



# Constitution

Gondwana Rainforest Trust Ltd  
ACN 628 358 323

# Constitution of Gondwana Rainforest Trust Ltd

<b>Preliminary</b>	<b>5</b>
1. Name of the company	5
2. Type of company	5
3. Limited liability of members	5
4. The guarantee	5
5. Definitions	5
<b>Charitable Purposes and powers</b>	<b>5</b>
6. Object	5
7. Powers	6
8. Not-for-profit	6
9. Amending the constitution	7
<b>Members</b>	<b>7</b>
10. Membership and register of members	7
11. Who can be a member	7
12. How to apply to become a member	8
13. Directors decide whether to approve membership	8
14. When a person becomes a member	8
15. When a person stops being a member	8
<b>Disciplinary procedures</b>	<b>9</b>
16. Disciplining members	9
<b>General meetings of members</b>	<b>10</b>
17. General meetings called by directors	10
18. General meetings called by members	10
19. Annual general meeting	11
20. Notice of general meetings	11
21. Quorum at general meetings	12
22. Auditor's right to attend meetings	13
23. Representatives of members	13
24. Using technology to hold meetings	13
25. Chairperson for general meetings	13

26.	Role of the chairperson	14
27.	Adjournment of meetings	14
<b>Members' resolutions and statements</b>		<b>14</b>
28.	Members' resolutions and statements	14
29.	Company must give notice of proposed resolution or distribute statement	15
30.	Circular resolutions of members	15
<b>Voting at general meetings</b>		<b>16</b>
31.	How many votes a member has	16
32.	Challenge to member's right to vote	16
33.	How voting is carried out	16
34.	When and how a vote in writing must be held	17
35.	Appointment of proxy	17
36.	Voting by proxy	18
<b>Directors</b>		<b>18</b>
37.	Number of directors	18
38.	Appointment of directors	18
39.	Election of chairperson	19
40.	When a director stops being a director	19
<b>Powers of directors</b>		<b>20</b>
41.	Powers of directors	20
42.	Delegation of directors' powers	20
43.	Appointment of attorneys and agents	20
44.	Payments to directors	21
45.	Execution of documents	21
<b>Duties of directors</b>		<b>21</b>
46.	Duties of directors	21
47.	Directors' interest	22
<b>Directors' meetings</b>		<b>22</b>
48.	When the directors meet	22
49.	Calling directors' meetings	22
50.	Chairperson for directors' meetings	23
51.	Quorum at directors' meetings	23
52.	Using technology to hold directors' meetings	23
53.	Passing directors' resolutions	23
54.	Circular resolutions of directors	23
<b>Secretary</b>		<b>24</b>
55.	Appointment and role of secretary	24
<b>Minutes and records</b>		<b>24</b>

56.	Minutes and records	24
57.	Financial and related records	25
	<b>By-laws</b>	<b>25</b>
58.	By-laws	25
	<b>Notice</b>	<b>25</b>
59.	What is notice	25
60.	Notice to the company	25
61.	Notice to members	26
62.	When notice is taken to be given	26
	<b>Financial year</b>	<b>26</b>
63.	Company's financial year	26
	<b>Indemnity, insurance and access</b>	<b>27</b>
64.	Indemnity	27
65.	Insurance	27
66.	Directors' access to documents	27
	<b>Winding up</b>	<b>27</b>
67.	Winding up	27
68.	Distribution of surplus assets	28
69.	Revocation of Deductible Gift Recipient Endorsement	28
70.	Register of Environmental Organisations	29
	<b>Definitions and interpretation</b>	<b>31</b>
71.	Definitions	31
72.	Reading this constitution with the Corporations Act	32
73.	Interpretation	32



# Preliminary

## 1. Name of the company

The name of the company is Gondwana Rainforest Trust Ltd ACN 628 358 323 (the **company**).

## 2. Type of company

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

## 3. Limited liability of members

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

## 4. The guarantee

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

- (a) debts and liabilities of the **company** incurred before the member stopped being a member; or
- (b) costs of winding up.

## 5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 71 and 73.

# Charitable Purposes and powers

## 6. Object

6.1 The **company** is a not-for-profit, non-political entity established and located in Australia for the purpose of the protection and enhancement of the natural environment or a significant aspect of the natural environment (**principal purpose**).

6.2 The **principal purpose** of the **company** will be furthered by means and activities including (without limitation):

- (a) promoting, facilitating, participating in, carrying out, arranging, or otherwise engaging in:
  - (i) the conservation of rainforests and the preservation of the biodiversity of rainforest ecosystems;

- (ii) the restoration, rehabilitation, enhancement and management of remnant and regrowth rainforest; and
- (iii) the revegetation of ex-rainforest lands, including without limitation the establishment and ongoing management of rainforest plantings of significant ecological value;
- (b) establishing and maintaining a public fund called the 'Gondwana Rainforest Fund' for the specific purpose of accepting gifts and donations to support and further the **principal purpose**;
- (c) collaborating with other organisations in relation to projects and activities in furtherance of the **principal purpose**;
- (d) purchasing, leasing, or otherwise acquiring any lands, buildings, easements, or property in furtherance of the **principal purpose**;
- (e) entering arrangements with governments or other authorities in furtherance of the **principal purpose**;
- (f) seeking gifts or donations of money or property from the public to be applied for the **principal purpose**; and
- (g) sharing knowledge gained from projects and activities in furtherance of the **principal purpose** with other organisations and professions via publications and educational activities.

## 7. Powers

Subject to clause 8, the **company** has:

- (a) the powers of an individual; and
- (b) all the powers of a company limited by guarantee under the **Corporations Act**,

which may only be used to carry out the **principal purpose** of the **company** and to do all things incidental or convenient in relation to the exercise of its powers to advance the **principal purpose**.

