

---

# **The Constitution of Central Desert Native Title Services Ltd**

---

**(ACN 124 921 811)**

## Amendment Certificate

Notes:

- (i) This page and the details contained within does not form part of the authorised Constitution.
- (ii) Amendments do not have force until they are notified correctly to the Australian Securities and Investments Commission.

<b>Version</b>	<b>Date</b>	<b>Description</b>	<b>Initials</b>	<b>ASIC Advised</b>
1	16 Apr 07	Adopted on Incorporation	N/A	16 Apr 07
2	17 Jul 08	Revised constitution		22 Jul 08
3	3 Apr 09	Change to board meeting cycle		22 Sep 09

# Contents

- 1. Company name and type.....4**
  - 1.1. Company Name .....4
  - 1.2. Company Type.....4
- 2. Definitions and interpretation .....4**
  - 2.1. Definitions .....4
  - 2.2. Interpretation.....4
- 3. Objects, functions & powers .....5**
  - 3.1. Objects.....5
  - 3.2. Functions .....5
  - 3.3. Powers .....6
  - 3.4. Limitation on power.....6
- 4. Members.....6**
  - 4.1. Application .....6
  - 4.2. Corporate Members .....6
  - 4.3. Member liability .....6
  - 4.4. Ceasing to be a Member & Expulsion from Membership .....6
  - 4.5. Register of Members.....7
- 5. Proceedings & resolutions of the Members .....7**
  - 5.1. General Meetings.....7
  - 5.2. Annual General Meetings .....7
  - 5.3. Calling Annual General Meetings and Extraordinary General Meetings .....7
  - 5.4. Notice of General Meetings .....7
  - 5.5. Quorum at General Meetings.....8
  - 5.6. Non member attendance at General Meetings .....8
  - 5.7. Chairperson of the General Meeting.....8
  - 5.8. Proxies at General Meetings.....9
  - 5.9. Voting at General Meetings .....9
- 6. Directors and Secretary.....9**
  - 6.1. Director and Secretary Eligibility .....9
  - 6.2. Number of Directors.....10
  - 6.3. Term of Office .....10
  - 6.4. Chairperson .....10
  - 6.5. Secretary.....10
  - 6.6. The powers and functions of the Directors .....11
  - 6.7. Duties of Company Officers.....11
  - 6.8. Ceasing to Hold Office & Removing Directors .....11
- 7. Proceedings and resolutions of Directors.....13**
  - 7.1. Calling Board Meetings.....13
  - 7.2. Notice of Board Meetings.....13
  - 7.3. Quorum at Board Meetings.....13
  - 7.4. Chairperson .....13
  - 7.5. Voting at Board Meetings.....14
  - 7.6. Resolutions without meetings .....14
  - 7.7. Sub-committees of Directors.....14
  - 7.8. Advisory Committees .....14
- 8. Miscellaneous .....15**
  - 8.1. Minutes .....15
  - 8.2. Finance & accounts .....15

8.3. Indemnity ..... 15

8.4. Notices ..... 16

8.5. Modification or Repeal of Constitution ..... 16

**9. Gift Fund ..... 16**

**10. Distribution of surplus on winding up ..... 16**

**Schedule 1 ..... 18**

**Schedule 2 ..... 19**

## Constitution Dated 03 April 2009

### 1. Company name and type

#### 1.1. Company Name

The name of the Company is Central Desert Native Title Services Ltd.

#### 1.2. Company Type

- (a) The Company is a public Company limited by guarantee.
- (b) The liability of the Members is limited to the extent of the guarantee required to be given pursuant to Clause 4.3 below.

### 2. Definitions and interpretation

#### 2.1. Definitions

In this Constitution, unless a contrary intention is evident, the following words convey the following meanings:

*Act* means the *Corporations Act 2001* (Cth) or any substitute or replacement legislation;

*Board* means the board of Directors of the Company;

*Central Desert Area* means the area described in Schedule 2;

*Chairperson* means the Chairperson of the Board;

*Company* means Central Desert Native Title Services Ltd;

*Director* means a director of the Company;

*Member* means a member of the Company;

*Officer* has the same meaning as in the Act;

*Secretary* means a secretary of the Company; and

*Special Resolution* has the same meaning as in the Act.

#### 2.2. Interpretation

- (a) In this Constitution:
  - (i) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
  - (ii) a reference to any Clause is to a clause of this Constitution; and
  - (iii) notes and headings are for convenient reference only.
- (b) the provisions of this Constitution are intended to displace the replaceable rules contained in the Act.
- (c) If any provision of this Constitution is held to be illegal, invalid or otherwise ineffective, that provision is deemed to be severed from the Constitution and the remainder of the Constitution shall remain in force.

