members who request the General Meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

22. **ANNUAL GENERAL MEETING**

- 22.1 A General Meeting, called the annual General Meeting, must be held:
- 22.1.1 within 18 months after registration of the Company, and
 - 22.1.2 after the first annual General Meeting, at least once in every calendar year.
- 22.2 Even if these items are not set out in the notice of meeting, the business of an annual General Meeting may include:
- 22.2.1 considering the annual report of the Board on the activities of the Company during its last financial year
 - 22.2.2 a review of the Company's activities
 - 22.2.3 a review of the Company's finances
 - 22.2.4 any auditor's report
 - 22.2.5 a review of the membership fee under Clause 17.1
 - 22.2.6 the election of directors, and

- 22.2.7 the appointment and payment of auditors, if any,
- 22.3 Before or at the annual General Meeting, the directors must give information to the members on the Company's activities and finances during the period since the last annual General Meeting.
- 22.4 The chairperson of the annual General Meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.
23. **NOTICE OF GENERAL MEETINGS**
- 23.1 Notice of a General Meeting must be given to:
- 23.1.1 each member entitled to vote at the meeting
 - 23.1.2 each director, and
 - 23.1.3 the auditor (if any).
- 23.2 Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- 23.3 Subject to Clause 23.4, notice of a meeting may be provided less than 21 days before the meeting if:
- 23.3.1 for an annual General Meeting, all the members entitled to attend and vote at the annual General Meeting agree beforehand, or
 - 23.3.2 for any other General Meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 23.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- 23.4.1 remove a director
 - 23.4.2 appoint a director in order to replace a director who was removed, or
 - 23.4.3 remove an auditor.
- 23.5 Notice of a General Meeting must include:
- 23.5.1 the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
 - 23.5.2 the general nature of the meeting's business, and
 - 23.5.3 if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution.
- 23.6 If a General Meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

24. QUORUM AT GENERAL MEETINGS

- 24.1 For a General Meeting to be held, at least 12 members (a QUORUM) must be present (in person, whether physically or by electronic means) for the whole meeting. When determining whether a quorum is present, a person may only be counted once.
- 24.2 No business may be conducted at a General Meeting if a quorum is not present.
- 24.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- 24.3.1 if the date is not specified – the same day in the next week
- 24.3.2 if the time is not specified – the same time, and
- 24.3.3 if the place is not specified – the same place.
- 24.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

25. AUDITOR'S RIGHT TO ATTEND MEETINGS

- 25.1 The auditor (if any) is entitled to attend any General Meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 25.2 The Company must give the auditor (if any) any communications relating to the General Meeting that a member of the Company is entitled to receive.

26. USING TECHNOLOGY TO HOLD MEETINGS

- 26.1 The Company may hold a General Meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 26.2 Anyone using this technology is taken to be present in person at the meeting.

27. CHAIRPERSON FOR GENERAL MEETINGS

- 27.1 The Chairperson is entitled to chair General Meetings.
- 27.2 If the Chairperson is not present, or does not wish to chair the General Meeting, the Deputy Chairperson is entitled to chair.
- 27.3 The members present and entitled to vote at a General Meeting may choose a director or member to be the chairperson for that meeting if:
- 27.3.1 there is no Chairperson or Deputy Chairperson, or
- 27.3.2 the Chairperson and Deputy Chairperson is not present within 30 minutes after the starting time set for the meeting, or
- 27.3.3 the Chairperson and Deputy Chairperson is present but says they do not wish to act as chairperson of the meeting.

28. ROLE OF THE CHAIRPERSON

28.1 The chairperson is responsible for the conduct of the General Meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).

28.2 The chair of the General Meeting has a deliberative vote, but does not have a casting vote.

29. ADJOURNMENT OF MEETINGS

29.1 If a quorum is present, a General Meeting must be adjourned if a majority of Members Present direct the chairperson to adjourn it.

29.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

MEMBERS' RESOLUTIONS AND STATEMENTS

30. MEMBERS' RESOLUTIONS AND STATEMENTS

30.1 Members with at least 5% of the votes that may be cast on a resolution or at least 100 members who are entitled to vote at a General Meeting may give:

30.1.1 written notice to the Company of a resolution they propose to move at a General Meeting (members' resolution), and/or

30.1.2 a written request to the Company that the Company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (members' statement).

