

Corporations Act 2001
Company Limited by Guarantee

Constitution
of
ORIGINAL EUMUNDI MARKETS LTD

1. REPLACEABLE RULES EXCLUDED

1.1 The operation of each of the sub-sections of the Act which are defined as replaceable rules are displaced by this Constitution and do not apply to the Company.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Constitution:

Act means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it.

Board means all or some of the Directors from time to time acting as a board.

Business day means a day that is not a Saturday, a Sunday or a public holiday in the place where the Office is located.

Chair means the chair of the Board appointed under rule 51 from time to time.

Committee means a committee to which powers have been delegated under rule 28.

Company means **Original Eumundi Markets Ltd.**

Constitution means the constitution of the Company as amended from time to time.

Director means a person holding the office of director of the Company under this Constitution.

Directors means the Directors for the time being of the Company or the Directors assembled as a Board.

Executive Officer means an executive officer appointed under rule 23 from time to time.

ITAA means the *Income Tax Assessment Act 1997 (Cth)* as amended from time to time.

Member means a member for the time being of the Company and entered as such in the Register and **Membership** has a corresponding meaning.

Nominated Representative means, in the case of a Member which is not a natural person, a natural person who is authorised under section 249 of the Act to represent that Member at meetings of the Company.

Notice means, depending on the context, a written notice, consent, approval, direction, order or other such written communication and **notify** and **notification** have corresponding meaning.

Objects means the objects listed in rule 3.

Office means the registered office of the Company for the time being.

Officer means a Director, Secretary or Executive Officer of the Company.

Original Eumundi Markets means the community market which has been operated by Eumundi & District Historical Association Inc. and its predecessor association in Eumundi since 1979.

Register means the register of Members kept pursuant to the Act.

Rule or **rules** means a rule of this Constitution.

Secretary means the person appointed by the Members from time to time to perform the duties of company secretary.

Special Resolution means a resolution of a general meeting where at least 75% of the votes cast on the resolution are in favour of the resolution and which is passed in accordance with sections 249H and 249L of the Act.

Subsidiary means any subsidiary company of the Company that may be incorporated from time to time with objects not inconsistent with the Objects and the incorporation of which has been approved by the Company in general meeting.

Technology Meeting means a Board or other meeting held using telephone or, if consented to by all meeting participants, other technology.

2.2 Interpretation

- (a) Reference to:
 - (i) the singular includes the plural and the plural includes the singular; and
 - (ii) a person includes a body corporate.
- (b) Except so far as the contrary intention appears in this Constitution:
 - (i) an expression has in this Constitution the same meaning as in the Act; and
 - (ii) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (c) **Including** and similar expressions are not words of limitation.
- (d) Headings and any table of contents or index are for convenience only and do not form part of this Constitution or affect its interpretation.

3. OBJECTS

3.1 The Objects for which the Company is established are to:

- (a) ensure the effective, profitable operation of the Original Eumundi Markets;
- (b) maintain, develop and promote the Original Eumundi Markets brand;
- (c) maintain, develop and nurture the Original Eumundi Markets as a hub to retain, sustain and develop original creative talent;
- (d) maintain, develop and improve the Original Eumundi Markets experience for all visitors;

- (e) maintain and protect, financially and otherwise, the historical significance and community ethos of the Original Eumundi Markets;
- (f) foster and maintain, financially and otherwise, an atmosphere of consideration, co-operation and mutually beneficial co-existence between the Original Eumundi Markets and the mainstream Eumundi business community;
- (g) support, financially or otherwise, organisations, activities and projects which provide a public benefit to the community of the township of Eumundi and its surrounding district including, without limitation, those of a cultural or historic nature.

4. POWERS

- 4.1 The Company has all the powers of an individual but does not have the power to issue shares.

5. APPLICATION OF INCOME AND PROPERTY

- 5.1 The income and property of the Company, from wherever it is derived, must be applied solely in support of the Objects.
- 5.2 Any allocation of funds or property to other institutions, bodies, entities, organisations, government departments or persons must be made in accordance with the established Objects of the Company and not be influenced by the expressed preference or interest of a particular donor to the Company.

6. NO DISTRIBUTION TO MEMBERS

- 6.1 Subject to rule 88, no portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise to the Members.
- 6.2 Rule 6.1 does not prevent:
 - (a) the payment in good faith of remuneration to any Officer, servant or Member of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
 - (b) the payment of interest at a rate not exceeding 12% per annum on money borrowed from any Member of the Company;
 - (c) the payment of reasonable and proper rent by the Company to a Member of the Company for premises leased or granted a right to use or occupy by the Member to the Company;
 - (d) the reimbursement of reasonable expenses incurred by any Member on behalf of the Company; or
 - (e) the disbursement of income or property under these Rules.

7. LIMITED LIABILITY

- 7.1 The liability of the Members is limited to the extent permitted by law.

8. GUARANTEE

- 8.1 Each Member of the Company undertakes to contribute an amount not exceeding \$100 to the property of the Company in the event of its being wound up while the Member is a Member or within 1 year after the Member ceases to be a Member, if required for payment:
- (a) of the debts and liabilities of the Company (contracted before the Member ceases to be a Member);
 - (b) of the costs, charges and expenses of winding up; and
 - (c) for the adjustment of the rights of the contributories among themselves.