### 3. Objects, functions & powers

#### 3.1. Objects

The objects of the Company are to directly assist and benefit the Aboriginal people of the Central Desert Area by:-

- (a) relieving poverty, sickness, suffering, distress, misfortune, destitution and helplessness amongst Aboriginal people of the Central Desert Area;
- (b) recognising that such poverty, sickness, suffering, distress, misfortune, destitution and helplessness result from such Aboriginal people having been progressively dispossessed of their land and/ or waters, without compensation, as a consequence of which they have become socially, spiritually and economically dis-empowered and are now the most disadvantaged section of Australian society to:
  - (i) directly assist them in regaining recognition of their rights and interests in lands and waters arising from their traditional laws and customs and to satisfy their aspirations with respect to such land and/or waters;
  - (ii) assist such Aboriginal people to regain access to their traditional lands and/or waters;
  - (iii) assist such Aboriginal people to have a voice in relation to the future use and exploitation of their traditional lands and/ or waters; and/ or
  - (iv) assist such Aboriginal people to obtain compensation in relation to their dispossession from their traditional lands and/or waters and in relation to the future use and exploitation of such traditional lands and/or waters.
- (c) promoting and protecting their distinctive laws and customs and Aboriginal culture generally; and
- (d) otherwise directly assist in the advancement of the general welfare of the Aboriginal people of the Central Desert Area;

to the extent that these are charitable purposes as recognised by the law of equity and the *Income Tax Assessment Act 1997* (Cth).

#### 3.2. Functions

The Company shall strive to attain its objects by doing all things within its powers necessary and desirable for the attainment of the objects described in Clause 3.1, including:

- (a) providing legal, research and other services to Aboriginal people of the Central Desert Area;
- (b) performing the functions of a representative body under the Native Title Act 1993 (Cth) for any part of the Central Desert Area;
- (c) delivering sustainable native title outcomes that will recognise and protect their capacity to maintain and develop their distinctive laws, customs, culture and identity for present and future generations and which will enhance their cultural and economic futures;
- (d) providing services and expertise in:-
  - (i) anthropological and related research;
  - (ii) assistance to establish the factual basis of native title claims; and
  - (iii) legal advice and representation in the mediation and litigation of native title claims;
- (e) directly assisting them in obtaining their rights and interests in lands and waters arising from distinctive laws and customs and to satisfy their aspirations with respect to land;
- (f) providing advice and representation in protecting land rights;
- (g) providing training and assistance in respect of appropriate governance structures to properly manage their lands and waters;
- (h) providing legal and other forms of assistance for the future use and access to their traditional lands and waters by others; and

- (i) doing all things incidental to the above.

### **3.3. Powers**

- (a) Subject to Clause 3.3(b) and 3.4 the Company has the legal capacity and powers of an individual and all the powers of a body corporate.
- (b) The Company does not have the power to issue shares.

### **3.4. Limitation on power**

- (a) The Company shall apply its assets and income solely to the furtherance of its objects as set out in Clause 3.1 above and is not empowered to pay, transfer or distribute, directly or indirectly, by way of dividend, bonus or otherwise any income or property to any Member of the company except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.
- (b) The company shall not pursue its objects by engaging in political lobbying activity in its own name.

## **4. Members**

### **4.1. Application**

- (a) Any person 18 years or over or a body corporate may apply to the Board to become a Member;
- (b) The Board may accept and reject candidate for membership at its discretion.

### **4.2. Corporate Members**

A Member who is a body corporate must nominate a natural person to act as that Member's representative.

### **4.3. Member liability**

Each Member guarantees that, in the event that the Company is wound up and they are a Member on the first day of the winding up, they shall contribute to the property of the Company for payment of the debts and liabilities of the Company and payment of the costs, charges and expenses of winding-up such amount as may be required but not exceeding \$1.00.

### **4.4. Ceasing to be a Member & Expulsion from Membership**

- (a) A Member shall cease to be a Member if the Member:
  - (i) ceases to be a director;
  - (ii) resigns its membership by giving notice to the Company;
  - (iii) dies or is a body corporate that is wound up;
  - (iv) is expelled as a Member in accordance with Clause 4.4(b).
- (b) A person may be expelled as a Member by a Special Resolution passed by the Members in general meeting if the Members are satisfied that the Member has engaged in conduct, is engaging in conduct, or is proposing to engage in conduct, which is or is likely to be detrimental to the interests of the Company or the objects in Clause 3.1 above.
- (c) Notice of intention to move a resolution to expel a Member must be given to the Member not less than 21 days prior to the date of the general meeting at which the resolution is to be moved.
- (d) The notice given to the Member must set out the grounds for the proposed motion with sufficient particularity for the Member to fully comprehend and answer the allegation against them.
- (e) Before a proposed resolution for expulsion of a Member is moved, the Member shall be given an opportunity to put their case to the Members by:
  - (i) giving the company a written statement for circulation to the Members (provided that it shall not be more than 1,000 words long and shall not be defamatory); and/or
  - (ii) speaking to the motion at the meeting.
- (f) A person may not be re-admitted as a Member if they have ever been expelled as a Member.