30.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.

30.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.

30.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.

30.5 If the Company has been given notice of a members' resolution under Clause 30.1.1, the resolution must be considered at the next General Meeting held more than two months after the notice is given.

30.6 This Clause does not limit any other right that a member has to propose a resolution at a General Meeting.

31. COMPANY MUST GIVE NOTICE OF PROPOSED RESOLUTION OR DISTRIBUTE STATEMENT

31.1 If the Company has been given a notice or request under Clause 30:

31.1.1 in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the Company's cost, or

31.1.2 too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who

proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a General Meeting, the members may pass a resolution that the Company will pay these expenses.

31.2 The Company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:

31.2.1 it is more than 1 000 words long

31.2.2 the directors consider it may be defamatory

31.2.3 Clause 31.1.2 applies, and the members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or

31.2.4 in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a General Meeting or is otherwise not a valid resolution able to be put to the members.

32. **CIRCULAR RESOLUTIONS OF MEMBERS**

32.1 Subject to Clause 32.3, the directors may put a resolution to the members to pass a resolution without a General Meeting being held (a circular resolution).

32.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.

32.3 Circular resolutions cannot be used:

32.3.1 for a resolution to remove an auditor, appoint a director or remove a director

32.3.2 for passing a Special Resolution, or

32.3.3 where the Corporations Act or this constitution requires a meeting to be held.

32.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in Clause 32.5 or Clause 32.6.

32.5 Members may sign:

32.5.1 a single document setting out the circular resolution and containing a statement that they agree to the resolution, or

32.5.2 separate copies of that document, as long as the wording is the same in each copy.

32.6 The Company may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

VOTING AT GENERAL MEETINGS

33. **HOW MANY VOTES A MEMBER HAS**

33.1 Each member or membership nominee present at a General Meeting who is entitled to vote has 1 vote.

33.2 Members whose membership rights have been suspended under Clause 17.3 are not entitled to vote.

34. **CHALLENGE TO MEMBER'S RIGHT TO VOTE**

34.1 A member or the chairperson may only challenge a person's right to vote at a General Meeting at that meeting.

34.2 If a challenge is made under Clause 34.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

35. **HOW VOTING IS CARRIED OUT**

35.1 Subject to Clause 36, voting must be conducted and decided by:

35.1.1 a show of hands, or

35.1.2 another method chosen by the chairperson that is fair and reasonable in the circumstances.

35.2 Members may vote in person only and not by proxy.

35.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.

35.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

35.5 Except in the case of a Special Resolution, decisions of members at General Meetings are made by a simple majority.

36. **WHEN AND HOW A VOTE IN WRITING MUST BE HELD**

36.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:

36.1.1 at least 5 Members Present

36.1.2 Members Present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or

36.1.3 the chairperson.

36.2 A vote in writing must be taken when and how the chairperson directs, unless Clause 36.3 applies.

36.3 A vote in writing must be held immediately if it is demanded under Clause 36.1:

36.3.1 for the election of a chairperson under Clause 27.2, or

36.3.2 to decide whether to adjourn the meeting.

36.4 A demand for a vote in writing may be withdrawn.

DIRECTORS

37. NUMBER OF DIRECTORS

- 37.1 The Company must have at least 6 and no more than 9 directors.
- 37.2 Up to 6 directors may be elected at the annual General Meeting.
- 37.3 Up to 3 directors may be appointed by the Board.

38. NOMINATION PROCESS

- 38.1 At least 4 weeks prior to the proposed date of the annual General Meeting at which a resolution or resolutions will be proposed to fill a vacancy in the position of a director, the returning officer shall request from members nominations for elections to positions falling vacant.
- 38.2 Nominations must:
 - 38.2.1 be in writing
 - 38.2.2 contain an undertaking that, if elected, the candidate will comply with the constitution
 - 38.2.3 be signed by the candidate, consenting to the nomination,
 - 38.2.4 be signed by 2 other members entitled to vote, nominating the candidate, and
 - 38.2.5 be submitted to the returning officer by no later than 5.00pm 7 days before the annual General Meeting.
- 38.3 The Board may, by regulation:
 - 38.3.1 prescribe a nomination form but failure to use the prescribed form does not invalidate a nomination if it complies with this clause, and
 - 38.3.2 provide for candidate statements and photographs to be submitted with nominations and their publication.
- 38.4 If the number of valid nominations received for an election is:
 - 38.4.1 greater than the number of positions to be elected, the returning officer must conduct a ballot in accordance with clause 39.
 - 38.4.2 the same as the number of positions to be elected, the returning officer must declare those candidates elected, or
 - 38.4.3 fewer than the number of positions to be elected, the returning officer must declare those candidates elected and any vacancies will be appointed by the Board notwithstanding clause 37.3.