MEMBERSHIP

9. CLASSES OF MEMBERS

- 9.1 Unless and until the Eumundi and District Historical Association Inc. determines otherwise, it will be the sole Member.

10. MEMBERSHIP - REPRESENTATIVES

- 10.1 A Member which is not a natural person will appoint a Nominated Representative to exercise all or any of the powers the Member may exercise:
- (a) at general meetings;
 - (b) at meetings of creditors or debenture holders; or
 - (c) relating to resolutions to be passed without meetings.
- 10.2 The appointment may be a standing one.
- 10.3 The appointment may set out restrictions on the Nominated Representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- 10.4 A Member which is not a natural person may appoint more than one (1) Nominated Representative but only one (1) Nominated Representative may exercise that Member's powers at any one time.
- 10.5 Unless otherwise specified in the appointment, the Nominated Representative may exercise, on the Member's behalf, all of the powers that the Member could exercise at a meeting or in voting on a resolution.

11. NOTIFICATION BY MEMBERS

- 11.1 The Member must promptly notify the Secretary of any change in its Nominated Representative under these Rules.

12. REGISTER OF MEMBERS

- 12.1 A Register must be kept in accordance with the Act.
- 12.2 The following must be entered in the Register in respect of each Member:
- (a) the full name of the Member;
 - (b) the residential address, facsimile number and email address, if any, of the Member;

- (c) any relevant category of Membership;
 - (d) the date of admission to and cessation of Membership;
 - (e) in the case of a Member which is not a natural person, the full name, address, facsimile number and email address, if any, of its Nominated Representative;
 - (f) the date on which any former Member ceased to be a Member and the reason for cessation of membership (if known); and
 - (g) such other information as the Directors require.
- 12.3 Each Member and any Nominated Representative must notify the Secretary in writing of any change in that person's name, address, facsimile number or email address within one month after the change.
- 12.4 The Register will be open for inspection at all reasonable times to any Member who applies to the Secretary for such inspection. Copies of the Register will be provided at the fee prescribed by the Board from time to time.

DIRECTORS

13. NUMBER OF DIRECTORS

- 13.1 The number of Directors must be no more than seven (7) and no fewer than three (3).

14. CATEGORIES OF DIRECTORS

- 14.1 Unless and until the Members determine otherwise by ordinary resolution, the membership of the Board will not be separated into different categories.

15. DIRECTORS – TERM OF APPOINTMENT

- 15.1 Directors may be appointed to hold office for a term not exceeding three (3) years and expiring on the date of the Company's annual general meeting in the final year of the Director's term of appointment.

16. RETIREMENT AND APPOINTMENT OF DIRECTORS

- 16.1 At the conclusion of every annual general meeting, one-third of the Directors (rounded up to the next integer) must retire from office. The Directors who have served longest since they were last elected must retire first. If there are equally serving Directors, those equally serving Directors may, among themselves, agree who is to retire by rotation. If those equally serving Directors are unable to decide, the Directors to retire by rotation will be chosen by the equally serving Directors by drawing lots.
- 16.2 A Director who is required to retire under Rule 16.1 (**retiring Director**) retains office until dissolution or adjournment of the meeting, at which time the retiring Director retires.
- 16.3 A retiring Director is eligible for re-election provided that a retiring non-executive Director is not eligible for re-election if that Director has served three successive three year terms.
- 16.4 Upon the retirement of a Director at the expiration of the Director's term of appointment, the Members may:

- (a) appoint a replacement Director; or
 - (b) re-appoint the same Director;
- for appointment or re-appointment (as the case may be).

17. CASUAL VACANCIES OF DIRECTORS

- 17.1 If a Director (**vacating Director**) vacates office before their term of appointment has expired, the Members may appoint a replacement Director to fill the vacancy.
- 17.2 Any replacement Director appointed under this rule 17 will hold office as Director for the balance of the unexpired term of appointment of the vacating Director
- 17.3 Replacement Directors are eligible for re-appointment to the Board.
- 17.4 Nothing in this rule 17 requires the filling of a casual vacancy where the balance of the unexpired term of appointment of the vacating Director is three (3) months or less.

18. INSUFFICIENT DIRECTORS

- 18.1 In the event of a vacancy in the office of a Director, the remaining Directors may act, but if the number of remaining Directors is not sufficient to constitute a quorum at a Board meeting, they may act only for the purpose of convening a general meeting of the Company.

POWERS OF DIRECTORS

19. VALIDATION OF ACTS OF DIRECTORS AND SECRETARIES

- 19.1 The acts of a Director or Secretary are valid despite any defect that may afterwards be discovered in that Officer's appointment or qualification.

20. GENERAL BUSINESS MANAGEMENT

- 20.1 The business of the Company is to be managed by or under the direction of the Board.

- 20.2 The Board may exercise all the powers of the Company except any powers that the Act or this Constitution requires the Company to exercise in general meeting.

20.3 Business Planning Requirements

The Board must:

- (a) develop and submit an annual business plan for endorsement by the Members.
- (b) report on the non-financial indicators of the Company's progress against the business plan by the end of each 3 month period.