## 8. Not-for-profit

- 8.1 The income and property of the **company** shall be used and applied solely in promotion of the **principal purpose** of the **company** and no portion shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to members or directors of the **company** except as provided in clauses 8.2 and 68.
- 8.2 Clause 8.1 does not stop the **company** from doing the following things, provided they are done in good faith:
  - (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**; or
  - (b) making a payment to a member in carrying out the **company's principal purpose**.

## 9. Amending the constitution

9.1 The members may amend this constitution by passing a **special resolution**.

# Members

## 10. Membership and register of members

10.1 The members of the **company** are:

- (a) the persons being members of the **company** immediately before the adoption of this constitution; and
- (b) any other person that the directors allow to be a member, in accordance with this constitution.

10.2 The directors may determine, from time to time, that an annual membership fee is to be paid by each member of the **company** and, if they do so, must give notice of any such determination in writing to the members. The directors may also determine:

- (a) the period of membership to which the membership fee will relate, provided that it can only be a period commencing after the determination to impose the membership fee is made;
- (b) the method to be used for payment of the membership fee; and
- (c) the due date for payment of the membership fee.

10.3 The **company** must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:

- (a) for each current member:
  - (i) name;
  - (ii) address;
  - (iii) any alternative address nominated by the member for the service of notices; and
  - (iv) date the member was entered on to the register;
- (b) for each person who stopped being a member in the last 7 years:
  - (i) name;
  - (ii) address;
  - (iii) any alternative address nominated by the member for the service of notices; and
  - (iv) dates the membership started and ended.

10.4 The **company** must give current members access to the register of members in accordance with the **Corporations Act**. Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members in accordance with the **Corporations Act**.

## 11. Who can be a member

- 11.1 A person who supports the purposes of the **company** is eligible to apply to be a member of the **company** under clause 12.
- 11.2 In this clause, 'person' means an individual or incorporated body.
- 11.3 An individual will be eligible for membership if they are over the age of 18.
- 11.4 An incorporated body will be eligible for membership if it has, is in the opinion of the directors, aims and objects similar to the aims and objects of the **company**.

## 12. How to apply to become a member

A person (as defined in clause 11.2) may apply to become a member of the **company** by giving notice to the secretary in a form approved by the directors from time to time and signed by the applicant stating that they:

- (a) want to become a member;
- (b) support the purpose(s) of the **company**;
- (c) agree to pay the annual membership fee set by the directors from time to time (if any); and
- (d) agree to comply with, and be bound by, the **company's** constitution, including paying the guarantee under clause 4 if required.

## 13. Directors decide whether to approve membership

- 13.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application. The directors may accept or reject the application.
- 13.2 If the directors approve an application, then subject to the receipt of the membership fee (if any) and the directors not having decided to revoke their approval of the application, the secretary must as soon as possible:
- (a) enter the new member on the register of members; and
  - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).
- 13.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.

## 14. When a person becomes a member

- 14.1 Other than **current members**, an applicant will become a member only after the applicant's application for membership has been approved by the directors and the applicant's name has been entered on the register of members.

## 15. When a person stops being a member

- 15.1 A person immediately stops being a member if they:
- (a) die;
  - (b) are convicted of an indictable offence;



- (c) are wound up or otherwise dissolved or deregistered (for an incorporated member);
- (d) resign, by writing to the secretary;
- (e) become mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
- (f) have not paid a membership fee imposed by a determination of the directors made in accordance with clause 10.2 within two months after it becomes due and, having been given notice of that fact by the **company**, has still not paid the outstanding membership fee within 21 days of the date of that notice;
- (g) are expelled under clause 16; or
- (h) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

15.2 Any person ceasing to be a member:

- (a) will not be entitled to any refund (or part refund) of any membership fees;
- (b) will remain liable for and will pay to the **company** all membership fees and monies which were due at the date of ceasing to be a member; and
- (c) will not have any claim, monetary or otherwise, against the **company**.

## Disciplinary procedures

### 16. Disciplining members

16.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **company** if the directors determine, in their absolute discretion, that:

- (a) the member has wilfully breached this constitution; or
- (b) the member's behaviour is causing, has caused, or is likely to cause harm to the **company** or is, or is likely to be, prejudicial to the interests of the **company**.

16.2 At least 14 days before the directors' meeting at which a resolution under clause 16.1 will be considered, the secretary must notify the member in writing:

- (a) that the directors are considering a resolution to warn, suspend or expel the member;
- (b) that this resolution will be considered at a directors' meeting and the date of that meeting;
- (c) what the member is said to have done or not done;
- (d) the nature of the resolution that has been proposed; and
- (e) that the member may provide an explanation to the directors, and details of how to do so.

16.3 Before the directors pass any resolution under clause 16.1, the member must be given a chance to explain or defend themselves by (at the option of the member):

- (a) sending the directors a written explanation before that directors' meeting; and/or
- (b) speaking at the meeting.

Any costs incurred by a member preparing or presenting an explanation to the directors are to be borne by the member.