39. ELECTION AND APPOINTMENT OF DIRECTORS

- 39.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the Company. The Board has the

discretion to determine the new terms of the initial directors, subject that the Board shall agree that:

- 39.1.1 one or more directors shall retire at the first annual General Meeting of the Company
 - 39.1.2 one or more directors shall retire 1 year after the first annual General Meeting of the Company, and
 - 39.1.3 one or more directors shall retire 2 years after the first annual General Meeting of the Company.
- 39.2 Apart from the initial directors and subject to Clause 37, the members may elect a director by a resolution passed in a General Meeting.
- 39.3 Each of the directors must be appointed by a separate resolution, unless:
- 39.3.1 the members present have first passed a resolution that the appointments may be voted on together, and
 - 39.3.2 no votes were cast against that resolution.
- 39.4 A person is eligible for election as a director of the Company if they:
- 39.4.1 are a member of the Company
 - 39.4.2 are nominated by 2 members (unless the person was previously elected as a director at a General Meeting and has been a director since that meeting),
 - 39.4.3 give the Company their signed consent to act as a director of the Company, and
 - 39.4.4 are not ineligible to be a director under the Corporations Act or the ACNC Act.
- 39.5 Subject to not exceeding the maximum number of directors set out in clause 37, the directors may appoint a person as a director to fill a casual vacancy or as an Independent Director if that person:
- 39.5.1 is a member of the Company
 - 39.5.2 gives the Company their signed consent to act as a director of the Company
 - 39.5.3 is not ineligible to be a director under the Corporations Act or the ACNC Act, and
 - 39.5.4 in the case of the appointment of an Independent Director, the person holds a qualification in respect of which their skills as an Independent Director principally relate and if that persons ceases to hold these qualifications the directors may immediately terminate the appointment.
- 39.6 If the number of directors is reduced to fewer than 3 or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to 3 (or higher if required for a quorum) or calling a General Meeting, but for no other purpose.

40. **APPOINTMENT OF OFFICE-BEARERS**

40.1 At the first Board meeting after the annual General Meeting, the directors must appoint directors as the Company's:

40.1.1 Chairperson

40.1.2 Deputy Chairperson

40.1.3 Secretary in accordance with Clause 59, and

40.1.4 Treasurer.

40.2 Office-Bearers cease to be Office-Bearers if:

40.2.1 they resign by written notice to the Chair, or

40.2.2 cease to be a director of the Company.

40.3 The Board must, as soon as practicable, fill vacancies in Office-Bearer positions.

41. **APPOINTMENT OF CEO**

41.1 The directors must appoint a CEO responsible to the board for the management of the company.

41.2 The terms, conditions and duties of the CEO will be decided by the Board.

41.3 For the avoidance of doubt, the CEO is not a director of the company nor a member of the Board.

42. **APPOINTMENT OF RETURNING OFFICER**

42.1 At least 12 weeks prior to the annual General Meeting, the directors must appoint a returning officer.

42.2 The returning officer:

42.2.1 must not be a member, director or employee of the Company;

42.2.2 is responsible for the conduct of the elections; and

42.2.3 may decide all matters relating to the election of directors not provided for in this constitution.

43. **TERM OF OFFICE**

43.1 Subject to Clause 39.1, at each annual General Meeting:

43.1.1 any director appointed by the directors to fill a casual vacancy or as an Independent Director must retire, and

43.1.2 at least one-third of the remaining directors must retire.

43.2 The directors who must retire at each annual General Meeting under Clause 43.1 will be the directors who have been longest in office since last being elected. Where directors were

elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise. In the case of the initial directors, the director(s) to retire will be decided by the Board.