20.4 Reporting Requirements

Without lessening its obligations under this Constitution or the Act, unless the Members otherwise resolve, the Board must deliver to the Members within 30 days of the end of each three (3) month period of each financial year:

- (a) an unaudited balance sheet to the end of that three (3) month period prepared in reasonable detail and using generally accepted accounting principles consistently applied; and
- (b) an unaudited profit and loss statement and cash flow statement (with projections for the balance of the then current financial year) for the last preceding three (3) month period and for the then current financial year to date.

20.5 **Limits on Board's Authority**

Without limiting other restrictions on the Board's authority contained in this Constitution or the Act, the Board may not determine the following matters without first referring them to the Members for resolution:

- (a) the undertaking of any expenditure, acquisition, sale, venture, borrowing, lending or other such activity, contract or agreement which exceeds \$100,000 per transaction or in the aggregation of related transactions;
- (b) any matter which a Director notifies the Board should be considered by the Members;
- (c) action causing the Company to default or potentially to default under any agreement to which the Company is a party;
- (d) the sale, disposal, division or restructure of the whole or a substantial part of the assets or undertaking of the Company;
- (e) the creation of any encumbrance (other than a repairer's lien) over the Company's undertaking or property or any part of the Company's undertaking or property.

20.6 A rule made or resolution passed by the Company in general meeting does not invalidate any prior act of the Board that would have been valid if that rule or resolution had not been made or passed.

21. APPOINTMENT OF ATTORNEY

21.1 The Board may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the Board), for the period and subject to the conditions they see fit.

21.2 A power of attorney may contain the provisions for the protection and convenience of persons dealing with the attorney that the Board sees fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

22. NEGOTIABLE INSTRUMENTS

22.1 The Executive Officer may either:

- (a) solely, with Board approval; or
- (b) jointly with a member of any finance subcommittee established by the Board; but in any event, subject to any levels of financial delegation agreed to by the Board;

countersign, draw, accept, endorse or otherwise create a negotiable instrument.

- 22.2 Despite rule 22.1, the Board may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

EXECUTIVE OFFICER

23. POWER TO APPOINT

- 23.1 The Board may appoint any person or persons, not being a Director, to a position of Executive Officer (or similar title) for the period and on the terms (including as to remuneration) the Board sees fit.

24. NOT A MEMBER OF THE BOARD

- 24.1 Executive Officers are not members of the Board but may attend Board meetings except where the Board otherwise decides.

25. NOT TO EXERCISE DIRECTORS' POWERS

- 25.1 Executive Officers are to act in an advisory capacity only and have the responsibility to implement the strategies and decisions of the Directors. The Board may not confer on an Executive Officer any of the powers that a Director must exercise, other than those of an advisory nature or as conferred in this Constitution.

26. WITHDRAWAL OF APPOINTMENT OR ADVISORY POWERS

- 26.1 The Board may revoke or vary:
- (a) an appointment; or
 - (b) any of the advisory powers conferred on an Executive Officer.

27. TEMPORARY APPOINTMENTS

- 27.1 If an Executive Officer becomes incapable of acting in that capacity the Board may appoint any other person not being a Director to act, whether temporarily or otherwise, as an Executive Officer.

COMMITTEES

28. COMMITTEES

- 28.1 The Board may direct the formation of a Committee of such Directors or others as it thinks fit.
- 28.2 Committees are to act in an advisory capacity only, answerable to the Board, and the Board may not confer on a Committee any of the powers, other than those of an advisory nature, that a Director must exercise.
- 28.3 The meetings and proceedings of any Committee consisting of two or more Directors are governed by the provisions in this Constitution including, without limitation, rule 78 regulating the meetings and proceedings of the Board.

REMOVAL AND RESIGNATION OF DIRECTORS

29. RESIGNATION OF DIRECTOR

29.1 A Director may resign as a Director by giving Notice of resignation to the Company at the Office.

30. VACATION OF OFFICE OF DIRECTOR

30.1 In addition to any other circumstances in which the office of a Director becomes vacant under the Act, the office of a Director becomes vacant if the Director:

- (a) becomes bankrupt or suspends payment or compounds with that Director's creditors;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) is absent from 3 consecutive meetings of Directors without special leave of absence from the Directors and the Directors then declare that Director's seat to be vacant;
- (d) ceases to be qualified as a Director under these Rules;
- (e) becomes prohibited from being a Director under or by reason of any order made under the Act; or
- (f) resigns from office in accordance with these Rules.

DIRECTORS' INTERESTS

31. PROHIBITION ON BEING PRESENT OR VOTING

31.1 Except where permitted by the Act, a Director who has a material personal interest in a matter that is being considered at a Board meeting:

- (a) must not be counted in a quorum;
- (b) must not vote on the matter; and
- (c) must not be present while the matter is being considered at the meeting.

31.2 If a Director who has a material personal interest in a matter that is being considered at a meeting of the Board is not prohibited by the Act from being present at the meeting and voting, the Director may be present, be counted in the quorum and may be heard but may not vote on the matter.