#### **4.5. Register of Members**

- (a) The Company shall at all times keep an up-to-date register of its Members in accordance with the Act listing in relation to each Member at least:
  - (i) the Member's name and address; and
  - (ii) the date on which the Member's name is entered in the register.
- (b) It is the responsibility of the Secretary to keep or cause to be kept the register of Members.
- (c) A separate Register shall be kept by the Secretary recording the name of the natural person nominated to act for a corporate Member in accordance with Clause 4.2.

### **5. Proceedings & resolutions of the Members**

#### **5.1. General Meetings**

- (a) A meeting of Members is a general meeting.
- (b) All meetings of the Members which are not an annual general meeting are extraordinary general meetings.

#### **5.2. Annual General Meetings**

- (a) An annual general meeting must be held in accordance with the provisions of the Act.
- (b) The business of an annual general meeting shall include each of the following, even if they are not referred to in the notice of the meeting:
  - (i) confirmation of the minutes of the last annual general meeting;
  - (ii) the consideration of the accounts and balance sheet;
  - (iii) consideration of the Board and the auditors of the company; and
  - (iv) the appointment of the company auditor in accordance with the Act.

#### **5.3. Calling Annual General Meetings and Extraordinary General Meetings**

- (a) Annual general meetings will be called by the Board.
- (b) In addition to the annual general meetings, the Board may call extraordinary general meetings.
- (c) Any member may give written notice to the Company requesting it to call an extraordinary general meeting; a meeting must be called within 2 months by:
  - (i) the Board fixing the date and other arrangements for the meeting; and
  - (ii) the Secretary giving notice of the meeting in accordance with this Constitution.
- (d) General meetings must be held on a date and at a time and a place that is reasonable having regard to the circumstances of each of the members.
- (e) Generally, all general meetings will be held at the company's principal place of business, and this place will be deemed to be reasonable.

#### **5.4. Notice of General Meetings**

- (a) The Company must give at least 21 days written notice of any general meeting to each Member, each Director and the auditor.
- (b) Less than 21 days notice of a Members' meeting may be given where all of the Members agree beforehand, except where a resolution is to be moved at the meeting for:
  - (i) removal of a Director from office;
  - (ii) removal of a the Company's auditor under the Act; or
  - (iii) repeal or amendment of this Constitution.

- (c) The written notice of a general meeting shall include details of:
  - (i) the place, date and time for the meeting;
  - (ii) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this;
  - (iii) the general nature of any business to be transacted at the meeting;
  - (iv) if a Special Resolution to:
    - (A) **[remove]** a Director, the secretary, or the auditor; or
    - (B) repeal or amend this Constitutionis to be proposed, the intention to propose such resolution and the terms of the resolution proposed; and
  - (v) the rights of the Member under the Act and this Constitution in relation to the appointment of a proxy, including:
    - (A) the fact that the Member has the right to appoint a proxy;
    - (B) the fact that the proxy must be a Member of the company; and
    - (C) what the Member must do to appoint a proxy.
- (d) General meetings must be held on a date and at a time and a place that is reasonable having regard to the circumstances of each of the Members.
- (e) Generally, all general meetings will be held at the company's principal place of business, and this place will be deemed to be reasonable.

#### **5.5. Quorum at General Meetings**

- (a) No business shall be transacted at a general meeting unless a quorum is present.
- (b) The quorum for a general meeting shall be one half (1/2) of the total number of Members, rounded up to the nearest whole number.
- (c) If within 1 hour after the time appointed for holding a meeting of the Members a quorum is not present:
  - (i) if the meeting was convened upon the requisition of Members, it shall be dissolved;
  - (ii) in any other case, the meeting:
    - (A) will stand adjourned to the following day at the same time and place or to such other day time and place as the Board may determine; and
    - (B) if at the adjourned meeting a quorum is not present within 1 hour after the time appointed for the holding of the meeting, the meeting shall be dissolved.

#### **5.6. Non member attendance at General Meetings**

- (a) The following persons, shall be entitled to attend and address each general meeting:
  - (i) the Directors;
  - (ii) the Secretary; and
  - (iii) the company's auditor.
- (b) On the request of any 2 or more Members, the Members may permit any other person in attendance and address the meeting.

