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**Constitution of  
Soil Carbon Industry Group Limited  
ACN [TBC]**

Martin Irwin  
Norton Rose Fulbright Australia  
Level 38, Oldfleet, 477 Collins Street  
Melbourne, Australia 3000  
Tel: +61 3 8686 6444  
nortonrosefulbright.com  
Our ref: 4031558

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*Corporations Act 2001*

Company limited by guarantee

## **Constitution**

of

## **Soil Carbon Industry Group Limited ACN [TBC]**

### **Introduction**

#### **1 Replaceable rules excluded**

1.1 The replaceable rules contained in the Act do not apply to the Company.

#### **2 Definitions and interpretation**

##### **2.1 Definitions**

In this constitution:

- (1) **Act** means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
- (2) **auditor** means any person appointed for the time being to perform the duties of an auditor of the Company;
- (3) **business day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office;
- (4) **Company** means Soil Carbon Industry Group Limited ACN [TBC];
- (5) **corporate member** means a member which is a body corporate;
- (6) **directors** means the directors for the time being of the Company or the directors assembled as a board;
- (7) **Foundation Members** means the persons who consent to be members on the registration of the Company and the persons who were members of the Incorporated Association at the date of registration of the Company and who agree in writing within 2 months after registration to become members of the Company;
- (8) **Membership Policy** means the membership policy of the Company approved by the Board and amended from time to time;
- (9) **Register** means the register of members to be kept pursuant to the Act;
- (10) **representative** means a person authorised to act as a representative of a body corporate pursuant to section 250D of the Act; and
- (11) **Secretary** means any person appointed to perform the duties of Secretary of the Company and any person appointed to act temporarily as Secretary.

## 2.2 Interpretation

- (1) Reference to:
  - (a) one gender includes the others;
  - (b) the singular includes the plural and the plural includes the singular; and
  - (c) a person includes a body corporate.
- (2) Except so far as the contrary intention appears in this constitution:
  - (a) an expression has in this constitution the same meaning as in the Act; and
  - (b) 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.
- (3) “Including” and similar expressions are not words of limitation.
- (4) 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 purpose of the Company is to lead and support soil carbon practitioners who are actively operationalising soil carbon projects in Australia. The Company advocates for knowledge sharing in the soil carbon industry and was formed to provide a unified voice on soil carbon project opportunities.
- 3.2 The objects of the Company are to establish a new approach to building agricultural productivity through improved soil carbon management, provide its members with the tools and resources to implement measurement based soil carbon projects and to mainstream soil carbon measurement as a platform for soil carbon credits and soil performance.
- 3.3 The Company intends to achieve its objects by:
  - (1) assist the roll out of soil carbon projects at a scale relevant to national and international greenhouse gas emissions and that mainstreams soil carbon into agricultural practice;
  - (2) facilitating the efficient and effective transfer of information to ensure knowledge sharing between industry participants;
  - (3) developing common messaging for members to adopt when discussing soil carbon projects;
  - (4) advocating for the removal of barriers to project participation through government process and policy development; and
  - (5) developing a soil carbon knowledge bank and central point of contact for soil carbon subject matter experts to educate the wider community and industry participants.
- 3.4 The Company can only exercise the powers in section 124(1) of the Corporations Act to:
  - (1) carry out the objects of the Company; and

- (2) do all things incidental or convenient in relation to the exercise of power under clause 3.3 (1).

## **4 Powers**

*[compare section 124]*

- 4.1 The Company has all the powers of an individual and a body corporate but does not have the power to issue shares.
- 4.2 Despite rule 4.1 the powers of the Company are ancillary to and exercisable only to pursue the objects of the Company set out in rule 3.

## **5 Application of income and property**

*[compare sections 125 and 150]*

- 5.1 The income and property of the Company, from wherever it is derived, must be applied solely towards the promotion of the objects of the Company set out in rule 3.

## **6 No distribution to members**

*[compare sections 150 and 254SA]*

- 6.1 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 of the Company.

## **7 Limited liability**

- 7.1 The liability of the members is limited.

## **8 Guarantee**

- 8.1 Every member of the Company undertakes to contribute an amount not exceeding \$10.00 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:
  - (1) of the debts and liabilities of the Company (contracted before the member ceases to be a member);
  - (2) of the costs, charges and expenses of winding up; and
  - (3) for the adjustment of the rights of the contributories among themselves.

## **Membership**

### **9 Number of members**

- 9.1 The number of members for which the Company proposes to be registered is unlimited.

### **10 Membership**

- 10.1 The members of the Company are:
  - (1) the Foundation Members; and



- (2) any other persons the directors admit to membership in accordance with this constitution.

## **11 Categories of membership**

11.1 The categories of membership are:

- (1) Category A members.

11.2 Additional categories of members, if recommended by the directors, may be created from time to time by the members in a general meeting.

## **12 Application for Category A membership**

12.1 Any individual who:

- (1) is not less than 18 years of age at the date of application;
  - (2) is involved in the soil carbon industry;
  - (3) supports the objects of the Company set out in rule 3; and
  - (4) has the capacity to pay the annual subscription fee in accordance with rule 19.2(1),
- may apply for Category A membership of the Company.

12.2 Any body corporate which:

- (1) is involved in the soil carbon industry;
  - (2) supports the objectives of the Company set out in rule 3; and
  - (3) has the capacity to pay the annual subscription fee in accordance with rule 19.2(1),
- may apply for Category A membership of the Company.

## **13 Form of application**

13.1 An application for membership must be:

- (1) in writing in a form approved by the directors;
- (2) signed by the applicant;
- (3) signed by the proposer and seconder, each of whom must be members;
- (4) accompanied by any other documents or evidence as to qualification for the type of membership applied for which the directors require; and
- (5) lodged with the Secretary of the Company.

13.2 If the applicant is a body corporate it must nominate 1 person (**nominated representative**) to represent it in the Company. The application form must:

- (1) state the name and address of the nominated representative; and

- (2) be signed by the nominated representative.

## **14 Admission to membership**

- 14.1 The directors must consider an application for membership as soon as practicable after its receipt and determine, in their discretion, the admission or rejection of the applicant.
- 14.2 The directors need not give any reason for the rejection of an application.
- 14.3 If an application for membership is rejected, the Secretary must notify the applicant in writing.
- 14.4 If an applicant is accepted for membership, the Secretary must:
  - (1) notify the applicant in writing; and
  - (2) request payment of:
    - (a) the application fee, if any, determined in accordance with rule 18; and
    - (b) the annual subscription, determined in accordance with rule 19.
- 14.5 The applicant becomes a member upon payment of the application fee, if any, and the annual subscription. The name and details of the member must be entered in the Register.
- 14.6 If payment of the application fee, if any, and the annual subscription is not received within 28 days after the date of the giving of the notice referred to in rule 14.4, the directors may revoke their acceptance of the applicant for membership.

## **15 Notification by members**

- 15.1 Each member must promptly notify the Secretary in writing of any change in their qualification to be a member of the Company.
- 15.2 Each corporate member must promptly notify the Secretary in writing of any change in the person nominated as its nominated representative under rule 13.2.
- 15.3 A person nominated as a nominated representative must consent to the nomination in writing.

## **16 Foundation members**

- 16.1 Foundation Members who have signed this constitution before the Company is registered become Category A members of the Company on registration of the Company.
- 16.2 Foundation Members are not required:
  - (1) to have any qualification for membership;
  - (2) to pay any application fee; or
  - (3) to pay an annual subscription until the 15<sup>th</sup> day of the next month occurring after registration of the Company.
- 16.3 Foundation Members must otherwise comply with this constitution.