32. DIRECTOR TO DISCLOSE INTERESTS

32.1 A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company must, as soon as practicable after the relevant facts have come to the Director's knowledge, declare the nature of the interest at a meeting of the Board or by Notice to the Secretary.

32.2 A Director who holds any office or possesses any property by which, whether directly or indirectly, duties or interests might be created in conflict with that Director's duties or interests as Director must declare at a meeting of the Board or by Notice to the Secretary the fact and the nature, character and extent of the conflict.

32.3 For the purposes of rules 32.1 and 32.2, a Director's interest or any conflict must be disregarded if it arises from or relates solely to:

- (a) a guarantee to be given by the Director (or by persons including the Director or by a body corporate of which the Director is a member or officer) in respect of a loan to the Company; or
- (b) the position of the Director as director of a related body corporate.

33. EFFECT OF INTEREST IN CONTRACT

33.1 If a Director has an interest in a contract or proposed contract with the Company (other than as a Member), or a conflicting interest or duty in relation to any other matter being considered by the Directors, and the Director discloses the nature and extent of the interest or duty at a meeting of the Board or by Notice to the Secretary:

- (a) the contract may be entered into; and
- (b) if the disclosure is made before the contract is entered into:
 - (i) the Director may retain benefits under the contract even though the Director has an interest in the contract;
 - (ii) the Company cannot avoid the contract merely because of the existence of the interest; and
 - (iii) the Director is not disqualified from the office of Director.

33.2 For the purposes of rule 33.1, **contract** includes an arrangement, dealing or other transaction.

34. OTHER INTERESTS

34.1 Without limiting these Rules, a Director may to the extent permitted by the Act:

- (a) hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of Director; and
- (b) be interested in any operation, undertaking or business undertaken or assisted by the Company or in which the Company is or may be interested.

35. EXTENSION OF MEANING OF “COMPANY”

35.1 For the purposes of these Rules **Company** includes any Subsidiary and any other company in which the Company or any Subsidiary is or becomes a member or is otherwise interested.

35.2 If a Director is or becomes a director of a wholly owned Subsidiary, and the constitution of that Subsidiary expressly authorises the Director to act in the best interests of the Company, that Director is taken to be acting in the best interests of the Subsidiary when acting in good faith in the best interests of the Company.

36. OTHER DIRECTORSHIPS AND SHAREHOLDINGS

36.1 A Director may be or become a director, officer, employee or member of any company promoted by the Company or in which the Company may be interested as a vendor, purchaser, member or otherwise and is not accountable for any reasonable benefits received as a director, officer, employee or member of the other company.

REMUNERATION OF DIRECTORS

37. DIRECTORS' REMUNERATION AND EXPENSES

- 37.1 Subject to rule 37.4, the Company may pay:
- (a) a Director for services in that Director's capacity as a Director of the Company; and
 - (b) the Directors' reasonable travelling and other expenses that they properly incur:
 - (i) in attending Board meetings or any meetings of Committees;
 - (ii) in attending any general meetings of the Company; and
 - (iii) in connection with the Company's business.
- 37.2 Payments to the Chair may be determined by the Board in its discretion. Without limiting that discretion, a payment to the Chair for acting in that capacity may be greater than that payable to a Director for services in that Director's capacity as a Director.
- 37.3 Subject to rule 37.2, all payments made to Directors must be approved or ratified by the Company in general meeting.

38. FINANCIAL BENEFIT

- 38.1 To the extent, if any, required by the Act, a Director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the Director or to any other related party of the Director.

SECRETARY

39. TERMS OF OFFICE OF SECRETARY

- 39.1 To the extent permitted by the Act, a Secretary is to be appointed by, or on the recommendation of, the Board.
- 39.2 A Secretary need not be a Director.
- 39.3 A Secretary holds office on the terms and conditions (including as to remuneration) that the Members determine.

INDEMNITY AND INSURANCE

40. INDEMNITY

- 40.1 To the extent permitted by the Act, the Company indemnifies:
- (a) every person who is or has been an Officer; and
 - (b) where the Board considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Company;
- against any liability incurred by that person in his or her capacity as an Officer of the Company or as an officer of the related body corporate (as the case may be).
- 40.2 In accordance with section 199A of the Act, the Company must not indemnify a person against:

- (a) any of the following liabilities incurred as an Officer:
 - (i) a liability owed to the Company or a related body corporate of the Company;
 - (ii) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
 - (iii) a liability that is owed to someone other than the Company or a related body corporate of the Company and did not arise out of conduct in good faith; or
- (b) legal costs incurred in defending an action for a liability incurred as an Officer if the costs are incurred:
 - (i) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under rule 40.1;
 - (ii) in defending or resisting criminal proceedings in which the person is found guilty;
 - (iii) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; or
 - (iv) in connection with proceedings for relief to the person under the Act in which the Court denies the relief;

however rule 40.2(b)(iii) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for a court order.