16.4 After considering any explanation under clause 16.3, the directors may:

- (a) take no further action;
  - (b) warn the member;
  - (c) suspend the member's rights as a member for a period of no more than 12 months;
  - (d) expel the member;
  - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause); or
  - (f) require the matter to be determined at a **general meeting**.
- 16.5 The directors cannot fine a member.
- 16.6 The secretary must give written notice to the member of the decision under clause 16.4 as soon as possible.
- 16.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 16.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## General meetings of members

### 17. General meetings called by directors

- 17.1 Any director may, at any time, call a **general meeting**.
- 17.2 If members with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held, the directors must:
- (a) within 21 days of the members' request, give all members notice of a **general meeting**; and
  - (b) hold the **general meeting** within 2 months of the members' request.
- 17.3 The percentage of votes that members have (in clause 17.2) is to be worked out as at midnight before the members request the meeting.
- 17.4 The members who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting;
  - (b) sign the request; and
  - (c) give the request to the **company**.
- 17.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

### 18. General meetings called by members

- 18.1 If the directors do not call the meeting within 21 days of being requested under clause 17.2, 50% or more of the members who made the request may call and arrange to hold a **general meeting**.

- 18.2 To call and hold a meeting under clause 18.1 the members must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution;
  - (b) call the meeting using the list of members on the **company's** member register, which the **company** must provide to the members making the request at no cost; and
  - (c) hold the **general meeting** within three months after the request was given to the **company**.
- 18.3 The **company** must pay the members who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.

## 19. Annual general meeting

- 19.1 A **general meeting**, called the annual **general meeting**, must be held at least once in every calendar year, unless the **company** has only one member.
- 19.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:
- (a) a review of the **company's** finances and consideration of the reports provided by the directors to the members;
  - (b) any auditor's report;
  - (c) the election of directors; and
  - (d) the appointment and fixing of remuneration of auditors, if any.
- 19.3 Before or at the annual **general meeting**, the directors must give information to the members on the **company's** finances during the period since the last annual **general meeting**.
- 19.4 The chairperson of the annual **general meeting** must give members as a whole, a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

## 20. Notice of general meetings

- 20.1 Notice of a **general meeting** must be given to:
- (a) each member entitled to vote at the meeting;
  - (b) each director; and
  - (c) the auditor (if any).
- 20.2** Subject to clause 20.3, notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 20.3 Subject to clause 20.4, notice of a **general meeting** may be provided less than 21 days before the meeting if:
- (a) for an annual **general meeting**, all the members entitled to attend and vote at the annual **general meeting** agree beforehand; or
  - (b) for any other **general meeting**, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 20.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director;

- (b) appoint a director in order to replace a director who was removed; or
  - (c) remove an auditor.
- 20.5 Notice of a **general meeting** must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (b) the general nature of the meeting's business;
  - (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution;
  - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
    - (i) the proxy does not need to be a member of the **company**;
    - (ii) the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
    - (iii) the proxy form must be delivered to the **company** at least 48 hours before the meeting.
- 20.6 The directors may postpone or cancel any **general meeting** whenever they think fit (other than a meeting called as the result of a request under clause 17.2).
- 20.7 The directors must give notice of the postponement or cancellation of a **general meeting** to all persons referred to in clause 20.1 as being entitled to receive notices from the **company**.
- 20.8 An accidental omission to send a notice of a **general meeting** (including a proxy appointment form) to any member or the non-receipt of a notice (or form) by any member does not invalidate the proceedings at or any resolution passed at the **general meeting**.
- 20.9 If a **general meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.
- 20.10 If at any time the **company** has only one member then, unless the contrary intention appears, a reference in this constitution to 'the members' is a reference to that member and, without limitation, a provision in this constitution which confers a power or imposes an obligation on the members to do a particular thing confers that power or imposes that obligation on that member.

## 21. Quorum at general meetings

- 21.1** For a **general meeting** to be held, at least 2 members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. If the **company** has only one member, that person is the quorum.
- 21.2 No business may be conducted at a **general meeting** if a quorum is not present when the meeting proceeds to business.
- 21.3 If there is no quorum present within 15 minutes after the starting time stated in the notice of **general meeting**, the **general meeting**:
- (a) if the **general meeting** was called on requisition of members, it is automatically dissolved; or
  - (b) in any other case, is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
    - (i) if the date is not specified – the same day in the next week;

- (ii) if the time is not specified – the same time; and
- (iii) if the place is not specified – the same place.

21.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is automatically dissolved.

## 22. Auditor's right to attend meetings

- 22.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 22.2 The **company** must give the auditor (if any) any communications relating to the **general meeting** that a member of the **company** is entitled to receive.

## 23. Representatives of members

- 23.1 An incorporated member may appoint as a representative:
- (a) one individual to represent the member at meetings and to sign circular resolutions under clause 30; and
  - (b) the same individual or another individual for the purpose of being appointed or elected as a director.
- 23.2 The appointment of a representative by a member must:
- (a) be in writing;
  - (b) include the name of the representative;
  - (c) be signed on behalf of the member; and
  - (d) be given to the **company** or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 23.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 23.4 The appointment may be standing (ongoing).

## 24. Using technology to hold meetings

- 24.1 The **company** may hold a **general meeting** at two or more venues (or without requiring members to attend at any particular venue) using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 24.2 Anyone attending a **general meeting** using technology of the kind described in clause 24.1 is taken to be present in person at the meeting for the purposes of forming a quorum and for all other purposes.