#### **5.7. Chairperson of the General Meeting**

- (a) The Members shall elect one of the Members to chair the meeting.
- (b) If the person elected as the chairperson of the general meeting is unwilling or not entitled to be the chairperson for any part of the meeting, the Members shall elect another Member as the chairperson of the general meeting.

## 5.8. Proxies at General Meetings

- (a) A Member who is entitled to attend and cast a vote at a general meeting may, by instrument in writing given to the company not less than 48 hours prior to the meeting, appoint another Member as the Member's proxy to attend and vote for the Member at the meeting.
- (b) An instrument of appointment shall be substantially in the form of Schedule 1 to this Constitution.
- (c) A proxy is entitled to vote on a show of hands or a poll.
- (d) An appointment of proxy will be automatically suspended or revoked if the Member who appointed the proxy attends the meeting.
- (e) The chairperson of the general meeting, or the Secretary, may require any person purporting to act as a proxy to establish, to the satisfaction of the meeting, that he or she is the person nominated as proxy in the instrument of appointment given to the company under this Constitution. If the person is unable to establish his or her identity he or she may be excluded from the meeting or from voting either upon a show of hands or upon a poll.

## 5.9. Voting at General Meetings

- (a) Only Members or their properly appointed proxies may vote at general meetings.
- (b) At a general meeting, each Member has 1 vote in relation to each resolution.
- (c) In the event that there is an equality of votes in relation to any proposed resolution, the chairperson of the general meeting shall have a deciding vote in addition to any vote that he or she may have as a Member.
- (d) A challenge to the right of a person to vote at a general meeting may only be raised at the meeting and must be determined by the chairperson of the meeting, whose decision is final.
- (e) At any meeting of the company's Members, each resolution shall be decided on a show of hands unless a poll is demanded.
- (f) Before a vote on a resolution is taken, the chairperson of the general meeting must inform the meeting whether notice of any proxy appointments have been received and if so how the proxy votes are to be cast.
- (g) On a show of hands, a declaration by the chairperson of the general meeting is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chairperson of the general meeting nor the minutes need to state the number or proportion of the votes recorded in favour of or against the resolution.
- (h) A poll (by either public vote or secret ballot) may be demanded in relation to any resolution by the chairperson of the general meeting.
- (i) A poll may only be demanded:
  - (i) before a vote is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting result on a show of hands is declared.
- (j) A poll demanded must be taken immediately.

## 6. Directors and Secretary

### 6.1. Director and Secretary Eligibility

- (a) A person is not eligible to be a Director or Secretary if:
  - (i) he or she has been found guilty of an offence and is sentenced to:
    - (A) imprisonment for 3 months or longer if the offence involved fraud, dishonesty or misappropriation of funds; or,
    - (B) imprisonment for one year or longer in the case of any other offence.

Or,

- (ii) he or she is disqualified from managing corporations under the Act; or,
  - (iii) **he or she is an employee of the Company.**
- (b) A person who has been found guilty and sentenced as described may nevertheless be eligible to be a Director or Secretary if:
- (i) where the person was never actually imprisoned - at least 5 years have elapsed since the person was convicted; or
  - (ii) where the person served a term of imprisonment - at least 5 years have passed since the person was released from prison.
- (c) A person may not be appointed as a Director or as the Secretary unless:
- (i) that person has in writing, signed by the person, consented to being a Director or the Secretary of the company, as the case may be; and
  - (ii) they have demonstrated skills or experience in one of the following:-
    - (A) native title;
    - (B) business or business connections;
    - (C) accounting;
    - (D) legal issues;
    - (E) community engagement or development;
    - (F) public administration;
    - (G) indigenous social and cultural issues;
    - (H) dispute resolution.

## 6.2. Number of Directors

- (a) Unless an ordinary resolution is passed by the Company in general meetings to the contrary, there shall be a maximum of 7 Directors.

## 6.3. Term of Office

- (a) At least one third of the Directors shall retire annually by rotation but shall be eligible for re-election. The Board will determine the Directors to retire by selecting the longest serving Directors.
- (b) If ever there should be a vacancy created in the office of Director, the Board may appoint a replacement Director, in which case that person will hold office as Director until the next annual general meeting of the Company at which time they shall be eligible for re-election.
- (c) The company in general meeting may from time to time by ordinary resolution remove or appoint a Director.