- (c) For the purposes of rule 40.2(b) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

40.3 An Officer must:

- (a) give Notice to the Company promptly on becoming aware of any Claim against the Officer that may give rise to a right to be indemnified under rule 40.1;
- (b) take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
- (c) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company;
- (d) allow the Company or its insurers to assume the conduct, negotiation or defense of any Claim and, on request by the Company, render all reasonable assistance and cooperation to the Company or its insurers in the conduct of any Claim, including giving the Company or its insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
- (e) on request by the Company or its insurers, do everything necessary or desirable which the Company reasonably requests to enable the Company or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the Officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the Company or its insurers for that purpose; and

- (f) notify any Claim to an insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all reasonable steps to enforce all the Officer's rights against the insurer or other person.

40.4 In rule 40.3 **Claim** means:

- (a) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an Officer in their role as Officer in that capacity;
- (b) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an Officer as that Officer; or
- (c) any written or oral demand or threat that might result in the Officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in rules 40.4(a) or 40.4(b) may be initiated.

41. INSURANCE

41.1 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an Officer of the Company or of a related body corporate of the Company against any liability incurred by the person as an Officer of the Company or of a related body corporate except a liability (other than one for legal costs) arising out of:

- (a) conduct involving a willful breach of duty in relation to the Company; or
- (b) a contravention of sections 181, 182 or 183 of the Act.

42. DIRECTOR VOTING ON CONTRACT OF INSURANCE

42.1 Despite anything in this Constitution, a Director is not precluded from voting in respect of any contract or proposed contract of insurance, merely because the contract insures or would insure the Director against a liability incurred by the Director as an Officer of the Company or of a related body corporate.

43. LIABILITY

43.1 An Officer is not liable for the act, neglect or default of any other Officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of the Officer's office unless it arises through that Officer's own negligence, default, breach of duty or breach of trust.

INSPECTION OF RECORDS

44. RIGHTS OF INSPECTION

44.1 The Board must permit a Member or a Member's Nominated Representative to:

- (a) visit and inspect the Office and any property of the Company;
- (b) inspect and take copies of any documents relating to the Company's affairs including its books of account; and
- (c) discuss the Company's affairs, finances and accounts with the Company's Officers, employees and auditors;

at any time and as often as that Member may require, upon first giving reasonable Notice to the Office.

45. CONFIDENTIAL INFORMATION

- 45.1 For as long as Eumundi and District Historical Association Inc. is the sole Member, it is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company at any time and as often as it may require, and to use that information for its own purposes.
- 45.2 Subject to rule 45.1 and except as provided by the Act, no Member (not being a Director) is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company.

BOARD MEETINGS

46. CIRCULATING RESOLUTIONS

- 46.1 The Directors may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution (except a Director absent from Australia who has not left a facsimile number or electronic address at which that Director may be given Notice) sign a document containing a statement that the Director is in favour of the resolution set out in the document.
- 46.2 Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 46.3 The resolution is passed when the last Director signs.
- 46.4 A facsimile or email addressed to or received by the Company and purporting to be signed or sent by a Director for the purpose of this rule must be treated as a document in writing signed by that Director.

47. MEETINGS OF DIRECTORS

- 47.1 The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they see fit.

48. CALLING BOARD MEETINGS

- 48.1 A Director may at any time, and a Secretary must on the requisition of a Director, call a meeting of the Board.

49. NOTICE OF MEETING

- 49.1 Two (2) clear days Notice of every Board meeting must be given to each Director, unless all Directors who are entitled to receive Notice agree to a shorter period of Notice or to dispense with Notice.
- 49.2 Despite rule 49.1, it is not necessary to give Notice of a Board meeting to any Director who:
- (a) has been given special leave of absence; or

- (b) is absent from Australia and has not left a facsimile number or an electronic address at which the Director may be given Notice.

49.3 Any Notice of a Board meeting may be given by post, facsimile, email, delivered personally or any other means of written communication.

50. TECHNOLOGY BOARD MEETING

50.1 A Board meeting may be held using telephone or, if consented to by all Directors, other technology (**technology meeting**). The consent may be a standing consent. A Director may only withdraw the consent within a reasonable period before the meeting.

50.2 If a Board meeting is held using any technology and all the Directors take part in the meeting, they must be treated as having consented to the meeting being held as a technology meeting using that technology.

50.3 The following provisions apply to a technology meeting:

- (a) each of the Directors taking part in the meeting must be able to hear and be heard by each of the other Directors taking part in the meeting; and
- (b) at the commencement of the meeting each Director must announce that Director's presence to all the other Directors taking part in the meeting.

50.4 If the Secretary is not present at a technology meeting one of the Directors present must take minutes of the meeting.

50.5 A Director may not leave a technology meeting by disconnecting that Director's link to the meeting unless that Director has previously notified the chair of the meeting.

50.6 A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that Director has previously obtained the express consent of the chair to leave the meeting.

51. CHAIRING BOARD MEETINGS

51.1 The Chair will be a Director appointed as Chair by the Directors.

51.2 The appointment as Chair in accordance with rule 51.1 may be a standing appointment. If at any Board meeting the Chair is not present within 10 minutes after the time appointed for the meeting, the Directors present must elect one of the other Directors to chair the meeting.

52. QUORUM

52.1 A quorum for a Board meeting is three (3) Directors entitled to vote and who are present at the meeting.

52.2 A quorum must be present at all times during the meeting.

53. PASSING OF DIRECTORS' RESOLUTIONS

53.1 A resolution of the Directors must be passed by a majority of the votes cast by Directors participating in the meeting and entitled to vote on the resolution.