## 25. Chairperson for general meetings

- 25.1 The **elected chairperson** is entitled to chair general meetings.
- 25.2 The directors present may elect a director to be the chairperson for that meeting if:
- (a) there is no **elected chairperson**; or

- (b) the **elected chairperson** is not present within 15 minutes after the starting time set for the meeting; or
  - (c) the **elected chairperson** is present but says they do not wish to act as chairperson of the meeting.
- 25.3 If no election is made under clause 25.2, then:
- (a) the members may elect one of the directors present as chairperson; or
  - (b) if no director is present or is willing to take the chair, the members may elect one of the members present as chairperson.
- 25.4 The general conduct of each **general meeting** of the **company** and the procedures to be adopted at the meeting will be determined by the chairperson. If there is a dispute at a **general meeting** about a question of procedure, the chairperson may determine the question.
26. **Role of the chairperson**
- 26.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 26.2 The chairperson has a casting vote in addition to the chairperson's votes as a member or proxy.
27. **Adjournment of meetings**
- 27.1 If a quorum is present:
- (a) a **general meeting** must be adjourned if a majority of **members present** direct the chairperson to adjourn it; and
  - (b) a **general meeting** may be adjourned in the chairperson's discretion with the meeting's consent.
- 27.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## Members' resolutions and statements

28. **Members' resolutions and statements**
- 28.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the **company** of a resolution they propose to move at a **general meeting** (members' resolution); and/or
  - (b) a written request to the **company** that the **company** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 28.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 28.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.

- 28.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 28.5 The percentage of votes that members have (as described in clause 28.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 28.6 If the **company** has been given notice of a members' resolution under clause 28.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 28.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

## 29. Company must give notice of proposed resolution or distribute statement

- 29.1 If the **company** has been given a notice or request under clause 28:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **company's** cost; or
  - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **company** will pay these expenses.
- 29.2 The **company** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) it is more than 1000 words long;
  - (b) the directors consider it may be defamatory;
  - (c) clause 29.1(b) applies, and the members who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members; or
  - (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the members.

## 30. Circular resolutions of members

- 30.1 The directors may put a resolution to the members to pass a resolution without a **general meeting** being held (a circular resolution).
- 30.2 Subject to clause 30.3, circular resolutions cannot be used:
- (a) for a resolution of members to remove an auditor or remove a director; or
  - (b) where the **Corporations Act** or this constitution requires a meeting to be held.
- 30.3 If the **company** has only one member, that member may pass a resolution of the **company** by the member recording it and signing the record.
- 30.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 30.5 or clause 30.6.

- 30.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording is the same in each copy.
- Any document referred to in this clause 30.5 may be in the form of a facsimile or electronic transmission and will be taken to have been signed by a member if it has been authorised by the member in another manner approved by the directors.
- 30.6 The **company** may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.
- 30.7 The passage of a resolution in accordance with this clause 30 of this constitution satisfies any requirement that the resolution be passed at a **general meeting**.

## Voting at general meetings

### 31. How many votes a member has

- 31.1 Each member has one vote.
- 31.2 Subject to this constitution and the **Corporations Act**, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 31.3 A member is not entitled to speak or vote at a **general meeting** if the person has not paid a membership fee imposed by a determination of the directors made in accordance with clause 10.2 within two months after it becomes due.

### 32. Challenge to member's right to vote

- 32.1 A member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 32.2 If a challenge is made under clause 32.1, the chairperson must decide whether or not the person may vote and the chairperson's decision is final.

### 33. How voting is carried out

- 33.1 Voting must be conducted and decided by:
- (a) a show of hands;
  - (b) a vote in writing; or
  - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 33.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 33.3 A resolution put to the vote of a **general meeting** is to be decided on a show of hands unless a vote in writing (in other words, a poll) is demanded in accordance with clause 34.



- 33.4 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 33.5 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

#### 34. When and how a vote in writing must be held

- 34.1 A vote in writing may be demanded on any resolution before, instead of or after a vote by a show of hands by:
- (a) at least three **members present**; or
  - (b) **members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
  - (c) the chairperson.
- 34.2 A vote in writing must be taken when and how the chairperson directs, unless clause 34.3 applies.
- 34.3 A vote in writing must not be demanded:
- (a) for the election of a chairperson under clause 25.2; or
  - (b) to decide whether to adjourn the meeting.
- 34.4 After a vote in writing has been demanded at a **general meeting**, the **general meeting** may continue for the transaction of business other than the question on which the vote in writing was demanded.
- 34.5 A demand for a vote in writing may be withdrawn.

#### 35. Appointment of proxy

- 35.1 A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 35.2 A proxy does not need to be a member.
- 35.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting;
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment); and
  - (c) join in to demand a vote in writing under clause 34.1.
- 35.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address;
  - (b) the **company's** name;
  - (c) the proxy's name or the name of the office held by the proxy (provided that, if a proxy is not named then it will be deemed to name the chairperson of the meeting as proxy); and
  - (d) the meeting(s) at which the appointment may be used.
- 35.5 A proxy form must be in the form set out in the Schedule or any other form approved by the directors.
- 35.6 The directors may determine that an appointment of proxy is valid even if it only contains some of the information specified in clause 35.4.

- 35.7 A proxy appointment may be standing (ongoing).
- 35.8 Proxy forms must be received by the **company** at the address or electronic address stated in the notice under clause 20.5(d) or at the **company's** registered address at least 48 hours before a meeting.
- 35.9 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 35.10 Unless the **company** receives written notice of the death, mental incapacitation or revocation before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies;
  - (b) is mentally incapacitated;
  - (c) revokes the proxy's appointment; or
  - (d) revokes the authority of a representative or agent who appointed the proxy.
- 35.11 A proxy appointment may specify the way the proxy must vote on a particular resolution.

## 36. Voting by proxy

- 36.1 A proxy is entitled to vote on a show of hands.
- 36.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
  - (b) if the way they must vote is specified on the proxy form, must vote that way; and
  - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

# Directors

## 37. Number of directors

The **company** must have at least three and no more than ten directors.