## **17 Register of members**

*[compare sections 168 and 169]*

- 17.1 The Company must keep a Register in accordance with the Act.
- 17.2 The following must be entered in the Register in respect of each member:
- (1) the full name of the member;
  - (2) the residential address, facsimile number and email address, if any, of the member;
  - (3) the category of membership;
  - (4) the date of admission to and cessation of membership;
  - (5) the date of last payment of the member's annual subscription;
  - (6) in the case of a corporate member, the full name, address, facsimile number and email address, if any, of its nominated representative; and
  - (7) such other information as the directors require.
- 17.3 Each member and nominated representative must notify the Secretary in writing of any change in that person's name, address, facsimile number or email address within 1 month after the change.

## **Application fee and annual subscription**

### **18 Application fee**

- 18.1 The application fee payable by each applicant for membership is the sum the directors determine for each category of membership.

### **19 Annual subscription**

- 19.1 The annual subscription payable by a member of the Company is the sum the directors determine from time to time and the Company approves in a general meeting.
- 19.2 Until the Company otherwise resolves, the minimum annual subscription:
- (1) for a Category A member is \$1,000.
- 19.3 All annual subscriptions are due and payable in advance on 1 July in each year, other than the initial subscription by a member which is payable in accordance with rule 14.4(2)(b).
- 19.4 If a person is admitted to membership of the Company during the months of January to June inclusive the directors may reduce the annual subscription payable by the applicant in any manner they see fit.

## 20 Unpaid annual subscriptions

20.1 If:

- (1) the annual subscription of a member remains unpaid for 2 months after it becomes payable; and
- (2) a notice of default is given to the member following a resolution of the directors to do this;

the member ceases to be entitled to any of the rights or privileges of membership but these may be reinstated on payment of all arrears if the directors see fit.

## Cessation of membership

### 21 Resignation

21.1 A member may resign from membership of the Company by giving one month's written notice to the Secretary.

21.2 The resignation of a member takes effect upon the expiration of the period of notice under rule 21.1.

21.3 If a member resigns from membership of the Company in accordance with rule 21.1, and a director of the Company connected with that member has been appointed a director of the Company in accordance with rule **Error! Reference source not found.**, that director must resign as a director of the Company in accordance with rule 92.1, unless the members of the Company resolve, by the passing of a resolution in accordance with rule 53.4, for such director to remain in their position until the end of their current term.

### 22 Failure to pay

22.1 If a member has not paid all arrears of annual subscriptions under rule 19 or, if paid, the member's rights and privileges are not reinstated:

- (1) the member remains liable for all the obligations and liabilities of membership until the expiration of 6 months after the date of notification under rule 20.1(2); and
- (2) the member ceases to be a member and member's name must be removed from the Register at the expiration of the 6 month period.

### 23 Cessation of membership

23.1 A member who is an individual ceases to be a member:

- (1) on the death of the member; or
- (2) if the member is expelled under rule 24.

23.2 A corporate member ceases to be a member:

- (1) if it is wound up or is otherwise dissolved or deregistered; or
- (2) if it is expelled under rule 24.

## **24 Disciplining members**

24.1 If any member:

- (1) wilfully refuses or neglects to comply with the provisions of this constitution; or
- (2) is guilty of any conduct which, in the opinion of the directors, is unbecoming of a member or prejudicial to the interest of the Company;

the directors may resolve to censure, fine, suspend or expel the member from the Company and, in the case of expulsion, to remove the member's name from the Register.

24.2 In exercising their powers under rule 24.1 the directors must not fine a member an amount exceeding the annual subscription of a Category A member, being an individual (whether or not the member is an individual or a body corporate, or is liable to pay an annual subscription).

24.3 At least 1 week before the meeting of the directors at which a resolution of the nature referred to in rule 24.1 is passed the directors must give to the member notice of:

- (1) the meeting;
- (2) what is alleged against the member; and
- (3) the intended resolution.

24.4 At the meeting and before the passing of the resolution, the member must have an opportunity of giving orally or in writing any explanation or defence the member sees fit.

24.5 A member may, by notice in writing lodged with the Secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the directors, elect to have the question dealt with by the Company in general meeting and in that event, a general meeting of the Company must be called for that purpose.

24.6 If at the meeting a resolution to the same effect as the resolution which was to be considered by the directors is passed by a majority of 2/3 of those present and voting (and the vote must be taken by secret ballot), the member concerned must be punished in the manner resolved and in the case of a resolution for expulsion the member is expelled and the member's name must be removed from the Register.

24.7 If any member ceases to be a member under rule 24.6, the directors may reinstate the member and restore the name of that member to the Register upon and subject to any terms and conditions they see fit.

## **25 Effect of cessation of membership**

25.1 If any member ceases to be a member under this constitution, the member remains liable to pay to the Company for any money which, at the time of the member ceasing to be a member, the member owes to the Company on any account and for any amount which the member is liable under rule 8 of this constitution.

## Meetings of members

### 26 Circulating resolutions

*[compare section 249A]*

- 26.1 This rule 26 applies to resolutions which 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.
- 26.2 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.
- 26.3 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.
- 26.4 The resolution is passed when the last member signs.
- 26.5 If the Company receives by facsimile or email a copy of a document referred to in this rule 26 it is entitled to assume that the copy is a true copy.

### 27 Calling of general meeting

*[compare sections 250N, replaceable rule 249C and section 249D]*

- 27.1 A majority of directors may call a general meeting whenever they see fit.
- 27.2 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.
- 27.3 Except as provided in the Act, no member or members may call a general meeting.

### 28 Amount of notice of meeting

*[compare section 249H]*

- 28.1 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 those persons who are entitled to receive notices from the Company.

### 29 Persons entitled to notice of general meeting

*[compare sections 249J(1) and 249K, and replaceable rule 249J(2)]*

- 29.1 Written notice of a meeting of the Company's members must be given individually to:
- (1) each member entitled to vote at the meeting;
  - (2) each director; and
  - (3) the Company's auditor.
- 29.2 The Company is only required to give notice of general meetings to those persons entitled to receive notice under this constitution and the Act.

### 30 How notice is given

*[compare sections 249J(3) and 249J(3A)]*

30.1 The Company may give the notice of meeting to a member:

- (1) personally;
- (2) by sending it by post to the address for the member in the Register or the alternative address (if any) nominated by the member;
- (3) by sending it to the facsimile number or email address (if any) nominated by the member;
- (4) by sending it by other electronic means (if any) nominated by the member; or
- (5) by notifying the member in accordance with rule 30.2.

30.2 If the member nominates:

- (1) an electronic means (**nominated notification means**) by which the member may be notified that notices of meeting are available; and
- (2) an electronic means (**nominated access means**) the member may use to access notices of meeting;

the Company may give the member notice of the meeting by notifying the member (using the nominated notification means):

- (3) that the notice of meeting is available; and
- (4) how the member may use the nominated access means to access the notice of meeting.

### 31 When notice is given

*[compare replaceable rules 249J(4) and 249J(5)]*

31.1 A notice of meeting sent by post is taken to be given 3 days after it is posted.

31.2 Except as provided by rule 31.3, a notice of meeting given to a member under rule 30.1(3) is taken to be given on the business day after it is sent.

31.3 A notice of meeting given to a member under rule 30.1(3) is not effective if:

- (1) in the case of service by facsimile, the Company's facsimile machine issues a transmission report that the transmission was unsuccessful;
- (2) in the case of service by email, the Company's computer reports that delivery has failed; or
- (3) in either case the addressee notifies the Company immediately that the notice was not fully received in a legible form.