## 6.4. Chairperson

- (a) The Directors may, by secret ballot, elect one of the directors to be the Chairperson at the first Board meeting after each annual general meeting.
- (b) Subject to this Constitution, the Chairperson shall hold office as the Chairperson from the date of their election until the date of the first Board meeting following the next annual general meeting.
- (c) Upon the expiry of the Chairperson's term, he or she shall be eligible for re-election as the Chairperson.

## 6.5. Secretary

- (a) The Secretary shall be appointed by the Board in accordance with the Act for such term, and upon such terms and conditions as to remuneration or otherwise as it thinks fit, and any Secretary so appointed may be removed by the Board.
- (b) The Secretary need not be a Director of the company and may be another person involved in the administration of the financial affairs of the company.

- (c) If there should ever be any vacancy in the office of Secretary, the Directors must meet to appoint an appropriate person, who consents in writing signed to be the Secretary.

#### **6.6. The powers and functions of the Directors**

- (a) The affairs of the company are to be managed and controlled under the direction of the Board.
- (b) The Board may exercise all of the powers of the company other than those that the Act or this Constitution requires the company to exercise in general meeting.
- (c) The Board may delegate any of its powers to a sub-committee of Directors.
- (d) The Board may establish consultative committees as and when required.
- (e) No Director or Member may make any public statement on behalf of the Company unless authorised to do so by the Board.
- (f) A Director does not have the power to appoint another person to exercise some or all of the Director's powers.
- (g) All acts performed in good faith by any Director shall be valid even if it is subsequently revealed that there was some defect in that person's appointment or that he or she was disqualified from holding office at the time that the act was performed.

#### **6.7. Duties of Company Officers**

- (a) Each Director and each other Officer must, in accordance with law, exercise their powers and discharge their duties:
  - (i) honestly;
  - (ii) in good faith and for proper purposes; and
  - (iii) with the degree of care and diligence that a reasonable person would exercise if they:
    - (A) were a director or officer of a corporation in the Company's circumstances; and
    - (B) occupied the office held by, and had the same responsibilities with the company as, the Director or Officer.
- (b) A Director must not:
  - (i) improperly use their position to gain an advantage for themselves or someone else;
  - (ii) improperly use information gained through their position as Director to gain advantage for themselves or someone else; or
  - (iii) in any way act so as to cause detriment to the company.
- (c) A Director, who stands to obtain any direct or indirect material benefit from a transaction or arrangement which is being considered by the company:
  - (i) must, as soon as possible after that fact comes to the Director's knowledge or attention, bring that fact to the attention of the Board and give full disclosure of the nature and extent of the material benefit which the Director would derive from the transaction or arrangement;
  - (ii) shall not be present for, nor participate in, any deliberations in relation to whether or not the transaction or arrangement should be entered into;
  - (iii) shall not vote on any resolution pertaining to the transaction or arrangement, or otherwise take part in making a decision in relation to the transaction or arrangement; and
  - (iv) shall not execute any document or do any thing on behalf of the company to execute or give effect to the proposed transaction or arrangement.
- (d) The minutes of any meeting at which a Director gives disclosure of the type referred to in sub-Clause 6.7(c)(i) in relation to a matter, or at which any matter in relation to which disclosure of the type referred to in sub-Clause 6.7(c)(i) has been given, shall record the disclosure and whether or not the Director was present during, or participated in any deliberations or voting in relation to the matter.

#### **6.8. Ceasing to Hold Office & Removing Directors**

- (a) The office of a Director shall become vacant if the Director:

- (i) resigns as a Director by giving written notice of his or her resignation to the Company;
  - (ii) dies;
  - (iii) becomes ineligible to hold office in the company;
  - (iv) becomes disqualified or prohibited by law from managing or holding office in corporations;
  - (v) is removed from office as a Director by a Special Resolution of Members under Clause 6.8(b).
- (b) A person may be removed from office as a Director by a Special Resolution passed by the Members in general meeting if the Members are satisfied that:
- (i) the person has breached his or her duties to the company, including the duties set out in Clauses 6.7(a) and 6.7(b) above, in a material respect;
  - (ii) the person has engaged in, is engaging in, or proposes to engage in, conduct which is or may be detrimental to the interests of the company or the objects in Clause 3.1 above;
  - (iii) the person, being a Director, has been absent from 3 consecutive meetings of the Board without leave of absence from the Board;
  - (iv) the person is directly or indirectly interested in any transaction or arrangement (or proposed transaction or arrangement) with the company and failed to disclose that fact or the nature and extent of the interest, or was present during or participated in deliberations or proceedings in relation to the transaction or arrangement;
  - (v) the person has committed an offence under the Act;
  - (vi) the person has become a mentally incapacitated person; or
  - (vii) the person has become insolvent under administration or has made any arrangement with his or her creditors or any class of his or her creditors.
- (c) In any event, notice of intention to move a resolution to remove a Director from office must be given to the Director not less than 21 days prior to the date of the meeting at which the resolution is to be moved.
- (d) The notice given to the Director must set out the grounds for the proposed motion with sufficient particularity for the Director to fully comprehend and answer the allegation against him or her.
- (e) The Director may put his or her case to the Members before the resolution is moved by:
- (i) giving the company a written statement for circulation to the Members (provided that it shall not be more than 1,000 words long and shall not be defamatory); and/ or
  - (ii) speaking to the motion at the meeting.
- (f) The Members may satisfy themselves of any matter in connection with a proposed resolution for removal of a Director in any way they see fit.
- (g) A person may not be appointed or re-appointed as a Director if they have been removed from office under Clause 6.8(b).
- (h) A person shall cease to be the Secretary upon the happening of any of the following events:
- (i) the person resigns as a director [secretary] by giving written notice of his or her resignation to the company;
  - (ii) the person dies;
  - (iii) the person becomes ineligible to hold office in the company; or
  - (iv) the person becomes disqualified or prohibited by law from managing or holding office in corporations.