## 38. Appointment of directors

- 38.1 The directors who were in office immediately prior to the adoption of this constitution will continue in office as directors after the adoption of this constitution. A director is not required to be a member and is not subject to retirement by rotation.
- 38.2 The members may appoint a director by a resolution passed in a **general meeting** if the person:
- (a) gives the **company** the person's signed consent to act as a director of the **company**; and

- (b) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act** or this constitution.
- 38.3 A director must be appointed by a separate resolution, unless the members present have first passed a resolution that the appointments of several directors may be voted on together.
- 38.4 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- (a) gives the **company** the person's signed consent to act as a director of the **company**; and
  - (b) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act** or this constitution.
- 38.5 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.
- 38.6 If it is discovered that:
- (a) there was a defect in the appointment of a person as a director or member of a committee; or
  - (b) a person appointed to one of those positions was disqualified,
- all acts of the directors or the committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## 39. Election of chairperson

- 39.1 The directors must elect a director as the **company's elected chairperson** and may determine the period for which the chairperson shall hold office (save that any chairperson shall cease to be chairperson if they cease to be a director).
- 39.2** A director appointed in accordance with clause 38 holds office until they stop being a director in accordance with clause 40.

## 40. When a director stops being a director

- 40.1 A director stops being a director if they:
- (a) give written notice of resignation as a director to the **company**;
  - (b) die;
  - (c) are removed as a director by a resolution of the members;
  - (d) are a representative of a member, and that member stops being a member;
  - (e) are a representative of a member, and the member notifies the **company** that the representative is no longer a representative;
  - (f) are absent for **6** consecutive directors' meetings without approval from the directors; or
  - (g) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**;
  - (h) are liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it.

# Powers of directors

## 41. Powers of directors

- 41.1 The directors are responsible for managing and directing the activities of the **company** to achieve the **principal purpose** of the **company**.
- 41.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be exercised by the members in a **general meeting**.
- 41.3 The directors must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 42; and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 41.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

## 42. Delegation of directors' powers

- 42.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate and a delegate of the directors may be authorised to sub-delegate to others. Any delegations must be recorded in the **company's** minute book.
- 42.2 Meetings of any committee of directors will be governed by the provisions of this constitution which deal with directors' meetings so far as they are applicable and are not inconsistent with any directions of the directors. The provisions apply as if each member of the committee was a director.

## 43. Appointment of attorneys and agents

- 43.1 The directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the **Corporations Act** appoint any person to be the attorney or agent of the **company**:
- (a) for the purposes;
  - (b) with the powers, authorities and discretions (not exceeding those exercisable by the directors under this constitution);
  - (c) for the period; and
  - (d) subject to the conditions,
- determined by the directors.
- 43.2 An appointment by the directors of an attorney or agent of the **company** may be made in favour of:
- (a) any member of any committee established under this constitution;
  - (b) any company;

- (c) the members, directors, nominees or managers of any company or firm; or
  - (d) any fluctuating body of persons whether nominated directly or indirectly by the directors.
- 43.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the directors think fit.
- 43.4 The directors may appoint attorneys or agents by electronic transmission, facsimile or other means of written communication to act for and on behalf of the **company**.
- 43.5 An attorney or agent appointed under this clause 43 may be authorised by the directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in the attorney or agent.

## 44. Payments to directors

- 44.1 The **company** must not pay fees to a director for acting as a director.
- 44.2 The **company** may:
- (a) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done; or
  - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company**.
- 44.3 Any payment made under clause 44.2 must be approved by the directors.

## 45. Execution of documents

The **company** may execute a document without using a common seal if the document is signed by:

- (a) two directors of the **company**;
- (b) a director and the secretary; or
- (c) any other persons duly authorised to do so by the directors.

# Duties of directors

## 46. Duties of directors

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which generally are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **company**;
- (b) to act in good faith in the best interests of the **company** and to further the **principal purpose** of the **company**;
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;

- (e) to disclose any material personal interest in the manner set out in clause 47;
- (f) to ensure that the financial affairs of the **company** are managed responsibly; and
- (g) not to allow the **company** to operate while it is insolvent.

## 47. Directors' interest

- 47.1 A director must disclose the nature and extent of any material personal interest in a matter that relates to the affairs of the **company** and is being considered at a meeting of directors (or that is proposed in a circular resolution) to the other directors.
- 47.2 The disclosure of a material personal interest by a director must be recorded in the minutes of the meeting.
- 47.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 47.4 or as permitted under the **Corporations Act**:
- (a) be present at the meeting while the matter is being discussed; or
  - (b) vote on the matter.
- 47.4 A director may still be present and vote if:
- (a) their interest arises because they are a member of the **company**, and the other members have the same interest;
  - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **company** (see clause 65);
  - (c) their interest relates to a payment by the **company** under clause 64 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**;
  - (d) the Australian Securities and Investments Commission (ASIC) makes an order, or a **general meeting** passes a resolution allowing the director to vote on the matter; or
  - (e) the directors who do not have a material personal interest in the matter pass a resolution that:
    - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the **company**; and
    - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

# Directors' meetings

## 48. When the directors meet

- 48.1 The directors may decide how often, where and when they meet.

## 49. Calling directors' meetings

- 49.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.

- 49.2 A director may give notice in writing via letter, facsimile or email or any other means of communication that has previously been agreed to by all of the directors.
- 49.3 By attending a directors' meeting, a director waives any objection he or she may have had in relation to the notice of meeting.
- 49.4 An accidental omission to give notice of a meeting of directors to any director or the non-receipt of such notice by any director does not invalidate the proceedings at or any resolution passed at the meeting.

## 50. Chairperson for directors' meetings

- 50.1 The **elected chairperson** is entitled to chair directors' meetings.
- 50.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the **elected chairperson** is:
- (a) not present within 15 minutes after the starting time set for the meeting; or
  - (b) present but does not want to act as chairperson of the meeting.
- 50.3 Where a quorum cannot be established for the consideration of a particular matter at a meeting of directors, the chairperson may call a **general meeting** to deal with the matter.