31.4 A notice of meeting given to a member under rule 30.1(5) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.

31.5 A certificate signed by a manager, Secretary or other officer of the Company that the notice was posted or given in accordance with this rule 31 is conclusive evidence of the matter.

## **32 Period of notice**

- 32.1 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.

## **33 Contents of notice**

*[compare replaceable rule 249L]*

- 33.1 A notice of a general meeting must:
- (1) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used);
  - (2) state the general nature of the meeting's business;
  - (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
  - (4) be worded and presented in a clear, concise and effective manner; and
  - (5) contain a statement setting out the following information:
    - (a) that the member has a right to appoint a proxy; and
    - (b) that the proxy need not be a member of the Company.

## **34 Notice of adjourned meeting**

*[replaceable rule 249M]*

- 34.1 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

## **35 Accidental omission to give notice**

*[compare section 1322(3)]*

- 35.1 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.

## **36 Postponement of general meeting**

- 36.1 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.
- 36.2 Whenever any meeting is postponed (as distinct from being adjourned under rule 38.3 or rule 39.3) 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.



## **37 Technology**

*[section 249S]*

- 37.1 The Company may hold a meeting of its members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

## **38 Quorum**

*[compare replaceable rule 249T]*

- 38.1 The quorum for a meeting of the Company's members is the number being 25 per cent (rounded up if necessary to the nearest whole number) of all members of the Company and the quorum must be present at all times during the meeting.
- 38.2 In determining whether a quorum is present, individuals attending as proxies, attorneys or body corporate representatives are counted. However, if a member has appointed more than 1 proxy, attorney or representative, only 1 of them is counted. If an individual is attending both as a member and as a proxy, attorney or body corporate representative, the individual is counted only once.
- 38.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
- (1) where the meeting was called by the members or upon the requisition of members, the meeting is dissolved; or
  - (2) in any other case, the meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:
    - (a) if the date is not specified – the same day in the next week;
    - (b) if the time is not specified – the same time; and
    - (c) if the place is not specified – the same place.
- 38.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

## **39 Chair at general meetings**

*[compare replaceable rule 249U]*

- 39.1 The Chair of the Company, if present, presides as chair at every general meeting.
- 39.2 Where a general meeting is held and:
- (1) there is no Chair of the Company; or
  - (2) the Chair is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act;
- the Deputy Chair of the Company if present presides as chair of the meeting or, if the Deputy Chair is not present or is unwilling to act, the directors present may appoint 1 of their number to be chair of the meeting and in default of their doing so the members present may appoint any 1 of their number to be chair of the meeting.
- 39.3 The chair may, at any time during the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be

considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place. In exercising this discretion, the chair may, but need not, seek the approval of the members present. Unless required by the chair, no vote may be taken or demanded by the members present in respect of any adjournment.

- 39.4 The chair of the meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at that meeting. The rulings of the chair of a meeting on all matters relating to the procedure and conduct of the meeting are final and no motion of dissent from those rulings may be accepted.
- 39.5 The chair of the meeting may in his or her absolute discretion refuse admission to, or require to leave and remain out of the meeting, any person who is not a member, director or auditor of the Company.
- 39.6 (1) A director who is not a member is entitled to be present and to speak to any general meeting.
- (2) A Secretary who is not a member is entitled to be present and to speak at any general meeting.
- (3) The auditor of the Company from time to time and any assistant of the auditor who is not a member is entitled to be present and to speak at any general meeting on any part of the meeting's business that concerns the auditor in the capacity as auditor of the Company.
- (4) Any professional adviser of the Company (including, without limitation, a solicitor or financial adviser), at the request of any director, is entitled to be present and, at the request of the chair, to speak at any general meeting. However, subject to the Act and this constitution, the Company is not obliged to send a notice of meeting to any professional adviser.

## **40 Business at adjourned meetings**

*[replaceable rule 249W(2)]*

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

## **Proxies and body corporate representatives**

### **41 Who can appoint a proxy**

*[compare mandatory rule 249X]*

- 41.1 A member who is entitled to attend and cast a vote at a meeting of the Company's members may appoint an individual or a body corporate as the member's proxy to attend and vote for the member at the meeting. The proxy need not be a member.

### **42 Rights of proxies**

*[compare section 249Y]*

- 42.1 A proxy appointed to attend and vote for a member has the same rights as the member:
- (1) to speak at the meeting;
  - (2) to vote (but only to the extent allowed by the appointment); and
  - (3) to join in a demand for a poll.

- 42.2 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.
- 42.3 A proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.
- 42.4 A proxy may be revoked at any time by notice in writing to the Company.

### **43 When proxy form must be sent to all members**

*[section 249Z]*

- 43.1 If the Company sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:
- (1) if the member requested the form or list – the Company must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
  - (2) otherwise – the Company must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

### **44 Appointing a proxy**

*[compare section 250A and Corporations Regulations 2001 reg 2G.2.01]*

- 44.1 An appointment of a proxy is valid if it is signed or otherwise electronically authenticated (as referred to in regulation 2G.2.01 of the *Corporations Regulations 2001* and in rules 44.2 and 44.3) by the member making the appointment and contains the following information:
- (1) the member's name and address;
  - (2) the Company's name;
  - (3) the proxy's name or the name of the office held by the proxy; and
  - (4) the meetings at which the appointment may be used.

An appointment may be a standing one.

- 44.2 An electronically authenticated appointment of a proxy must in addition to rule 48.1:
- (1) include a method of identifying the member; and
  - (2) include an indication of the member's approval of the information communicated.
- 44.3 If the electronically authenticated appointment of a proxy is done through either email or internet-based voting:
- (1) the member must be identified by personal details such as the member's name, personal address and date of birth; and
  - (2) the member's approval must be communicated by a form of security protection (for example, the entering of a confidential identification number such as a shareholder registration number or holder identification number).
- 44.4 An undated appointment is taken to have been dated on the day it is given to the Company.

- 44.5 An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
- (1) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
  - (2) if the proxy has 2 or more appointments that specify different ways to vote on the resolution – the proxy must not vote on a show of hands;
  - (3) if the proxy is the chair – the proxy must vote on a poll, and must vote that way; and
  - (4) if the proxy is not the chair – the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a member, this rule 44.5 does not affect the way that the person can cast any votes the person holds as a member.

- 44.6 An appointment does not have to be witnessed.
- 44.7 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

## 45 Form of proxy sent out by Company

- 45.1 A form of proxy sent out by the Company may be in a form determined by the directors but must:
- (1) enable the member to specify the manner in which the proxy must vote in respect of a particular resolution; and
  - (2) leave a blank for the member to fill in the name of the person primarily appointed as proxy.
- 45.2 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.
- 45.3 Despite rule 45.1 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:

**Soil Carbon Industry Group Limited**  
 ACN [TBC].....(Company)

I/We, \_\_\_\_\_ of \_\_\_\_\_, being a member/members of the 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.