- 43.3 Other than a director appointed under Clause 39.5, a director's term of office starts at the end of the annual General Meeting at which they are elected and ends at the end of the annual General Meeting at which they retire.
- 43.4 Each director must retire at least once every three years.
- 43.5 A director who retires under Clause 43.1.2 may nominate for election or re-election, subject to Clause 43.6.
- 43.6 A director who has held office for a continuous period of nine years may only be re-appointed or re-elected by a Special Resolution.

44. **WHEN A DIRECTOR STOPS BEING A DIRECTOR**

- 44.1 A director stops being a director if they:
 - 44.1.1 give written notice of resignation as a director to the Company
 - 44.1.2 die
 - 44.1.3 are removed as a director by a resolution of the members
 - 44.1.4 stop being a member of the Company
 - 44.1.5 are absent for 3 consecutive directors' meetings without approval from the directors,
 - 44.1.6 retire and are not re-appointed or re-elected by Special Resolution, or
 - 44.1.7 become ineligible to be a director of the Company under the Corporations Act or the ACNC Act.

POWERS AND RESPONSIBILITIES OF DIRECTORS

45. **POWERS OF DIRECTORS**

- 45.1 The directors are responsible for managing and directing the activities of the Company to achieve the purpose(s) set out in Clause 6.
- 45.2 The directors may use all the powers of the Company except for powers that, under the Corporations Act or this constitution, may only be used by members.
- 45.3 The directors must decide on the responsible financial management of the Company including:
 - 45.3.1 any suitable written delegations of power under Clause 46, and
 - 45.3.2 how money will be managed, such as how electronic transfers, promissory notes or negotiable instruments must be authorised and signed or otherwise approved.
- 45.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a General Meeting.

46. **DELEGATION OF DIRECTORS' POWERS**

- 46.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the Company (such as a chief executive officer) or any other person, as they consider appropriate.
- 46.2 The directors must keep a written record of delegation of powers under clause 46.1.

47. **PUBLIC STATEMENTS**

- 47.1 The Chairperson is able to make public statements on behalf of the Company.
- 47.2 The directors may, by Regulation or resolution, authorise the CEO or another person to make public statements on behalf of the Company.
- 47.3 No other person may make any public statement on behalf of the Company unless authorised by the directors.

48. **PAYMENTS TO DIRECTORS**

- 48.1 The Company must not pay fees to a director for acting as a director.
- 48.2 The Company may:
- 48.2.1 pay a director for work they do for the Company, other than as a director, if the amount is no more than a reasonable fee for the work done, or
 - 48.2.2 reimburse a director for expenses properly incurred by the director in connection with the affairs of the Company.
- 48.3 Any payment made under Clause 48.2 must be approved by the directors.
- 48.4 The Company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

49. **EXECUTION OF DOCUMENTS**

- 49.1 The Company may execute a document without using a common seal if the document is signed by:
- 49.1.1 two directors of the Company, or
 - 49.1.2 a director and the secretary.

DUTIES OF DIRECTORS

50. **DUTIES OF DIRECTORS**

- 50.1 The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
- 50.1.1 to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company

- 50.1.2 to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in Clause 6
- 50.1.3 not to misuse their position as a director
- 50.1.4 not to misuse information they gain in their role as a director
- 50.1.5 to disclose any perceived or actual material conflicts of interest in the manner set out in Clause 51
- 50.1.6 to ensure that the financial affairs of the Company are managed responsibly, and
- 50.1.7 not to allow the Company to operate while it is insolvent.

51. **CONFLICTS OF INTEREST**

- 51.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
 - 51.1.1 to the other directors, or
 - 51.1.2 if all of the directors have the same conflict of interest, to the members at the next General Meeting, or at an earlier time if reasonable to do so.
- 51.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 51.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under Clauses 51.4:
 - 51.3.1 be present at the meeting while the matter is being discussed, or
 - 51.3.2 vote on the matter.
- 51.4 A director may still be present and vote if:
 - 51.4.1 their interest arises because they are a member of the Company, and the other members have the same interest
 - 51.4.2 their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the Company (see Clause 74)
 - 51.4.3 their interest relates to a payment by the Company under Clause 73 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act
 - 51.4.4 the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
 - 51.4.5 the directors who do not have a material personal interest in the matter pass a resolution that:
 - (a) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the Company, and

- (b) says that those directors are satisfied that the interest should not stop the director from voting or being present.

DIRECTORS' MEETINGS

52. WHEN THE DIRECTORS MEET

- 52.1 Subject to Clause 52.2, the directors may decide how often, where and when they meet.
- 52.2 The directors shall meet at least 6 times per calendar year.