53.2 The Chair has a casting vote if necessary in addition to any deliberative vote the Chair has as a Director. The Chair has discretion both as to whether or not to use the casting vote and as to the way in which it is used.

MEETINGS OF MEMBERS

54. CIRCULATING RESOLUTIONS

- 54.1 This rule applies to resolutions that the Act, or this Constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an auditor.
- 54.2 The Company may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 54.3 Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- 54.4 The resolution is passed when the last Member signs.
- 54.5 If the Company receives by facsimile transmission or email a copy of a document referred to in this rule, it is entitled to assume that the copy is a true copy.

55. CALLING OF GENERAL MEETING

- 55.1 A majority of Directors may call a general meeting whenever they see fit.
- 55.2 The Board must call a general meeting when requested to do so by Notice from the Member.
- 55.3 Except as permitted by law, a general meeting (to be called the annual general meeting) must be held at least once in every calendar year within 5 months of the end of the Company's financial year.

56. AMOUNT OF NOTICE OF MEETING

- 56.1 Subject to the provisions of the Act as to short notice, at least 21 days' notice of a general meeting must be given in writing to the persons who are entitled to receive Notices from the Company.

57. PERSONS ENTITLED TO NOTICE OF GENERAL MEETING

- 57.1 Notice of a meeting of the Members must be given individually to:
- (a) each Member entitled to vote at the meeting;
 - (b) each Director; and
 - (c) the Company's auditor.
- 57.2 No other person is entitled to receive any form of Notice of general meetings.

58. HOW NOTICE IS GIVEN

- 58.1 The Company may give Notice of meeting to the Member:
- (a) personally;

- (b) by sending it by post to the address for the Member in the Register or to the alternative address (if any) nominated by the Member; or
- (c) by sending it to the facsimile number or email address (if any) nominated by the Member.

59. WHEN NOTICE IS GIVEN

59.1 A Notice of meeting sent by post is taken to have been given three (3) days after it is posted.

59.2 Except as provided by rule 59.3, a Notice of meeting sent by facsimile, email or other electronic means, is taken to have been given, if sent before 5 p.m. on a Business day at the place of receipt, on the day it is sent, and otherwise on the next Business day at the place of receipt.

59.3 Service by facsimile or email is not effective if:

- (a) in the case of service by facsimile, the Company's facsimile machine issues a transmission report that the transmission was unsuccessful;
- (b) in the case of service by email, the Company's computer reports that delivery has failed; or
- (c) in either case the addressee notifies the Company that the Notice was not fully received in a legible form within three (3) hours after the transmission ends or by 12 noon on the Business day on which it would otherwise be treated as given, whichever is later.

59.4 A certificate signed by any manager, Secretary or other officer of the Company that the Notice was given in accordance with this rule is conclusive evidence that the Notice was given in accordance with this rule.

60. PERIOD OF NOTICE

60.1 Subject to the Act and this Constitution, where a specified number of days' Notice or Notice extending over any period is required to be given, the day of service is excluded and the day upon which the Notice expires is included.

61. CONTENTS OF NOTICE

61.1 Notice of a general meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two (2) or more places, the technology that will be used);
- (b) state the general nature of the meeting's business;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- (d) contain a statement setting out the following information:
 - (i) that the Member has a right to appoint a proxy; and
 - (ii) that the proxy need not be a Member.

62. NOTICE OF ADJOURNED MEETING

- 62.1 When a meeting is adjourned, new Notice of the resumed meeting must be given if the meeting is adjourned for one (1) month or more.

63. ACCIDENTAL OMISSION TO GIVE NOTICE

- 63.1 The accidental omission to give Notice of any general meeting to or the non-receipt of the Notice by any person entitled to receive Notice of a general meeting under this Constitution does not invalidate the proceedings at or any resolution passed at the meeting.

64. POSTPONEMENT OF GENERAL MEETING

- 64.1 The Directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by Members as provided by the Act) for not more than 42 days after the date for which it was originally called.
- 64.2 Whenever any meeting is postponed the same period of Notice of the meeting must be given to persons entitled to receive Notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

65. TECHNOLOGY

- 65.1 The Company may hold a general meeting at two (2) or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

66. CHAIR AT GENERAL MEETINGS

- 66.1 The Chair will also chair general meetings. The appointment may be a standing appointment. In the absence of the Chair appointed pursuant to rule 51, the Directors must appoint one of their number to chair the meeting.
- 66.2 The Chair must adjourn a meeting of the Members if the Members present with a majority of votes at the meeting agree or direct that the Chair must do so.

67. BUSINESS AT ADJOURNED MEETINGS

- 67.1 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

PROXIES AND BODY CORPORATE REPRESENTATIVES

68. WHO CAN APPOINT A PROXY

- 68.1 The Member who is entitled to attend and cast a vote at a general meeting may appoint a person as the Member's proxy to attend and vote for the Member at the meeting. The proxy need not be a Member.