## **46 Receipt of proxy documents**

*[compare section 250B]*

- 46.1 For an appointment of a proxy for a meeting of the Company's members to be effective, the following documents must be received by the Company at least 48 hours before the meeting:
- (1) the proxy's appointment; and
  - (2) if the appointment is signed or otherwise authenticated by the appointor's attorney – the authority under which the appointment was signed or authenticated or a certified copy of the authority.
- 46.2 If a meeting of the Company's members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- 46.3 The Company receives an appointment or authority:
- (1) when it is received at any of the following:
    - (a) the Company's registered office;
    - (b) a facsimile number or email address at the Company's registered office; or
    - (c) a place, facsimile number or email address specified for the purpose in the notice of meeting; or
  - (2) if the notice of meeting specifies other electronic means by which a member may give the document – when the document given by those means is received by the Company and complies with rules 44.2 and 44.3.
- 46.4 An appointment of a proxy is ineffective if:
- (1) the Company receives either or both the appointment or authority at a fax number or electronic address; and
  - (2) a requirement (if any) in the notice of meeting that:
    - (a) the transmission be verified in a way specified in the notice; or
    - (b) the proxy produce the appointment and authority (if any) at the meeting;is not complied with.

## **47 Validity of proxy vote**

*[section 250C(1) and compare replaceable rule 250C(2)]*

- 47.1 A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.
- 47.2 Unless the Company receives written notice of one of the following matters before the start or resumption of the meeting at which the proxy votes, a vote cast by the proxy will be valid even if:
- (1) the appointing member dies;

- (2) the member is mentally incapacitated;
- (3) the member revokes the proxy's appointment; or
- (4) the member revokes the authority under which the proxy was appointed by a third party;

before the proxy votes.

- 47.3 A proxy is not revoked by the member attending and taking part in the meeting unless the member actually votes at the meeting on a resolution for which the proxy is proposed to be used.

## **48 Body corporate representative**

*[section 250D]*

- 48.1 A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:

- (1) at meetings of the Company's members;
- (2) at meetings of creditors or debenture holders;
- (3) relating to resolutions to be passed without meetings; or
- (4) in the capacity of a member's proxy appointed under rule 41.

The appointment may be a standing one.

- 48.2 The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.

- 48.3 A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.

- 48.4 Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

## **49 Attorney of member**

- 49.1 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 it must be produced to the Company at least 48 hours before the meeting, in the same way as the appointment of a proxy.

## **Voting at meetings of members**

### **50 How vote may be exercised**

- 50.1 Subject to rules 51 and 52 at any general meeting of members, each member present has 1 vote on a show of hands and on a poll.

50.2 The vote may be exercised in person or by proxy, body corporate representative or attorney.

## **51 Voting disqualification**

51.1 A member is not entitled to vote at a general meeting if:

- (1) the annual subscription of the member; or
- (2) in the case of a person who is a nominated representative, the annual subscription of the corporate member for which he or she is the nominated representative;

is more than 1 month in arrears at the date of the meeting or the postponed or adjourned meeting.

## **52 Objections to right to vote**

*[compare replaceable rule 250G]*

52.1 A challenge to a right to vote at a meeting of members:

- (1) may only be made at the meeting; and
- (2) must be determined by the chair, whose decision is final.

52.2 A vote not disallowed following the challenge is valid for all purposes.

## **53 How voting is carried out**

*[compare replaceable rule 250J]*

53.1 A resolution put to the vote at a meeting of the Company's members must be decided on a show of hands unless a poll is demanded.

53.2 On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

53.3 Unless otherwise required by this constitution or the Act, any resolution to:

- (1) take any step to wind up or dissolve the Company;
- (2) to amend this constitution; or
- (3) to materially change the nature of the Company's business from that undertaken as at the date this constitution was adopted or which would be inconsistent with the objects in clause 3;

must be passed by at least 75% of the votes cast by all members entitled to vote on the resolutions.

53.4 Unless otherwise required by this constitution or the Act, all resolutions of the Company are ordinary resolutions which are resolutions passed by more than 50% of the votes cast by members entitled to vote on the resolutions.

## **54 Matters on which a poll may be demanded**

*[compare section 250K]*

54.1 A poll may be demanded on any resolution.

54.2 A demand for a poll may be withdrawn.

## **55 When a poll is effectively demanded**

*[compare section 250L]*

55.1 At a meeting of the Company's members, a poll may be demanded by:

- (1) at least 3 members entitled to vote on the resolution;
- (2) a member or members with at least 5% of the votes that may be cast on the resolution on a poll; or
- (3) the chair.

55.2 The poll may be demanded:

- (1) before a vote is taken;
- (2) before the voting results on a show of hands are declared; or
- (3) immediately after the voting results on a show of hands are declared.

## **56 When and how polls must be taken**

*[compare replaceable rule 250M]*

56.1 A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.

56.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.

56.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

56.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

## **Annual general meeting**

*[compare section 250N]*

## **57 Business of an annual general meeting**

*[compare sections 250R, 250S and 250T]*

57.1 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (1) the consideration of the annual financial report, directors' report and auditor's report;
- (2) the election of directors;
- (3) the appointment of the auditor; and



- (4) the fixing of the auditor's remuneration.

All other business transacted at an annual general meeting and all business transacted at any other general meeting is special business.

57.2 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.

57.3 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.

57.4 If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must:

- (1) allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit, the preparation and content of the auditor's report, the accounting policies adopted by the Company in relation to the preparation of the financial statements and the independence of the auditor in relation to the conduct of the audit; and
- (2) allow a reasonable opportunity for the auditor or their representative to answer written questions submitted to the auditor under section 250PA of the Act.

## **58 Resolutions proposed by members**

*[compare sections 249N and 249O]*

58.1 A member may not at any meeting move any resolution relating to special business unless:

- (1) members with at least 5% of the votes that may be cast on the resolution have given the Company notice of the resolution or the requirements of section 249N of the Act have otherwise been satisfied, and 2 months' notice has elapsed since the notice was given; or
- (2) the resolution has previously been approved by the directors.

## **Appointment of directors**

### **59 Number of directors**

*[compare section 201A]*

59.1 The number of the directors must be not less than 3 nor more than 6.

### **60 Board composition**

60.1 Subject to rule 64 at all times, each category of member shall be entitled to appoint that number of directors to the board of the Company as follows:

- (1) Category A appointees: up to 6 Directors

### **61 Directors' qualifications**

61.1 No person may be a director unless that person is:

- (1) a member of the Company or is the nominated representative of a corporate member;
- (2) involved in the soil carbon industry; and
- (3) an individual who is at least 18 years old.

## **62 First directors**

- 62.1 The first directors are those named in the application for registration of the Company.
- 62.2 The first directors hold office until the termination of the first annual general meeting of the Company but, subject to this constitution, are eligible for election at that meeting. If they resign before the first annual general meeting, they may be replaced at a general meeting before the first annual general meeting, and their replacements hold office until the termination of the first annual general meeting.

## **63 Election of directors**

*[compare section 201E and replaceable rule 201G]*

- 63.1 The directors are elected at each annual general meeting of the Company.
- 63.2 An elected director holds office until the termination of the annual general meeting held in the third year after his or her election (3 year term).

## **64 Nomination for election**

- 64.1 Each candidate for election as a director must, in accordance with rule 60.1:
- (1) be proposed by a member, or the nominated representative of an corporate member of the relevant category of member; and
  - (2) be seconded by a member, or the nominated representative of another corporate member of the relevant category of member;
- both of which members of the relevant category of member must be current financial members of the Company at the time of nomination.
- 64.2 No member or nominated representative of a member may propose more than 1 person as a candidate but may second more than 1 nomination.
- 64.3 A nomination of a candidate for election must:
- (1) be in writing;
  - (2) be signed by the candidate; and
  - (3) be signed by the proposer and seconder.
- 64.4 A nomination of a candidate for election must be received at the registered office of the Company not later than 5pm on the day which is 30 days prior to the annual general meeting at which the candidate seeks election.
- 64.5 A list of the candidates' names in alphabetical order for each category of member together with the proposers' and seconders' names must be sent to members with the notice of the annual general meeting.