## 51. Quorum at directors' meetings

- 51.1 Unless the directors determine otherwise, the quorum for a directors' meeting is two directors.
- 51.2 A quorum must be present for the whole directors' meeting.

## 52. Using technology to hold directors' meetings

- 52.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors and which allows the directors to simultaneously hear each other and participate in discussion.
- 52.2 The directors' agreement may be a standing (ongoing) one.
- 52.3 A director may only withdraw their consent within a reasonable period before the meeting.

## 53. Passing directors' resolutions

- 53.1 A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution and, subject to clause 47, each director has one vote.
- 53.2 In the case of an equality of votes, the chairperson of the meeting has a casting vote in addition to a deliberative vote, unless only two directors are present at the meeting or only 2 directors are competent to vote on the question, in either of which cases the chairperson does not have a casting vote.

## 54. Circular resolutions of directors

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

- 54.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 54.3 or clause 54.4.
- 54.3 Each director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 54.4 The **company** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 54.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 54.3 or clause 54.4.

## Secretary

### 55. Appointment and role of secretary

- 55.1 The **company** must have at least one secretary, who may also be a director.
- 55.2 A secretary must be appointed by the directors (after giving the **company** the secretary's signed consent to act as secretary of the **company**) on such terms and conditions as the directors may decide.
- 55.3 The role of the secretary includes:
- (a) maintaining a register of the **company's** members; and
  - (b) maintaining the minutes and other records of **general meetings** directors' meetings and circular resolutions.
- 55.4 The secretary is entitled to attend and be heard on any matter at all directors' and **general meetings**.
- 55.5 The directors may, subject to the terms of the secretary's employment contract, suspend, remove or dismiss the secretary.

## Minutes and records

### 56. Minutes and records

- 56.1 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**;
  - (b) minutes of circular resolutions of members; and
  - (c) a copy of a members' statement distributed to members under clause 29.



- 56.2 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
  - (b) minutes of circular resolutions of directors.
- 56.3 To allow members to inspect the **company's** records:
- (a) the **company** must give a member access to the records set out in clause 56.1; and
  - (b) the directors may authorise a member to inspect other records of the **company**, including records referred to in clause 56.2 and clause 57.1.
- 56.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting; or
  - (b) the chairperson of the next meeting.
- 56.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.
57. Financial and related records
- 57.1 The **company** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 57.2 The **company** must also keep written records that correctly record its operations.
- 57.3 The **company** must retain its records for at least 7 years.
- 57.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.
- 57.5 Except as otherwise required by law, a member other than a director does not have the right to inspect any financial records or other documents of the **company** unless the member is authorised to do so by a court order or a resolution of the directors.

## By-laws

### 58. By-laws

- 58.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 58.2 Members and directors must comply with by-laws as if they were part of this constitution.

# Notice

## 59. What is notice

- 59.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 60 to 62, unless specified otherwise.
- 59.2 Clauses 60 to 62 do not apply to a notice of proxy under clause 35.8.

## 60. Notice to the company

- 60.1 Written notice or any communication under this constitution may be given to the **company**, the directors, or the secretary by:
- (a) delivering it to the **company's** registered office;
  - (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided;
  - (c) sending it to an email address or other electronic address notified by the **company** to the members as the **company's** email address or other electronic address; or
  - (d) sending it to the fax number notified by the **company** to the members as the **company's** fax number.

## 61. Notice to members

- 61.1 Written notice or any communication under this constitution may be given to a member:
- (a) in person;
  - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
  - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any);
  - (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any); or
  - (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 61.2 If the **company** does not have an address for the member, the **company** is not required to give notice in person.

## 62. When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;

- (c) sent by email, fax, or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 61.1(e) is taken to be given on the business day after notification is given to the relevant member that the notice is available.

## Financial year

### 63. Company's financial year

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

## Indemnity, insurance and access

### 64. Indemnity

- 64.1 The **company** indemnifies each officer of the **company** out of the assets of the **company**, to the relevant extent, against:
- (a) any liability (other than for legal costs) incurred by that person as an officer of the **company**; or
  - (b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an officer of the **company**.
- 64.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 64.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so; and
  - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 64.4** The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

### 65. Insurance

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

## 66. Directors' access to documents

- 66.1 A director has a right of access to the financial records of the **company** at all reasonable times.
- 66.2 If the directors agree, the **company** must give a director or former director access to:
- (a) certain documents, including documents provided for or available to the directors; and
  - (b) any other documents referred to in those documents.

# Winding up

## 67. Winding up

- 67.1 The **company** must be wound up if the members resolve that the **company** should be wound up or if the **company** is required to be wound up at law.
- 67.2 If the **company** is wound up, each member must contribute in accordance with the terms of the guarantee given by each member under clause 4.

## 68. Distribution of surplus assets

- 68.1 If any **surplus assets** remain following the winding up of the **company**, the **surplus assets** will not be paid to or distributed to the members or former members of the **company**.
- 68.2 Subject to clause 68.3, the **Corporations Act** or other applicable Act, and any court order, if on the winding up or dissolution of the **company**, there remains any **surplus assets**, the surplus must be given or transferred another organisation which is a charity registered under the **ACNC Act** and, by its constitution, is:
- (a) required to pursue purposes similar to the **principal purpose** of the **company**;
  - (b) required to apply its income and property in promoting its purpose(s); and
  - (c) prohibited from making any distribution to its members to at least the same extent as the **company**,

such organisation to be determined by the members of the **company** at or before the winding up and in default, by application to the Supreme Court of New South Wales for determination.