53. CALLING DIRECTORS' MEETINGS

- 53.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 53.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

54. CHAIRPERSON FOR DIRECTORS' MEETINGS

- 54.1 The Chairperson is entitled to chair directors' meetings.
- 54.2 If the Chairperson is not present at a directors' meeting, the Deputy Chairperson may chair the meeting.
- 54.3 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the Chairperson or Deputy Chairperson is:
- 54.3.1 not present within 30 minutes after the starting time set for the meeting, or
- 54.3.2 present but does not want to act as chairperson of the meeting.

55. QUORUM AT DIRECTORS' MEETINGS

- 55.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a number of directors greater than 50% of sitting directors.
- 55.2 A quorum must be present for the whole directors' meeting.

56. USING TECHNOLOGY TO HOLD DIRECTORS' MEETINGS

- 56.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 56.2 The directors' agreement may be a standing (ongoing) one.
- 56.3 A director may only withdraw their consent within a reasonable period before the meeting.

57. PASSING DIRECTORS' RESOLUTIONS

- 57.1 A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.
- 57.2 Each director shall have 1 vote.

57.3 Directors may only vote in person including by way of technology (such as video or teleconferencing).

57.4 If an equal number of votes are cast for and against a resolution in a Board meeting, the chair of the meeting must declare the resolution lost. For the avoidance of doubt, the chair does not have a casting vote.

58. **CIRCULAR RESOLUTIONS OF DIRECTORS**

58.1 The directors may pass a circular resolution without a directors' meeting being held.

58.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in Clause 58.3 or Clause 58.4.

58.3 Each director may sign:

58.3.1 a single document setting out the resolution and containing a statement that they agree to the resolution, or

58.3.2 separate copies of that document, as long as the wording of the resolution is the same in each copy.

58.4 The Company may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

58.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in Clause 58.3 or Clause 58.4.

SECRETARY

59. **APPOINTMENT AND ROLE OF SECRETARY**

59.1 The Company must have at least one secretary, who may also be a director.

59.2 A secretary must be appointed by the directors (after giving the Company their signed consent to act as secretary of the Company) and may be removed by the directors.

59.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.

59.4 The role of the secretary includes:

59.4.1 maintaining a register of the Company's members, and

59.4.2 maintaining the minutes and other records of General Meetings (including notices of meetings), directors' meetings and circular resolutions.

MINUTES AND RECORDS

60. **MINUTES AND RECORDS**

60.1 The Company must, within one month of the occurrence of any of the matters in Clauses 60.1.1, 60.1.2, 60.1.3 or 60.1.4, make and keep the following records:

60.1.1 minutes of proceedings and resolutions of General Meetings

- 60.1.2 minutes of circular resolutions of members
 - 60.1.3 a copy of a notice of each General Meeting, and
 - 60.1.4 a copy of a members' statement distributed to members under Clause 31.
- 60.2 The Company must, within one month of the occurrence of the any of the matters in Clauses 60.2.1 or 60.2.2, make and keep the following records:
- 60.2.1 minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
 - 60.2.2 minutes of circular resolutions of directors.
- 60.3 To allow members to inspect the Company's records:
- 60.3.1 the Company must give a member access to the records set out in Clause 60.1, and
 - 60.3.2 the directors may authorise a member to inspect other records of the Company, including records referred to in Clause 60.2 and Clause 61.1.
- 60.4 The directors must ensure that minutes of a General Meeting or a directors' meeting are signed within a reasonable time after the meeting by:
- 60.4.1 the chairperson of the meeting, or
 - 60.4.2 the chairperson of the next meeting.
- 60.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

61. **FINANCIAL AND RELATED RECORDS**

- 61.1 The Company must make and keep written financial records that:
- 61.1.1 correctly record and explain its transactions and financial position and performance, and
 - 61.1.2 enable true and fair financial statements to be prepared and to be audited.
- 61.2 The Company must also keep written records that correctly record its operations.
- 61.3 The Company must retain its records for at least 7 years.
- 61.4 The directors must take reasonable steps to ensure that the Company's records are kept safe.