## **65 Election procedure – directors**

65.1 Subject to rule 60.1:

- (1) if the number of candidates for election as directors for the relevant category of member is equal to or less than the number of vacancies on the board, for the relevant category of member the chair of the annual general meeting must declare those candidates to be duly elected as directors; and
- (2) if the number of candidates for election as directors for the relevant category of member is greater than the number of vacancies on the board for the relevant category of member, a ballot must be held for the election of the candidates.

65.2 If a ballot is required, balloting lists must be prepared listing the names of the candidates only in alphabetical order for each category of member.

65.3 At the annual general meeting each person entitled to vote and voting on the ballot for the relevant category of member may vote for a number of candidates equal to the number of vacancies for the relevant category of member. A member is only entitled to vote in relation to the category of which they are a member.

65.4 The candidates for the relevant category of member receiving the greatest number of votes cast in their favour must be declared by the chair of the meeting to be elected as directors.

65.5 If an equality of votes would otherwise prevent the successful candidate for a vacancy from being determined, the chair, prior to the declaration of the result of the ballot, in addition to his or her deliberative vote (if any) is entitled to a casting vote, except that if the chair:

- (1) does not exercise a casting vote; or
- (2) is one of the candidates who received the same number of votes;

then the names of the candidates who received the same number of votes must be put to a further ballot immediately.

65.6 There is not a vacancy for the purpose of this rule 65 (or rules 71 or 72) because the number of directors is less than the maximum allowed under rule 59.1. There is a vacancy only if the number of directors is less than the number elected at the previous annual general meeting (adjusted for any increase under clause 71.1).

## **66 Time appointment or retirement takes effect**

66.1 Directors who are appointed at a meeting of members take office immediately after the end of the meeting.

66.2 Directors who retire at a meeting of members continue to hold office until the end of the meeting.

## **67 Office bearers**

67.1 The office bearers of the Company are:

- (1) the Chair;
- (2) the Deputy Chair;
- (3) the Treasurer; and

- (4) the Secretary.

## **68 First office bearers and subsequent election at board meeting**

- 68.1 The first office bearers of the Company are elected by the first directors appointed under rule 62. They hold office until the end of the first meeting of the directors held after the first annual general meeting of the Company.
- 68.2 Subsequent office bearers are elected by the directors at the first meeting of the directors held after the immediately preceding annual general meeting and hold office until the end of the first meeting of the directors held after the next annual general meeting.
- 68.3 The directors present must appoint 1 of their number to act as chair of the meeting for the purpose of the election.

## **69 Eligibility and nomination**

- 69.1 Except for the Secretary and public offer, only directors may be office bearers. Any director is eligible for election to any office bearer position.
- 69.2 Each director standing for election as an office bearer must be proposed by another director.
- 69.3 If a director stands for election for more than 1 position as an office bearer separate nominations must be received in respect of each position.
- 69.4 A nomination may be:
- (1) in writing, received by the Secretary not less than 24 hours prior to the board meeting at which the election is to take place and signed by the candidate and the proposer; or
  - (2) made orally at the meeting, provided that the candidate is present and consents to the nomination.

## **70 Election procedure – office bearers**

- 70.1 The election of the office bearers is held in the order in which the positions are listed in rule 67.1.
- 70.2 If there is only 1 candidate for election to any office bearer position that person is declared elected to that position.
- 70.3 If there is more than 1 candidate for election to any office bearer position a ballot must be held among the candidates. The candidate receiving the greatest number of votes cast in his or her favour is declared elected to that position.
- 70.4 In the case of an equality of votes in respect of any position a further ballot must be held immediately but if there is still an equality of votes the successful candidate must be determined by lot.
- 70.5 If a director is elected to a position as office bearer then his or her nomination, if any, for any other position must be treated as withdrawn before the election is held in respect of the other position or positions.
- 70.6 Subject to this rule 70 a ballot is conducted in the manner the directors determine.

## **Appointment of directors between AGMs**

### **71 Casual vacancies and additional directors**

*[compare replaceable rules 201G and 201H]*

- 71.1 The Company in general meeting may by resolution and the directors may at any time appoint a person qualified to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors does not at any time exceed the number fixed in accordance with this constitution and the composition of the board remains consistent with the requirements set out in rule 60.
- 71.2 Any director appointed under rule 71.1 holds office until the termination of the next annual general meeting of the Company and is then eligible for re-election at that annual general meeting.

### **72 Insufficient directors**

*[compare replaceable rule 201H]*

- 72.1 In the event of a vacancy or vacancies 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 meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or convening a general meeting of the Company.

## **Alternate directors**

*[compare replaceable rule 201K]*

### **73 Appointment**

- 73.1 A director may appoint any person who is qualified to be a director and who is approved by a majority of the other directors to act as an alternate director in place of the appointing director for a meeting or for a specified period.
- 73.2 An alternate director is not taken into account for the purpose of rule 59.

### **74 Rights and powers of alternate director**

- 74.1 An alternate director is entitled to notice of meetings of the directors and, if the appointor is not present at a meeting, is entitled to attend and vote in his or her stead.
- 74.2 Subject to the requirements of the Act, an alternate director is entitled to a separate vote for each director that the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.
- 74.3 An alternate director, when acting as a director, is responsible to the Company for his or her own acts and defaults and is not to be taken as the agent of the director by whom he or she was appointed.

### **75 Suspension or revocation of appointment**

- 75.1 A director may revoke or suspend the appointment of an alternate director appointed by him or her.

75.2 The directors may suspend or remove an alternate director by resolution after giving the appointing director reasonable notice of their intention to do so.

## **76 Form of appointment, suspension or revocation**

76.1 An appointment, suspension or revocation under rules 73 or 75 takes effect only when the Company has received notice in writing of the appointment, suspension or revocation. The notice may be given by facsimile or email.

## **77 Termination of appointment**

77.1 The appointment of an alternate director automatically terminates:

- (1) if the appointor ceases to hold office as director;
- (2) on the happening in respect of the alternate director any event which causes a director to vacate the office of director; or
- (3) if the alternate director resigns from the appointment by written notice left at the registered office of the Company.

## **78 Power to act as alternate for more than 1 director**

78.1 A director or any other person may act as alternate director to represent more than 1 director.

78.2 Subject to the Act, in determining whether a quorum is present at a meeting of directors, an alternate director who attends the meeting is to be counted as a director for each director on whose behalf the alternate director is attending the meeting.

## **Powers of directors**

### **79 Validation of acts of directors and secretaries**

*[compare sections 201M and 204E]*

79.1 An act done by a director or Secretary of the Company is effective even if his or her appointment, or the continuance of his or her appointment is invalid because the Company, the director or Secretary did not comply with this constitution or any provision of the Act.

79.2 Rule 79.1 does not deal with the question whether an effective act by a director or Secretary:

- (1) binds the Company in its dealings with other people; or
- (2) makes the Company liable to another person.

79.3 Where a person whose office as director of the Company is vacated under a provision of the Act purports to do an act as a director of the Company, that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated.

## **80 General business management**

*[compare replaceable rule 198A]*

- 80.1 The business of the Company is to be managed by or under the direction of the directors.
- 80.2 The directors 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.
- 80.3 A rule made or resolution passed by the Company in general meeting does not invalidate any prior act of the directors which would have been valid if that rule or resolution had not been made or passed.
- 80.4 The directors may pay all expenses incurred in promoting and forming the Company.