- 68.3 If the **company** is endorsed as a deductible gift recipient under the **ITAA 1997**, upon the winding up of the **company** any surplus:
- (a) gifts of money or property received by the **company** for the **principal purpose** of the **company**;
  - (b) **deductible contributions** received by the **company** in relation to a fund-raising event held for the **principal purpose** of the **company**;
  - (c) money received by the **company** because of the gifts or **deductible contributions** mentioned in clauses 68.3(a) and 68.3(b) including, without limitation, any money received because of the investment of those gifts or **deductible contributions**; and
  - (d) assets held by the **company** other than those mentioned above,

will not be paid to or distributed amongst the members or former members of the **company**, but will be given or transferred to another fund, authority or institution:

- (e) which is, by its constitution, required to pursue purposes which are charitable at law only and are similar to the **principal purpose** of the **company**;
- (f) which is required to apply its income and property in promoting its purpose(s);
- (g) gifts to which can be deducted under Division 30 of the **ITAA 1997**; and
- (h) which has constituent documents which prohibit the distribution of its income and property among its members to at least the same extent as the **company**,

such fund, authority or institution to be determined by the members of the **company** at or before the winding up and in default, by application to the Supreme Court of New South Wales for determination.

## 69. Revocation of Deductible Gift Recipient Endorsement

69.1 If the **company's** endorsement as deductible gift recipient in accordance with Division 30 of the **ITAA 1997** is revoked, any surplus:

- (a) gifts of money or property received by the **company** for the **principal purpose** of the **company**;
- (b) **deductible contributions** received by the **company** in relation to a fund-raising event held for the **principal purpose** of the **company**;
- (c) money received by the **company** because of the gifts or **deductible contributions** mentioned in clauses 69.1(a) and 69.1(b) including, without limitation, any money received because of the investment of those gifts or **deductible contributions**; and
- (d) assets held by the **company** other than those mentioned above,

will not be paid to or distributed amongst the members or former members of the **company**, but will be given or transferred to another fund, authority or institution:

- (e) which is, by its constitution, required to pursue purposes which are charitable at law only and are similar to the **principal purpose** of the **company**;
- (f) which is required to apply its income and property in promoting its purpose(s)
- (g) gifts to which can be deducted under Division 30 of the **ITAA 1997**; and
- (h) which has constituent documents which prohibit the distribution of its income and property among its members to at least the same extent as the **company**,

such fund, authority or institution to be determined by the members of the **company** at or before the winding up and in default, by application to the Supreme Court of New South Wales for determination.

## 70. Register of Environmental Organisations

70.1 Application of this clause

- (a) Clause 70 only applies if the **company** and the Gondwana Rainforest Fund are entered on the **Register of Environmental Organisations**.

70.2 Members

- (a) Unless the **Environment Minister** has determined that the **company** does not have to meet the following requirements, the members of the **company** must satisfy one of the following requirements:
  - (i) a majority of the members of the company must be bodies corporate; or

- (ii) the **company** must have at least 50 **voting members** who are individuals.

70.3 Establishment of the Gondwana Rainforest Fund

- (a) The **company** must, for the purpose of supporting the **principal purpose** of the **company**, establish and maintain the Gondwana Rainforest Fund:
  - (i) to which gifts of money or property for the **principal purpose** of the company are to be made;
  - (ii) to which **deductible contributions** are to be made;
  - (iii) to which any money received by the **company** because of such gifts and contributions is to be credited;
  - (iv) that does not receive any other money or property; and
  - (v) that complies with Subdivision 30-E of the **ITAA 1997**.

70.4 Requirements of the Gondwana Rainforest Fund

- (a) The **company** must inform the **Department** as soon as possible if:
  - (i) it changes its name or the name of the Gondwana Rainforest Fund;
  - (ii) there is any change to the membership of the management committee of the Gondwana Rainforest Fund; or
  - (iii) there has been any departure from the model rules for public funds located in the **guidelines**.

70.5 Ministerial Rules

- (a) The **company** agrees to comply with any rules that the Federal Treasurer and the **Environment Minister** may make to ensure that gifts made to the Gondwana Rainforest Fund are used only for the **principal purpose**.

70.6 Conduit Policy

- (a) Any allocation of funds or property to other persons or organisations will be made in accordance with the **principal purpose** of the **company** and will not be influenced by the preference of the donor.

70.7 Winding up of the Gondwana Rainforest Fund

- (a) In the case of the winding up of the Gondwana Rainforest Fund, any surplus assets of the Gondwana Rainforest Fund are to be transferred to another fund with similar objectives that is on the **Register of Environmental Organisations**.

70.8 Revocation of endorsement

- (a) If the **company** ceases to be endorsed as a deductible gift recipient for the operation of the Gondwana Rainforest Fund, any surplus assets of the Gondwana Rainforest Fund will be transferred to another public fund that is on the **Register of Environmental Organisations**.

70.9 Statistical Information

- (a) Statistical information requested by the **Department** on donations to the Gondwana Rainforest Fund will be provided within four months of the end of each financial year.
- (b) An audited statement for the **company** and the Gondwana Rainforest Fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of public monies and the management of public fund assets.