69. RIGHTS OF PROXIES

- 69.1 A proxy appointed to attend and vote for a Member has the same rights as the Member:
- (a) to speak at the meeting;
 - (b) to vote (but only to the extent allowed by the appointment); and
 - (c) to join in a demand for a poll.
- 69.2 If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.
- 69.3 A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.
- 69.4 A proxy may be revoked at any time by Notice to the Company.

70. APPOINTING A PROXY

- 70.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the following information:
- (a) the Member's name and address;
 - (b) the Company's name;
 - (c) the proxy's name or the name of the office held by the proxy; and
 - (d) the meetings at which the appointment may be used.
- An appointment may be a standing one.
- 70.2 An undated appointment is taken to have been dated on the day it is given to the Company.
- 70.3 An appointment may specify the way the proxy is to vote on a particular resolution.
- 70.4 An appointment does not have to be witnessed.
- 70.5 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

71. FORM OF PROXY SENT OUT BY COMPANY

- 71.1 A form of proxy sent out by the Company may be in a form determined by the Directors but must:
- (a) enable the Member to specify the manner in which the proxy must vote in respect of a particular transaction; and
 - (b) leave a blank for the Member to fill in the name of the person primarily appointed as proxy.
- 71.2 The form may provide that if the Member leaves it blank as to the person primarily appointed as proxy or if the person or persons named as proxy fails or fail to attend, the Chair of the meeting is appointed proxy.
- 71.3 Despite rule 71.1 an instrument appointing a proxy may be in the following form or in a form that is as similar to the following form as the circumstances allow:

Original Eumundi Markets Limited

I/We, _____

of _____,
being a Member/Members of the abovenamed company, appoint:
_____ of _____ or,
in his or her absence:
_____ of _____ as
my/our proxy to vote for me/us on my/our behalf at the *annual general/*general
meeting of the company to be held on _____ and
at any adjournment of that meeting.

† This form is to be used *in favour of/*against the resolution

Signed: _____ on _____

*Strike out whichever is not desired.

† To be inserted if desired.

72. RECEIPT OF PROXY DOCUMENTS

72.1 For an appointment of a proxy for a meeting of the Members to be effective, the following documents must be received by the Company at least 24 hours before the meeting:

- (a) the proxy's appointment; and
- (b) if the appointment is signed by the appointor's attorney – the authority under which the appointment was signed or a certified copy of the authority.

72.2 If a meeting of the Members has been adjourned, an appointment and any authority received by the Company at least 24 hours before the resumption of the meeting are effective for the resumed part of the meeting.

72.3 The Company receives an appointment or authority when it is received at any of the following:

- (a) the Company's registered office;
- (b) a facsimile number at the Company's registered office; or
- (c) a place, facsimile number or email address specified for the purpose in the Notice of meeting.

72.4 An appointment of a proxy is ineffective if:

- (a) the Company receives either or both the appointment or authority at a fax number or electronic address; and
- (b) a requirement (if any) in the Notice of meeting that:
 - (i) the transmission be verified in a way specified in the Notice; or
 - (ii) the proxy produce the appointment and authority (if any) at the meeting;

is not complied with.

73. VALIDITY OF PROXY VOTE

73.1 A vote cast by a proxy is valid although, before the proxy votes:

- (a) the appointing Member dies;
- (b) the Member is mentally incapacitated;

- (c) the Member revokes the proxy's appointment; or
- (d) the Member revokes the authority under which the proxy was appointed by a 3rd party;

unless the Company receives Notice of that event before the start or resumption of the meeting at which the proxy votes.

74. ATTORNEY OF MEMBER

- 74.1 An attorney for a Member may do whatever the Member could do personally as a member, but if the attorney is to vote at a meeting of Members or a class of Members the instrument conferring the power of attorney or a certified copy of the authority must be produced to the Company at least 24 hours before the meeting, in the same way as the appointment of a proxy.

VOTING AT MEETINGS OF MEMBERS

75. HOW VOTE MAY BE EXERCISED

- 75.1 At any general meeting of Member, each Member present and entitled to vote has one vote.
- 75.2 The vote may be exercised in person or by proxy, Nominated Representative or attorney.
- 75.3 The Chair is the sole judge of the validity of every vote tendered at the meeting and the determination of the Chair is final and conclusive.

ANNUAL GENERAL MEETING

76. BUSINESS OF AN ANNUAL GENERAL MEETING

- 76.1 The business of an annual general meeting must include consideration of the annual financial report, Directors' report and auditor's report, even if not referred to in the Notice of meeting.
- 76.2 All other business transacted at an annual general meeting and all other business transacted at any other general meeting is special business.
- 76.3 The business of the annual general meeting also includes any other business which under this Constitution or the Act ought to be transacted at an annual general meeting.
- 76.4 The Chair of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.
- 76.5 If the Company's auditor or the auditor's representative is at the meeting, the Chair of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or the auditor's representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

77. RESOLUTIONS PROPOSED BY MEMBERS

- 77.1 A Member may not at any meeting move any resolution relating to special business unless:

- (a) the Member has given not less than thirty (30) Business days' Notice of the Member's intention to move an ordinary resolution or two (2) months' Notice of the Member's intention to move a special resolution at the meeting by leaving the Notice and a signed copy of the resolution at the registered office of the Company; or
- (b) the resolution has previously been approved by the Board.