## **81 Borrowing powers**

- 81.1 Without limiting the generality of rule 80, but subject to rule 6, the directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

## **82 Appointment of attorney**

- 82.1 The directors 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 directors), for the period and subject to the conditions they see fit.
- 82.2 A power of attorney may contain the provisions for the protection and convenience of persons dealing with the attorney that the directors see fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

## **83 Negotiable instruments**

*[compare replaceable rule 198B]*

- 83.1 Any 2 directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 83.2 The directors 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.

## **84 Delegation to committee of directors**

*[compare section 198D]*

- 84.1 The directors may delegate any of their powers to a committee of directors and revoke the delegation.
- 84.2 A committee must exercise the powers delegated to it in accordance with any directions of the directors. The exercise of the power by the committee is as effective as if the directors had exercised it.
- 84.3 The meetings and proceedings of any committee of directors are governed by the provisions in this constitution regulating the meetings and proceedings of the directors.

## **85 Delegation generally**

*[compare rule 198D]*

- 85.1 For managing any affairs of the Company in any specified locality the directors may:
- (1) establish any local committees, boards or branches;
  - (2) appoint any members of the Company or any nominated representative of a corporate member to be a member of the local committee, board or branch;
  - (3) appoint any managers or agents, fix their remuneration and delegate to them any of the powers vested in the directors; and
  - (4) authorise the members for the time being of the local committee, board or branch to fill any vacancies on it and to act despite vacancies.
- 85.2 In the exercise of delegated powers, any committee formed (including a committee of directors and a local board or branch) or person or persons appointed to the committee must conform to any regulations that may be imposed by the directors. The committee may be authorised to sub-delegate any of the powers vested in it.
- 85.3 A local committee, board or branch may remove any person appointed under rule 85.1(3) and may revoke or vary the delegation but no person dealing in good faith and without notice of the revocation or variation is affected by it.

## **Executive officer**

*[compare replaceable rule 201J]*

### **86 Power to appoint**

- 86.1 The directors may appoint any person, not being a director, to the position of executive officer for the period and on the terms (including as to remuneration) the directors see fit.

### **87 Not a member of the board**

- 87.1 The executive officer is not a member of the board of the Company but may attend meetings of the directors except where the directors otherwise request.

### **88 Powers**

- 88.1 The directors may, upon terms and conditions and with any restrictions they see fit, confer on an executive officer any of the powers that the directors can exercise.
- 88.2 Any powers so conferred may be concurrent with, or to the exclusion of, the powers of the directors.

### **89 Withdrawal of appointment or powers**

- 89.1 The directors may revoke or vary:
- (1) an appointment; or
  - (2) any of the powers conferred on an executive officer.



## **90 Temporary appointments**

- 90.1 If an executive officer becomes incapable of acting in that capacity the directors may appoint any other person, not being a director, to act temporarily as executive officer.

## **Removal and resignation of directors**

### **91 Removal of directors**

*[compare section 203D]*

- 91.1 The Company may by resolution passed by a 65% majority of all members entitled to vote remove a director, or multiple directors, from office.

### **92 Resignation of director**

*[replaceable rule 203A]*

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

### **93 Vacation of office of director**

*[compare section 206B]*

- 93.1 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:
- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
  - (2) 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;
  - (3) is not present (either personally or by an alternate director) at 3 consecutive meetings of directors without special leave of absence from the directors and the directors declare his or her seat to be vacant;
  - (4) ceases to be qualified as a director under rule 61;
  - (5) becomes disqualified from being a director under the Act or any order made under the Act;
  - (6) is removed from office in accordance with rule 91; or
  - (7) resigns from office in accordance with rule 92.

## **Directors' interests**

### **94 Prohibition on being present or voting**

*[compare section 195]*

- 94.1 Except where permitted by the Act a director who has a material personal interest in a matter that is being considered at a meeting of directors:
- (1) must not be counted in a quorum;
  - (2) must not vote on the matter; and

- (3) must not be present while the matter is being considered at the meeting.
- 94.2 If a director who has a material personal interest in a matter that is being considered at a meeting of the directors 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.
- 94.3 A director who is interested in any matter may, despite that interest, witness the fixing of the seal to any document evidencing or otherwise connected with that matter.

## **95 Director to disclose interests**

*[compare section 191]*

- 95.1 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 directors or by written notice to the Secretary of the Company.
- 95.2 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 his or her duties or interests as director must declare at a meeting of the directors of the Company or by written notice to the Secretary of the Company the fact and the nature, character and extent of the conflict.
- 95.3 For the purposes of rules 95.1 and 95.2, a director's interest or any conflict must be disregarded if it arises from or relates solely to:
- (1) 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
  - (2) the position of the director as a director of a related body corporate.

## **96 Effect of interest in contract**

*[compare replaceable rule 194]*

- 96.1 Subject to the Act, 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 directors or by written notice to the Secretary of the Company:
- (1) the contract may be entered into; and
  - (2) if the disclosure is made before the contract is entered into:
    - (a) the director may retain benefits under the contract even though the director has an interest in the contract;
    - (b) the Company cannot avoid the contract merely because of the existence of the interest; and
    - (c) the director is not disqualified from the office of director.
- 96.2 For the purposes of rule 96.1 **contract** includes an arrangement, dealing or other transaction.

## **97 Standing notice of interest**

*[compare section 192]*

- 97.1 A director who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
- 97.2 A notice under the above rule may be given:
- (1) at a directors' meeting (either orally or in writing); or
  - (2) to the other directors individually in writing.
- 97.3 If the standing notice is given to the other directors individually in writing:
- (1) the notice is effective when it has been given to every director; and
  - (2) the notice must be tabled at the next directors' meeting after it is given.
- 97.4 The director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

## **98 Other interests**

- 98.1 Without limiting rule 95 or rule 96 a director may to the extent permitted by the Act:
- (1) hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of director;
  - (2) be interested in any operation, undertaking or business undertaken or assisted by the Company or in which the Company is or may be interested.

## **99 Extension of meaning of "Company"**

- 99.1 For the purposes of rules 95, 96 and 97 **Company** includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

## **100 Other directorships and shareholdings**

- 100.1 A director of the Company 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, shareholder or otherwise and is not accountable for any remuneration or benefits received as a director, officer, employee or member of the other company.
- 100.2 Subject to the Act:
- (1) the directors of the Company may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or any of them as directors or other officers of the other company;
  - (2) any director of the Company may vote at a meeting of directors of the Company in favour of a resolution that the Company exercises its voting power conferred by the

shares or other interest held by the Company in the other company to appoint that director as a director or other officer of the other company;

- (3) any director of the Company may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that director as a director or other officer of the other company; and
- (4) a director of the Company who is also a director of the other company may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the director to any other office in the other company and a resolution appointing any other directors of the Company as directors or other officers of the other company.

## **Directors' meetings**

*[compare sections 248A to 248G]*

### **101 Circulating resolutions**

*[compare replaceable rule 248A]*

- 101.1 The directors may pass a resolution without a directors' 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, email address or other contact details acceptable to the directors, at which he or she may be given notice) sign a document containing a statement that they are in favour of the resolution set out in the document.
- 101.2 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.
- 101.3 The resolution is passed when the last director signs.
- 101.4 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 101 must be treated as a document in writing signed by that director.
- 101.5 In this rule 101 a reference to all the directors does not include a reference to an alternate director whose appointor has signed the document, but an alternate director may sign the document in the place of his or her appointor.

### **102 Meetings of directors**

- 102.1 The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they see fit.