70.10 Maintenance of the Gondwana Rainforest Fund

- (a) The **company** will maintain the Gondwana Rainforest Fund in accordance with the following rules:

- (i) the objective of the Gondwana Rainforest Fund is to support the **principal purpose** of the **company**;
- (ii) members of the public are to be invited to make gifts of money or property to the Gondwana Rainforest Fund for the **principal purpose**;
- (iii) money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the Gondwana Rainforest Fund;
- (iv) a separate bank account is to be opened to deposit money donated to the Gondwana Rainforest Fund and any interest accruing thereon, and gifts to it are to be kept separate from other funds of the **company**;
- (v) receipts are to be issued in the name of the Gondwana Rainforest Fund and proper accounting records and procedures will be kept and used for the Gondwana Rainforest Fund;
- (vi) the Gondwana Rainforest Fund will be operated on a not-for-profit basis; and
- (vii) a committee of management of no fewer than three persons will administer the Gondwana Rainforest Fund. The committee will be appointed by the **company**. A majority of the members of the committee are required to be **responsible persons**,
- (viii) The Gondwana Rainforest Fund can be used to pay for the reasonable operating expenses of the Company including rent, stationery, salaries and wages.

## Definitions and interpretation

### 71. Definitions

In this constitution:

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and includes any exemption or modification to that Act applying to the **company**

**company** means the **company** to which this constitution relates and which has the name set out in clause 1

**Corporations Act** means the *Corporations Act 2001* (Cth) and includes any exemption or modification to that Act applying to the **company**

**deductible contribution** means a contribution that is deductible under items 7 or 8 of the table in subsection 30-15(2) of the **ITAA 1997** and any amendment or re-enactment of these items

**Department** means the Department administered by the Commonwealth Environment Minister

**directors** means all or some of the directors acting as a board

**elected chairperson** means a person elected by the directors to be the **company's** chairperson under clause 39

**Environment Minister** has the meaning given by the **ITAA 1997**

**Environment Secretary** has the meaning given by the **ITAA 1997**

**Equivalent Clause** has the meaning given to that term in clause 72 **general meeting** means a meeting of members and includes the annual **general meeting**, under clause 19.1

**guidelines** means 'The Register of Environmental Organisations – Guidelines, Commonwealth of Australia 2003', as modified or amended from time to time

**ITAA 1997** means the *Income Tax Assessment Act 1997* (Cth)

**Imported Provisions** means the following provisions of the Corporations Act:

- i. section 139 (Company must send copy of constitution to member)
- ii. sections 191 to 193 (disclosure of, and voting on matters involving, material personal interests)
- iii. Divisions 1 to 7 of Part 2G.2 (meetings of members of companies), and
- iv. Part 2G.3 (minutes and members' access to minutes)

**member present** means, in connection with a **general meeting**, a **member present** in person, by representative or by proxy at the venue or venues for the meeting

**principal purpose** means the **principal purpose** referred to in clause 6.1

**Register of Environmental Organisations** means the register kept by the **Environment Secretary** under section 30-255 of the **ITAA 1997**

**registered charity** means a charity that is registered under the **ACNC Act**

**responsible person** means an individual who satisfies any requirements for being a 'responsible person' under the **guidelines**

**special resolution** means a resolution:

- i. of which notice has been given under clause 20.5(c), and
- ii. that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution

**surplus assets** means any assets of the **company** that remain after paying all debts and other liabilities of the **company**, including the costs of winding up

**voting member** means a member of the **company** who is entitled to vote at a **general meeting**

## 72. Reading this constitution with the Corporations Act

72.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.

72.2 If, while the **company** is a **registered charity**, the **Corporations Act** operates such that an **Imported Provision** does not apply to the **company** because the **company** is a **registered charity**:

- (a) a clause in the same terms as the **Imported Provision**, along with any relevant definitions in the **Corporations Act**, is deemed to be included in this Constitution and to apply to the **company** to the extent the **Imported Provision** would have applied to the **company** were the **company** not a **registered charity (Equivalent Clause)**; and
- (b) a reference in this Constitution to an **Imported Provision** is deemed to be a reference to the **Equivalent Clause**.

72.3 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution. Where the expression has more than one meaning in the **Corporations Act** and a provision of the **Corporations Act** deals with the



same matter as a clause of this constitution, that expression has the same meaning as in that provision.

## 73. Interpretation

### 73.1 In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression and the meaning of general words is not limited by specific examples introduced by these expressions;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this constitution, and a reference to this constitution includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) headings are inserted for convenience and do not affect the construction of this constitution;
- (g) a reference to A\$, \$A, dollar or \$ is to Australian currency; and
- (h) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

# Schedule – Proxy form

## APPOINTMENT OF PROXY – GONDWANA RAINFOREST TRUST LTD

Please mark ☐ to indicate your directions

I, \_\_\_\_\_ (insert member's name) of  
\_\_\_\_\_ (insert address) being a member of Gondwana  
Rainforest Trust Ltd (**Company**) entitled to attend and vote, hereby appoint  
\_\_\_\_\_ (insert name of proxy) of  
\_\_\_\_\_ (insert address of proxy) or if no individual is named, or if the proxy is  
unable to attend and/or vote, the chairperson of the meeting, as my proxy to act generally on my behalf and  
to vote in accordance with the following directions (or if no directions have been given, as the proxy sees fit)  
at the [Extraordinary/Annual] General Meeting of the Company to be held at [insert address] at [insert time]  
on [insert date] (**Meeting**) and at any adjournment or postponement of the Meeting.

BUSINESS	FOR	AGAINST	ABSTAIN
[insert]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**PLEASE NOTE:** If you mark the **ABSTAIN** box for an item, you are directing your proxy not to vote on your behalf on a show of hands or a poll and your votes will not be counted in computing the required majority.

This form must be lodged with the secretary of the Company before the start of the Meeting. Please return this form to:

[insert secretary name]

Secretary, Gondwana Rainforest Trust Ltd

Address: [insert address]

Email: [insert email]

<b>Name:</b>	
<b>Signature:</b>	
<b>Daytime Telephone:</b>	
<b>Date</b>	