77.2 Upon receiving a Notice referred to in rule 77.1(a) the Secretary must:

- (a) if the Notice convening the meeting has already been sent, immediately notify the Members of the proposed resolution; or
- (b) otherwise include Notice of the proposed resolution in the Notice convening the meeting.

MINUTES

78. MINUTES TO BE KEPT

78.1 The Directors must keep minute books in which they record within one (1) month:

- (a) proceedings and resolutions of meetings of the Members;
- (b) proceedings and resolutions of Board meetings (including meetings of a Committee of Directors);
- (c) resolutions passed by Members without a meeting; and
- (d) resolutions passed by Directors without a meeting.

78.2 The Board must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one (1) of the following:

- (a) the chair of the meeting; or
- (b) the chair of the next meeting.

78.3 The Board must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

78.4 Without limiting these Rules, the Directors must record in the minute books:

- (a) all appointments of Officers and executive employees;
- (b) the names of the Directors present at all meetings of the Board and the Company;
- (c) in the case of a technology meeting, the nature of the technology; and
- (d) all other matters required by the Act to be recorded in the minute books, including each Notice and standing Notice given by a Director in relation to a material personal interest.

ACCOUNTS, AUDIT AND RECORDS

79. ACCOUNTS

79.1 The Board must cause proper accounting and other records to be kept in accordance with the Act.

- 79.2 The Board must distribute copies of every profit and loss account, balance sheet and statement of cash flows (including every document required by law to be attached to them) as required by the Act.
- 79.3 Without limiting these Rules, the Board must:
- (a) keep proper books of account (which may include computer records) of the Company at the Office;
 - (b) ensure that entries are made of all such matters, transactions and things which are usually entered in books of accounts kept by entities engaged in concerns of a similar nature; and
 - (c) in accordance with the Act and any state or territory legislation applicable to registration of charities or charitable fundraising, arrange for the Company's accounts to be audited in accordance with the Act and the applicable state or territory legislation.

80. AUDIT

- 80.1 To the extent that the Act requires it, a registered company auditor must be appointed.
- 80.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

EXECUTION OF DOCUMENTS

81. COMMON SEAL

- 81.1 The Company may (but need not) have a common seal.

82. USE OF COMMON SEAL

- 82.1 The Board must provide for the safe custody of the common seal.
- 82.2 The common seal may not be affixed to any document except by the authority of a resolution of the Board.
- 82.3 The Company executes a document with its common seal if the affixing of the seal is witnessed by:
- (a) two (2) Directors of the Company; or
 - (b) one (1) Director and the Secretary.

83. EXECUTION OF DOCUMENTS WITHOUT COMMON SEAL

- 83.1 The Company may execute a document without using a common seal if the document is signed by:
- (a) two (2) Directors of the Company; or
 - (b) one (1) Director and the Secretary.

84. EXECUTION OF DOCUMENT AS A DEED

- 84.1 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with rules 82 or 83.

85. EXECUTION – GENERAL

- 85.1 The same person may not sign in the dual capacities of Director and Secretary.
- 85.2 A Director may sign any document as Director, with or without the common seal, even though the document relates to a contract, arrangement, dealing or other transaction in which the Director is interested and the Director's signature complies with the requirements of this Constitution as to execution despite the Director's interest.
- 85.3 Rules 82 and 83 do not limit the ways in which the Directors may authorise documents (including deeds) to be executed on behalf of the Company.

INADVERTENT OMISSIONS

86. FORMALITIES OMITTED

- 86.1 If some formality required by this Constitution is inadvertently omitted or is not carried out, the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the Directors that the omission has directly prejudiced any Member financially. The decision of the Directors is final and binding on all Members.

ALTERATIONS

87. ALTERATIONS

- 87.1 If the Company is approved as a public benevolent institution by the Australian Taxation Office, the Australian Taxation Office must be notified in writing of any alterations to this Constitution.

WINDING UP

88. WINDING UP

- 88.1 If, on the winding up or dissolution of the Company, any property (the **surplus**) remains after the satisfaction of all of the Company's debts and liabilities the surplus must not be paid or distributed among the Members, but must be paid, given or transferred to an institution, body, entity or organisation (**Transferee Entity**) having objects similar to the Objects and whose constitution prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under rules 5 and 6.
- 88.2 The Transferee Entity must be chosen by the Directors (as the Directors were constituted at the commencement of the winding up). If the Directors do not choose a Transferee Entity within a reasonable time, any Member as at the commencement of the winding up, or the liquidator, may apply to the Court for appointment of the Transferee Entity.
- 88.3 If the Company holds an authority to fundraise under any relevant legislation in the jurisdiction in which the Company operates and the provisions of rules 5, 6 or 88.1 are relevant to that authority, no addition, alteration or amendment may be made to rules 5, 6 or 88.1 without the prior written approval of the person or office responsible for the administration of that relevant legislation in that jurisdiction.

Dated this

day of

2010

EXECUTED by **EUMUNDI and DISTRICT**)
HISTORICAL ASSOCIATION)
INCORPORATED as the sole Member by its)
proper officers in accordance with its)
constitution:)

Name (printed):

Name (printed):

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