### **103 Calling directors' meetings**

*[compare replaceable rule 248C]*

- 103.1 A director may at any time, and a Secretary must on the requisition of a director, call a meeting of the directors.

### **104 Notice of meeting**

*[compare replaceable rule 248C]*

- 104.1 Reasonable notice of every directors' meeting must be given to each director and alternate director except that it is not necessary to give notice of a meeting of directors to any director who:

- (1) has been given special leave of absence; or
- (2) is absent from Australia and has not left a facsimile number, email address or other contact details acceptable to the directors at which he or she may be given notice.

104.2 Any notice of a meeting of directors may be given in writing or orally, and whether by facsimile, telephone, email or any other means of communication.

## **105 Waiver of notice**

105.1 All resolutions of the directors passed at a meeting where a quorum is present but where notice of meeting has not been given to each director, or any act carried out under any of the resolutions, is as valid as if notice of meeting had been given to all directors if each director to whom notice was not given subsequently agrees to waive the notice.

## **106 Technology meeting of directors**

*[compare section 248D]*

106.1 A directors' meeting may be held using telephone or, if consented to by all directors, other technology. The consent may be a standing one. A director may only withdraw the consent within a reasonable period before the meeting.

106.2 If a directors' meeting is held using any technology and all the directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.

106.3 The following provisions apply to a technology meeting:

- (1) 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
- (2) at the commencement of the meeting each director must announce his or her presence to all the other directors taking part in the meeting.

106.4 If the Secretary is not present at a technology meeting 1 of the directors present or another person nominated by them present at the meeting must take minutes of the meeting.

106.5 A director may not leave a technology meeting by disconnecting his or her link to the meeting unless that director has previously notified the chair of the meeting.

106.6 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.

## **107 Chairing directors' meetings**

*[compare replaceable rule 248E]*

107.1 The Chair is the chair of all meetings of the directors.

107.2 At a meeting of directors if:

- (1) no Chair has been elected as provided by rule 70; or
- (2) the Chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the Deputy Chair is the chair of the meeting, but if:

- (3) no Deputy Chair has been elected as provided by rule 70; or
- (4) the Deputy Chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the directors present must elect a director present to chair the meeting.

## **108 Quorum**

*[compare replaceable rule 248F]*

108.1 The quorum for a directors' meeting is 3 directors entitled to vote or a greater number determined by the directors. The quorum must be present at all times during the meeting.

108.2 An alternate director is counted in a quorum at a meeting at which the director who appointed the alternate is not present (so long as the alternate is, under the Act relating to directors' interests, entitled to vote).

108.3 If a quorum is not present within 30 minutes after the notified commencement time of the directors meeting:

- (1) in the case of a special meeting, the meeting lapses; or
- (2) in any other case, the meeting must be adjourned to a date no later than 14 days after the adjourned meeting and notice of the time, date and place to which the meeting is adjourned must be given in accordance with rule 104.

## **109 Passing of directors' resolutions**

*[compare replaceable rule 248G]*

109.1 A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.

109.2 A person who is an alternate director is entitled (in addition to his or her own vote if he or she is a director) to 1 vote on behalf of each director whom he or she represents as an alternate director at the meeting and who is not present at the meeting.

## **Remuneration of directors**

### **110 No directors' remuneration**

*[compare section 150]*

110.1 No director may receive any remuneration for his or her services in his or her capacity as a director of the Company.

### **111 Directors' expenses**

111.1 Despite rules 6 and 110 the Company may permit payments to directors in the following circumstances:

- (1) for the payment of out-of-pocket expenses incurred in carrying out the duties of a director where the payments do not exceed an amount previously approved by the board;

- (2) for any service rendered to the Company in a professional or technical capacity where the provision of that service has the prior approval of the board and the amount payable is approved by a resolution of the board and is on reasonable commercial terms; or
- (3) as an employee of the Company where the terms of employment have been approved by a resolution of the board.

## **112 Financial benefit**

*[compare Chapter 2E - sections 207 and following]*

112.1 The Company must not provide any financial benefit to a director or any related party of a director, other than in accordance with rule 111.1.

112.2 The Company must not make loans to directors, or provide guarantees or security for obligations undertaken by directors other than obligations which were undertaken by the director solely in promotion of the objects of the Company.

## **Secretary**

### **113 Appointment of Secretary**

*[compare section 204A]*

113.1 The directors must, in accordance with the Act, appoint 1 or more secretaries.

113.2 The directors may appoint a person as an acting Secretary or as a temporary substitute for a Secretary.

### **114 Terms of office of Secretary**

*[compare replaceable rule 204F]*

114.1 A Secretary of the Company holds office on the terms and conditions (including as to remuneration) that the directors determine.

## **Indemnity and insurance**

### **115 Indemnity**

*[compare section 199A]*

115.1 To the extent permitted by the Act, the Company indemnifies:

- (1) every person who is or has been an officer of the Company; and
- (2) where the board of directors considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Company;

against all losses, liabilities, costs, charges and expenses incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be). This indemnity includes, without limitation:

- (3) a liability for negligence; and

- (4) a liability for reasonable legal costs on a solicitor client basis including in respect of civil or criminal proceedings except to the extent prohibited by section 199A(3) of the Act.

115.2 The indemnity does not extend to and is not an indemnity against any amount in respect of which the indemnity would otherwise be illegal, void or unenforceable or not permitted by law and does not operate in respect of any liability of the officer to the extent that liability is covered by insurance.

115.3 In accordance with section 199A of the Act, the Company must not indemnify a person against:

- (1) any of the following liabilities incurred as an officer of the Company:
  - (a) a liability owed to the Company or a related body corporate;
  - (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under sections 961M, 1317H, 1317HA or 1317HB of the Act; or
  - (c) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; or
- (2) legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:
  - (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under rule 115.3(1);
  - (b) in defending or resisting criminal proceedings in which the person is found guilty;
  - (c) 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
  - (d) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

Rule 115.3(2)(c) 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.

- (3) For the purposes of rule 115.3(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

115.4 An officer must:

- (1) 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 by the Company;
- (2) 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;
- (3) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company;



- (4) allow the Company or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by the Company, render all reasonable assistance and co-operation 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;
- (5) 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
- (6) 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.

115.5 In rule 115.4 **Claim** means:

- (1) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;
- (2) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company; or
- (3) 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 rule 115.5(1) or 115.5(2) may be initiated.

115.6 If an officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, and the officer may be indemnified under rule 115.1, the directors may, despite the interest (if any) of the directors or any of them, execute or cause to be executed a mortgage, charge or security over or affecting the whole or any part of the assets or undertaking of the Company by way of indemnity to secure the officer so becoming liable from any loss in respect of that liability.

## **116 Insurance**

*[compare section 212]*

116.1 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 a related body corporate of the Company against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:

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

## **117 Director voting on contract of indemnity or insurance**

*[compare section 191(2)(vi)]*

117.1 Despite anything in this constitution, a director is not precluded from voting in respect of any contract or proposed contract of indemnity or insurance, merely because the contract indemnifies or insures or would indemnify or insure the director against a liability incurred by the director as an officer of the Company or of a related body corporate.

## 118 Liability

118.1 An officer of the Company 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 his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

## 119 Meaning of “officer”

119.1 For the purposes of rules 115, 116, 117 and 118, **officer** means a director or Secretary or a member of a local committee, board or branch appointed under rule 85.1.

## Winding up

### 120 Winding up

120.1 Subject to rule 120.2, if the Company is wound up or dissolved, the amount that remains after such winding up or dissolution and the satisfaction of all debts and liabilities will be transferred to another organisation with similar objects and purposes that are charitable at law which is not carried on for the profit or gain of its members as determined by the members of the Company.