## **7. Proceedings and resolutions of Directors**

### **7.1. Calling Board Meetings**

- (a) The Directors shall meet to attend to the Company's business as often as is necessary and in any case at least three times every calendar year [amended 3/4/09].
- (b) A Director may at any time, and the Secretary shall on the requisition of a Director, summon a meeting of the Board by giving at least 7 days written notice to all Directors unless all Directors agree otherwise.
- (c) Board meetings must be held on a date and at a time and a location that is reasonable having regard to the circumstances of each of the Directors.
- (d) Ordinarily, all Board meetings will be held at the company's principal place of business and this location shall be deemed to be reasonable.
- (e) A Board meeting may be held using telephone or other technology, provided that:
  - (i) each Director taking part must be able to hear each of the other Directors taking part at and from the commencement of the meeting;
  - (ii) each Director must acknowledge his or her presence at the commencement of the meeting to all of the Directors taking part; and
  - (iii) no Director may leave the meeting unless the Director has first obtained the consent of the chairperson of the Board meeting; and
  - (iv) each Director will, for the purposes of this Constitution, be conclusively presumed to have been present and to have taken part at all times during the meeting by telephone unless the Director obtained the consent of the meeting to leave the meeting.

### **7.2. Notice of Board Meetings**

- (a) Reasonable notice of every Board meeting, and of the postponement of a meeting or the change in any of the logistical arrangements for a meeting, is to be given to each Director by the Secretary.
- (b) Notice of a Board meeting must include notice of:
  - (i) the date, time and location of the meeting;
  - (ii) if the meeting is to be held by telephone or teleconference, the arrangements for the facilitation of the meeting; and
  - (iii) the agenda (to the extent that it is known in advance).

### **7.3. Quorum at Board Meetings**

- (a) No business shall be transacted at a Board meeting unless a quorum is present.
- (b) A quorum for a Board meeting shall be one half (1/2) of the Directors rounded up to the nearest whole number.
- (c) If within 1 hour of the time appointed for holding a Board meeting a quorum is not present:-
  - (i) the meeting shall stand adjourned to the following day at the same time and location (unless circumstances prevent that); and
  - (ii) if at the adjourned meeting a quorum is not present within 1 hour of the appointed time, but there are no less than 3 Directors present, the meeting may proceed at the discretion of the Directors present;
  - (iii) if at the adjourned meeting a quorum is not present within 1 hour of the appointed time, and there are less than 3 Directors present, the meeting may proceed at the discretion of the Directors present only for the purposes of calling a general meeting of the company, and otherwise the meeting shall be dissolved.

### **7.4. Chairperson**

- (a) The Chairperson shall preside at all Board meetings, but if the Chairperson is not present at a meeting, the Board may elect another Director as the chairperson for that meeting.

- (b) If the Chairperson is unwilling or not entitled to be the chairperson for any part of the meeting, the Directors shall elect another Director, as the chairperson of the Board meeting for the purposes of that part of the meeting.

#### **7.5. Voting at Board Meetings**

- (a) A resolution of the Board must be passed by a majority of votes of the Directors present who are entitled to vote on the resolution.
- (b) Each Director shall have one vote in relation to each resolution.
- (c) In case of an equality of votes, the Chairperson shall have a casting vote in addition to his or her vote as a Director.
- (d) Unless a poll is demanded, each resolution shall be decided on a show of hands.
- (e) On a show of hands, a declaration by the chairperson of the Board meeting is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chairperson of the Board meeting nor the minutes need to state the number or proportion of the votes recorded in favour of or against the resolution.
- (f) A poll (by either public vote or secret ballot) may be demanded in relation to any resolution by any Director.
- (g) A poll may only be demanded:
  - (i) before a vote is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting result on a show of hands is declared.
- (h) A poll demanded must be taken immediately.