COMMITTEES

62. **EXECUTIVE COMMITTEE**

- 62.1 The Executive Committee is a standing committee comprised of the CEO, the Chairperson, the Deputy Chairperson, the Secretary and the Treasurer.
- 62.2 The Executive Committee must:

62.2.1 receive reports from the CEO, and

62.2.2 make recommendations to the Board on the following:

- (a) governance issues
- (b) initiating annual general meetings and special meetings
- (c) staffing issues
- (d) general operational policies
- (e) stakeholder relations
- (f) the constitution, and
- (g) issues referred to it by the Board.

63. **OTHER COMMITTEES**

63.1 The Board may, by Regulation or resolution, establish other standing or ad hoc committees, including a finance, audit and risk committee, with such membership and terms of reference as they think appropriate.

63.2 Committees established by the Board under Clause 63.1 may include members who are not directors or members of the Company.

REGULATIONS

64. **REGULATIONS**

64.1 The directors may pass a resolution to make Regulations to give effect to this constitution.

64.2 Members and directors must comply with Regulations as if they were part of this constitution.

NOTICE

65. **WHAT IS NOTICE**

65.1 Anything written to or from the Company under any Clause in this constitution is written notice and is subject to Clauses 66 to 68, unless specified otherwise.

66. **NOTICE TO THE COMPANY**

66.1 Written notice or any communication under this constitution may be given to the Company, the directors or the secretary by:

66.1.1 delivering it to the Company's registered office

66.1.2 posting it to the Company's registered office or to another address chosen by the Company for notice to be provided, or

66.1.3 sending it to an email address or other electronic address notified by the Company to the members as the Company's email address or other electronic address.

67. **NOTICE TO MEMBERS**

- 67.1 Written notice or any communication under this constitution may be given to a member:
- 67.1.1 in person
 - 67.1.2 by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
 - 67.1.3 sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any), or
 - 67.1.4 if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 67.2 If the Company does not have an address for the member, the Company is not required to give notice in person.

68. **WHEN NOTICE IS TAKEN TO BE GIVEN**

- 68.1 A notice:
- 68.1.1 delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered
 - 68.1.2 sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
 - 68.1.3 sent by email or other electronic method, is taken to be given on the business day that it is sent and, if not sent on a business day, the next business day, and
 - 68.1.4 given under Clause 67.1.4 is taken to be given on the business day after the notification that the notice is available is sent.

FINANCIAL

69. **COMPANY'S FINANCIAL YEAR**

The Company's financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

70. **MANAGEMENT OF FUNDS**

- 70.1 The directors are responsible for the management of the funds of the Company.
- 70.2 The directors must make Regulations providing for the financial management of the Company.

71. **PAYMENTS**

All cheques, electronic funds transfers, drafts, bills of exchange, promissory notes and other negotiable instruments must be authorised either by 2 directors or by 2 persons duly authorised in writing by the Board.

72. PUBLIC FUND

- 72.1 The Fund is established to receive all gifts of money or property for the purpose set out in Clause 6.1.3 and any money received because of such gifts must be credited to its bank account. The Fund must not receive any other money or property into its account and it must comply with subdivision 30-E of the *Income Tax Assessment Act 1997*.
- 72.2 The objective of the Fund is to support the Company's environmental purposes.
- 72.3 Members of the public are to be invited to make gifts of money or property to the Fund for the environmental purposes of the Company.
- 72.4 Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the Fund.
- 72.5 A separate bank account is to be opened to deposit money donated to the Fund, including interest accruing thereon, and gifts to it are to be kept separate from other funds of the Company.
- 72.6 Receipts are to be issued in the name of the Fund and proper accounting records and procedures are to be kept and used for the Fund.
- 72.7 The Fund will be operated on a not-for-profit basis.
- 72.8 The Board must appoint a management committee of no fewer than 3 persons to administer the Fund. A majority of the members of the committee are required to be 'responsible persons' as defined by the Guidelines to the Register of Environmental Organisations.
- 72.9 The Company must inform the Commonwealth Department responsible for the environment as soon as possible if:
- 72.9.1 it changes its name or the name of its Fund;
 - 72.9.2 there is any change to the membership of the management committee of the Fund;
or
 - 72.9.3 there has been any departure from the model rules for public funds located in the Guidelines to the Register of Environmental Organisations.
- 72.10 The Company agrees to comply with any rules that the Treasurer and the Minister with responsibility for the environment may make to ensure that gifts made to the Fund are only used for its principal purpose.
- 72.11 Any allocation of funds or property to other persons or organisations will be made in accordance with the established purposes of the Company and not be influenced by the preference of the donor.
- 72.12 In case of the winding-up of the Fund, any surplus assets are to be transferred to another fund with similar objectives that is on the Register of Environmental Organisations.
- 72.13 Statistical information requested by the Department on donations to the Fund will be provided within four months of the end of the financial year.