120.2 If the Company is endorsed as a deductible gift recipient by the Commissioner of Taxation under Division 30 of the *Income Tax Assessment Act 1997* and such endorsement is revoked or the Company is wound up or dissolved, the Company must transfer to another organisation which is endorsed as a deductible gift recipient and charitable at law as determined by the members of the Company any surplus representing:

- (1) gifts of money or property made for the principal purpose of the Company;
- (2) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
- (3) money received by the Company because of such gifts and contributions.

120.3 If the members do not make the necessary determination under rules 120.1 and 120.2, the Company may apply to the Supreme Court to determine the organisation or organisations to whom the transfers are to be made.

## Minutes

### 121 Minutes to be kept

*[compare section 251A]*

121.1 The directors must keep minute books in which they record within 1 month:

- (1) proceedings and resolutions of meetings of the Company’s members;
- (2) proceedings and resolutions of directors’ meetings (including meetings of a committee of directors);
- (3) resolutions passed by members without a meeting; and
- (4) resolutions passed by directors without a meeting.

- 121.2 The directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
- (1) the chair of the meeting; or
  - (2) the chair of the next meeting.
- 121.3 The directors 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.
- 121.4 Without limiting rule 121.1 the directors must record in the minute books:
- (1) all appointments of officers;
  - (2) the names of the directors and alternate directors present at all meetings of directors and the Company;
  - (3) in the case of a technology meeting, the method by which the meeting was held;
  - (4) all orders resolutions and proceedings of general meetings and of meetings of the directors and of committees formed by the directors;
  - (5) proxy votes exercisable and exercised in respect of each resolution at a meeting; and
  - (6) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a director of a material personal interest in a matter that relates to the affairs of the Company.

## **Inspection of records**

### **122 Rights of inspection**

*[compare replaceable rule 247D and sections 173, 198F, 247A and 251B]*

- 122.1 The directors of the Company, or the Company by a resolution passed at a general meeting, may authorise a member to inspect books of the Company.
- 122.2 A member other than a director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its members and for resolution of members passed without meetings, except as provided by law or authorised by the directors or by the Company in general meeting.
- 122.3 Directors have the rights of inspection and access provided by section 198F of the Act.

### **123 Confidential information**

- 123.1 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.

## Accounts, audit and records

### 124 Accounts

*[compare sections 286-291, 296 and 297]*

- 124.1 The directors must cause proper accounting and other records to be kept in accordance with the Act.
- 124.2 The directors must distribute copies of every financial statement (including every document required by law to be attached to it) as required by the Act.

### 125 Audit

*[compare sections 301, 327D and 328A-331]*

- 125.1 Subject to the Act, a registered company auditor must be appointed.
- 125.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

## Execution of documents

### 126 Common seal

- 126.1 The Company may, but need not, have a common seal.

### 127 Use of common seal

*[compare sections 127(2) and 129(6)]*

- 127.1 If the Company has a common seal the directors must provide for its safe custody.
- 127.2 The common seal may not be fixed to any document except by the authority of a resolution of the directors or of a committee of the directors duly authorised by the directors.
- 127.3 The Company executes a document with its common seal if the fixing of the seal is witnessed by:
- (1) 2 directors of the Company;
  - (2) a director and a company Secretary of the Company; or
  - (3) a director and any other person authorised by the directors for that purpose.

### 128 Execution of documents without common seal

*[compare sections 127(1) and 129(5)]*

- 128.1 The Company may execute a document without using a common seal if the document is signed by:
- (1) 2 directors of the Company; or
  - (2) a director and a company Secretary of the Company.

## **129 Execution of document as a deed**

*[compare section 127(3)]*

- 129.1 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 rule 129 or rule 130.

## **130 Execution – general**

*[compare sections 129(5), 129(6) and 127(4)]*

- 130.1 The same person may not sign in the dual capacities of director and Secretary.
- 130.2 A director may sign any document as director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this constitution as to execution despite his or her interest.
- 130.3 Rules 129 and 130 do not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Company.

## **Notices**

### **131 Notices other than notices of meeting**

- 131.1 Any notice by the Company to a member may be given in the same way as a notice of meeting may be given under rule 30, and the time the notice is taken to be given is the same as provided in the case of a notice of meeting by rule 31.

## **Inadvertent omissions**

### **132 Formalities omitted**

*[compare section 1322]*

- 132.1 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**

### **133 Alterations**

- 133.1 If the Company is endorsed as an income tax exempt fund, a tax concession charity or a deductible gift recipient by the Australian Taxation Office, before making any alterations to this constitution (in particular rules 3, 5, 6, 61, 84, 85, 88, 110, 111, 112 or 120) the directors must consider:
- (1) whether those alterations may effect the entitlement of the Company to that endorsement; and
  - (2) whether, as a term of the endorsement, the Company is required to notify the Australian Taxation Office or any other government authority of the alterations to this constitution.

# Signing


## 134 Signing

134.1 The persons whose names are written below agree to this constitution and to be members of the Company.

**Name of subscriber**

Matthew Warnken

**Signature and name,  
address and occupation  
of subscriber**

  
.....  
Signature

MATTHEW WARNKEN  
.....  
Full name (BLOCK LETTERS)

131 DARLING STREET  
BALMAIN EAST NSW 2041  
.....

Address (BLOCK LETTERS)

MANAGING DIRECTOR  
AGRIPROVE  
.....

Occupation (BLOCK LETTERS)

Louisa Kiely

  
.....  
Signature

LOUISA KIELY  
.....  
Full name (BLOCK LETTERS)

5 BRUMBYS RUN  
.....

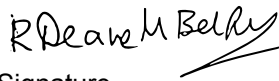
CLIFTON GROVE NSW 2800  
.....

Address (BLOCK LETTERS)

DIRECTOR/CEO  
CARBON FARMERS OF AUSTRALIA P/L  
.....

Occupation (BLOCK LETTERS)

Deane Belfield

  
.....  
Signature

DEANE BELFIELD  
.....  
Full name (BLOCK LETTERS)

BOX 947  
CASTLEMAINE  
VIC 3450  
.....

Address (BLOCK LETTERS)

DIRECTOR,

Occupation (BLOCK LETTERS)

**Name of subscriber**

Phil Mulvey

**Signature and name,  
address and occupation  
of subscriber**

Signature

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Full name (BLOCK LETTERS)

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)2276&&9,&  
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Address (BLOCK LETTERS)

!5(225  
85%22817  
.....  
Occupation (BLOCK LETTERS)

Chris McCosker

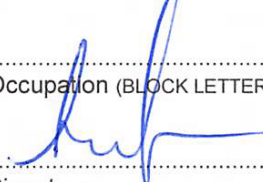
  
.....  
Signature

CHRISTOPHER MCCOSKER  
.....  
Full name (BLOCK LETTERS)

19/42 GLEN EDEN DRIVE  
.....  
GLEN EDEN, QLD, 4680  
.....  
Address (BLOCK LETTERS)

GENERAL MANAGER  
CARBON LINK  
.....  
Occupation (BLOCK LETTERS)

Ignatius Verbeek

  
.....  
Occupation (BLOCK LETTERS)

Signature  
Ignatius Verbeek  
.....  
Full name (BLOCK LETTERS)

22 Summer Place  
Meneveler Heights 2291  
.....  
Address (BLOCK LETTERS)

Managing Director  
.....  
Occupation (BLOCK LETTERS)