#### **7.6. Resolutions without meetings**

- (a) The Board may pass a resolution without a Board meeting being held if all the Directors 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.
- (b) If the method of passing resolutions described in the preceding clause is used, then:
  - (i) 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; and
  - (ii) the resolution shall be deemed to be passed when the last Director signs.
- (c) A resolution passed without a meeting must be minuted and, at the next meeting of the Directors, signed by chairperson of that Board meeting.

#### **7.7. Sub-committees of Directors**

- (a) If the Board delegates any of its powers to a sub-committee of Directors pursuant to Clause 6.6(c) above, the proceedings and resolutions of the subcommittee will be governed by the provisions for regulating the proceedings and resolutions of the Board contained in this Constitution.
- (b) A minute of all the meetings and resolutions of every committee shall be made and signed in the same manner in all respects as minutes of meetings and resolutions of the Board are required by this Constitution to be made and signed.

#### **7.8. Advisory Committees**

The Board may appoint (and take advice from) an advisory committee in relation to particular native title claims and that advisory committee may include a member or members of the relevant native title claim group.

## **8. Miscellaneous**

### **8.1. Minutes**

- (a) The Directors must cause minutes of the proceedings and resolutions of the Members and Directors to be kept in accordance with the Act.
- (b) Minutes of a meeting shall be confirmed at the next succeeding meeting and signed by the chairperson of that meeting.
- (c) A minute that is recorded and signed is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.
- (d) The Directors shall ensure that the Members have such access to the company's minutes as is required by the Act.

### **8.2. Finance & accounts**

The Directors shall ensure that the company complies with its legal obligations to:

- (a) keep written financial records that:
  - (i) correctly record and explain its transactions and financial position and performance; and
  - (ii) would enable true and fair financial statements to be prepared and audited;
- (b) prepare annual financial reports and Directors' reports;
- (c) prepare half-yearly financial reports and Directors' reports;
- (d) have its financial reports audited and obtain auditor's reports;
- (e) lodge its financial reports, Directors' reports and auditor's reports with ASIC;
- (f) report annually to Members; and
- (g) all other legal obligations relating to the keeping of accounts and financial reporting.

### **8.3. Indemnity**

- (a) To the extent permitted by law, every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against liability in relation to all claims, proceedings and demands incurred in the course of performing his or her duties as an Officer of the Company.
- (b) The indemnity granted by the Company contained in the preceding clause shall continue in full force and effect notwithstanding the repeal or modification of that clause, in respect of all claims, proceedings and demands made in relation to any acts and omissions occurring prior to the date of the repeal or modification.
- (c) An Officer (or former Officer) of the Company shall not be indemnified out of the funds of the Company in relation to:
  - (i) a liability owed to the company (or a related body corporate);
  - (ii) a liability for a pecuniary penalty order or compensation order under the Act;
  - (iii) 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.
- (d) An Officer (or former Officer) of the Company shall not be indemnified out of the funds of the Company in relation to legal costs incurred in defending an action for a liability incurred as an Officer or employee where the costs are incurred:
  - (i) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under Clause 8.3(c) above;
  - (ii) in defending or resisting criminal proceedings in which the person is found guilty;
  - (iii) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or

- (iv) in connection with proceedings for relief to the person under this Act in which the Court denies relief.

#### 8.4. Notices

- (a) Where under this Constitution, a person is required or entitled to give a notice or other written document to the company, they may do so by:
  - (i) delivering the notice or other document during business hours to the company's registered office;
  - (ii) posting the notice or other document by ordinary pre-paid post addressed to the Secretary at the Company's registered office; or
  - (iii) forwarding the notice or other document by facsimile transmission to a facsimile number at the Company's registered office.
- (b) A notice or other document given to or by the Company shall be deemed to have been given:
  - (i) if delivered by hand, on the date that it is delivered;
  - (ii) if delivered by ordinary pre-paid post, on the third business day after it is posted; and
  - (iii) if sent by facsimile transmission, or other electronic means, on the next business day after successful transmission.

#### 8.5. Modification or Repeal of Constitution

The Company may repeal or modify this Constitution by a Special Resolution of the Members in [a] general meeting.