- 72.14 An audited financial statement for the Company and its Fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of Fund monies and the management of Fund assets.

INDEMNITY, INSURANCE AND ACCESS

73. INDEMNITY

- 73.1 The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.
- 73.2 In this Clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 73.3 In this Clause, 'to the relevant extent' means:
- 73.3.1 to the extent that the Company is not precluded by law (including the Corporations Act) from doing so, and
 - 73.3.2 for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 73.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

74. INSURANCE

To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company.

75. DIRECTORS' ACCESS TO DOCUMENTS

- 75.1 A director has a right of access to the financial records of the Company at all reasonable times.
- 75.2 If the directors agree, the Company must give a director or former director access to:
- 75.2.1 certain documents, including documents provided for or available to the directors, and
 - 75.2.2 any other documents referred to in those documents.

WINDING UP

76. SURPLUS ASSETS NOT TO BE DISTRIBUTED TO MEMBERS

If the Company is wound up, any Surplus Assets must not be distributed to a member or a former member of the Company, unless that member or former member is a charity described in Clause 77.1.

77. DISTRIBUTION OF SURPLUS ASSETS

- 77.1 Subject to the Corporations Act and any other applicable Act, and any court order, any Surplus Assets that remain after the Company is wound up must be distributed to one or more charities:
- 77.1.1 with charitable purpose(s) similar to, or inclusive of, the purpose(s) in Clause 6, and
- 77.1.2 which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as the Company.
- 77.2 The decision as to the charity or charities to be given the Surplus Assets must be made by a Special Resolution of members at or before the time of winding up. If the members do not make this decision, the Company may apply to the Supreme Court to make this decision.

DEFINITIONS AND INTERPRETATION

78. DEFINITIONS

In this constitution:

"ACNC Act"	means the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth)
"Board"	means the board of directors of the Company
"CEO"	means the person appointed in accordance with Clause 41.1
"Chairperson"	means a person elected by the directors to be the Company's chairperson under Clause 40
"Company"	means the Company referred to in Clause 1
"Corporations Act"	means the <i>Corporations Act 2001</i> (Cth)
"DeputyChairperson"	means a person elected by the directors to be the Company's deputy chairperson under Clause 40.
"Fund"	means the CERES Environmental Fund
"General meeting"	means a meeting of members and includes the annual General Meeting, under Clause 22.1
"Guarantee"	means the amount prescribed in Clause 4
"Independent Director"	means a person appointed in accordance with Clause 39.5
"Initial Member"	means a person who is named in the application for registration of the Company, with their consent, as a proposed member of the Company
"Member Present"	means, in connection with a General Meeting, a member present in person at the venue or venues for the meeting
"Office-Bearer"	means the positions listed in Clause 40

"Person"	means any individual or incorporated body
"Quorum"	means the number of members described in Clause 24.1
"Registered Charity"	means a charity that is registered under the ACNC Act
"Regulation"	means regulations of the Company made under Clause 64.
"Returning Officer"	means the person appointed in accordance with Clause 42.1
"Special Resolution"	means a resolution: <ul style="list-style-type: none"> (a) of which notice has been given under Clause 23.5.3, and (b) that has been passed by at least 75% of the votes cast by Members Present and entitled to vote on the resolution
"Surplus Assets"	means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

79. **READING THIS CONSTITUTION WITH THE CORPORATIONS ACT**

- 79.1 The replaceable rules set out in the Corporations Act do not apply to the Company.
- 79.2 While the Company is a Registered Charity, the ACNC Act and the Corporations Act override any Clauses in this constitution which are inconsistent with those Acts.
- 79.3 If the Company is not a Registered Charity (even if it remains a charity), the Corporations Act overrides any Clause in this constitution which is inconsistent with that Act.
- 79.4 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

80. **INTERPRETATION**

- 80.1 In this constitution:
- 80.1.1 the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- 80.1.2 reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).