### 9. Gift Fund

- (a) If the Company obtains deductible gift recipient status from the Australian Taxation Office, it will maintain for the objects of the Company a fund, called the Gift Fund, to which gifts of money or property for that purpose would be made and to which any money received by the Company because of such gifts is to be credited and the Gift Fund will not receive any other money or property.
- (b) The Company must use:
  - (i) gifts made to the Gift Fund; and
  - (ii) any income received as a result of those giftsonly for the attainment of its objects as set out in Clause 3.1 above.
- (c) At the first occurrence of:
  - (i) the winding up of the Gift Fund; or
  - (ii) the revocation of the company's deductible gift recipient endorsement under Division 30 of the *Income Tax Assessment Act 1997*,any surplus assets of the Gift Fund must be transferred to another institution or corporation in Australia with similar objects as the Company and which is a public benevolent institution for the purposes of any taxation law of the Commonwealth.

### 10. Distribution of surplus on winding up

If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another institution or corporation in Australia which:

- (a) has objects which are similar to the objects of the company as set out in Clause 3.1;
- (b) has a constitution which requires its income and property to be applied in promoting its objects;

- (c) has a constitution which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Company by this Constitution; and
- (d) is a public benevolent institution for the purposes of any taxation law of the Commonwealth.

# Schedule 1

## Notice of Appointment of Proxy

To the Secretary of Central Desert Native Title Services Ltd

I, .....

of .....

hereby give notice that I appoint [the  Chairman of the meeting, or  ]

.....

of .....

who is a Member of Central Desert Native Title Services Ltd,

to attend and vote at the general meeting of the Company to take place on .....

[subject to the following condition/s]:

1. In relation to the proposed resolution:  
     [insert terms of the proposed resolution]  
     my proxy is to vote [in favour of] [against] the resolution [abstain]
2. (etc.)

Dated: .....

Signed: .....

Witnessed by  
(Signature) .....

Witness' name: .....

Witness' address and  
contact number: .....

## Schedule 2

The area is the area of land and waters bounded by lines commencing at the intersection of the northern boundary of the larger of the two areas comprising Native title Claimant Application WG0160/97 (Tjurabalan), the Northern Territory border and the Western Australia State border, and then proceeding south by the eastern border of the Western Australia State to its intersection with the south-eastern corner of 1991 Local Government Area (LGA) of Kalgoorlie/Boulder, then generally westerly along the southern boundary of that LGA to its intersection with the road that heads northerly to Black Cat Well, then generally north-westerly along the road to T intersection at Black Cat Well and the Railway line, then generally west along the Railway line to the Karonie Railway Station, then generally north along the road to the T junction at Six Mile Dam, then generally south-westerly along the road to the Y junction of this road near Yowie Hill and the Kurnalpi-Pinjin Road, then generally north-easterly by that road to the intersection of Menzies LGA, then generally easterly along the southern boundary of Menzies LGA to its intersection with Kirgella Rocks Station, then generally north along the boundary of that Station to its intersection with Mount Celia Station, then generally northerly along the boundary of that Station to its intersection with Merolia Station, then generally easterly and northerly along the boundaries of that Station to its intersection with White Cliffs Station, then generally easterly and northerly along the boundaries of that Station to its intersection with the Cosmo Newbery Aboriginal Reserve, then generally north-westerly and north-easterly by the southern, western and northern boundaries of that Reserve to its intersection with longitude 124 degrees east, then due north by that meridian to the intersection with the southern boundary of Wiluna LGA, then generally westerly and north-easterly by the southern and western boundaries of that LGA to its intersection with the Meekatharra to Wiluna road, then generally west by that road to the intersection with the Great Northern Highway, then generally north-easterly by that Highway to its intersection with the Census Collectors District 5020401, then generally south-westerly by that boundary to its intersection with the centre thread of Gascoyne River, then generally west by the centre line of that River to its intersection with the Upper Gascoyne LGA, then generally north-westerly by the eastern boundary of that LGA to Ullawarra Station, then generally northerly and easterly along that Station boundary to the point of the intersection of the eastern boundary of Ullawarra Station and the western prolongation of the southern boundary of East Pilbara LGA, then generally easterly to the point of intersection with the eastern boundary of Native Title Claimant Application WG6110/98 (Martu), then generally northerly by the eastern boundary of that Application to its intersection with the eastern boundary of Native Title Claimant Application WG6077/98 (Ngurrara), then generally north-easterly by the eastern boundary of that Application to the intersection with the southern boundary of Native Title Claimant Application WG0160/97 (Tjurabalan), and then generally northerly and north-easterly by the western and northern boundaries of that Application to the point where the line began.

Note: Where Native Title Claimant Applications are referenced these are as per the Register of Native Title Claims at 10 May 2000.