

DATED 5th February 2003

THE FINDING SYDNEY FOUNDATION

CHARITABLE TRUST DEED



OWEN LEGAL & CORPORATE

Level 3, 220 St George's Terrace

PERTH WA 6000

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Reference: GM/20246

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THE FINDING SYDNEY FOUNDATION DEED made the fifth day of February 2010.

BETWEEN:

1. The person named in Item 1 of the Schedule as the Founder (the "**Founder**")
AND
2. The entity named in Item 3 of the Schedule as the Trustee (the "**Trustee**")

RECITALS:

- A. The Founder desires to establish a public trust fund solely for the purpose of providing money, property and other benefits to The Finding Sydney Foundation.
- B. The Founder has, prior to the execution of this Deed, paid to the Trustee the sum of \$100.00 to be held by the Trustee upon trust and for the purposes hereinafter specified.
- C. The Trustee has consented to act as Trustee under this Deed and to accept the trusts hereinafter set forth.

OPERATIVE PROVISIONS:

I. INTERPRETATION

I.1 Definitions

In this Deed, including the recitals, except where the context otherwise requires:

Appointor means the person named or described in Item 2 of the Schedule and any substitute or additional person appointed under this deed.

Auditor means the auditor of the Fund appointed as provided in clause 9;

Deed means this instrument as amended, modified or replaced pursuant to clause 12;

Director means, in the case of a corporate trustee, a director of the company;

Financial Year means the 12 month period commencing 1 July and ending 30 June following or any substituted accounting period of the Trust;

Foundation means the trust established and recorded in this Deed;

Fund means:

- (a) the sum of \$100.00 referred to in recital B;
- (b) all money and property, real and personal, as may hereafter be paid or transferred to and accepted by the Trustee as additions to the said sum of \$100.00 to be held upon the trusts of this Deed; and

- (c) the investments of other property from time to time representing such sums of money, property or accretions thereto and any part thereof and the income of the Fund;

Management Committee means the persons named in Item 4 of the Schedule and the committee established for the time being pursuant to clause 8 whether additional or substituted;

Month means a calendar month;

Finding Sydney Foundation means the Finding Sydney Foundation established by this deed and any entity which may succeed to or replace the Finding Sydney Foundation;

Responsible Person means an individual who because of their tenure of some public office or their position in the community, has a degree of responsibility to the community as a whole;

Trust means the trust established as recorded in this Deed;

Trustees means the entity, person or persons named in Item 3 of the Schedule and the Trustees for the time being of this Deed whether additional or substituted;

Schedule means the schedule to and forming part of this Deed;

Year means:

- (a) the year commencing on the date of this Deed and ending 30 June 2003, and thereafter the period commencing on the first day of July and ending on the next following thirtieth day of June or the date of termination of the Foundation (as the case may be): or
- (b) any other period of 12 Months as determined by the Trustees;

I.2 Interpretation

- (a) words denoting the singular number shall include the plural number and vice versa;
- (b) words denoting persons shall include firms, associations, corporations, governments, governmental authorities and departments, institutions and statutory bodies whether (in any case) incorporated or not; and
- (c) words denoting a gender shall include the other genders. Headings are for convenience only and shall be ignored in the interpretation of this Deed.
- (d) References to any statute, shall be construed as including references to the statute as amended or modified from time to time and in the event that the statute is repealed shall be construed as including references to the statute which replaces the statute so repealed and any amendments or modifications thereto from time to time. References to any particular section which may be repealed and replaced shall include

references to any section which replaces the section so repealed and any amendments or modifications thereto from time to time.

2. ESTABLISHMENT OF THE FOUNDATION

2.1 Foundation Name

The Foundation established as described in the recitals shall be known as "The Finding Sydney Foundation".

2.2 First Trustee

The company, HMAS SYDNEY SEARCH PTY LTD shall be the first Trustee of the Foundation.

2.3 The Fund

The Fund of the Foundation shall be held by the Trustee upon the trusts hereinafter declared.

3. OBJECTS OF THE FOUNDATION

The sole object of the Foundation is to provide money, property and other benefits to the Finding Sydney Foundation with the aim of searching for HMAS Sydney and HSK Kormoran which vessels were sunk off the Western Australian coast following a battle at sea on 19 November 1941 and to undertake philanthropic activities to commemorate the sailors involved in the engagement and to establish a virtual memorial to the sailors, the vessels and the engagement that led to their demise and in furtherance of that object;

- (a) to assist the Trustee to build the widest possible community and political support for the Foundation;
- (b) to assist the Trustee in promoting and implementing the objects, mission and vision of the Foundation;
- (c) to promote the Foundation to persons in government, business, media and community organisations, including the implementation of education programmes;
- (d) to encourage persons to donate money, objects and other property, services, resources and other benefits to the Foundation;
- (e) to encourage and demonstrate public support for the Foundation and its programmes;
- (f) to enter into any arrangement with any institution or organisation the objects of which include objects similar to or compatible with those of the Foundation;
- (g) to solicit and accept gifts, endowments and bequests from members of the public for the promotion of the objects of the Foundation;

- (h) to establish a public fund, in the form of the Fund, which will be used exclusively for the benefit of the Foundation; and
- (i) to do all things incidental or conducive to the attainment of any of the above objects.

4. APPOINTMENT AND REMOVAL OF TRUSTEE

4.1 Body Corporate

A body corporate may act as Trustee.

4.2 Trustee to be Australian Resident

A trustee shall not be appointed unless, in the case of a corporation, it is incorporated in Australia or in the case of a natural person, that person is a resident of Australia

4.3 Additional Trustees

The Trustee may appoint additional trustees.

4.4 Retirement of Trustee

- (a) Subject to clause 4.4(b), the Trustee may retire by giving notice in writing to the Appointor.
- (b) If the Trustee is sole trustee of the Trust, the Trustee's retirement must not take effect until a replacement Trustee is appointed.
- (c) If a Trustee being an individual is found to be a lunatic or of unsound mind, becomes subject to the bankruptcy laws or becomes an insolvent under administration the Trustee's appointment shall be determined.
- (d) If a trustee being a corporation enters into compulsory or voluntary liquidation, other than voluntary liquidation for the purpose of amalgamation or reconstruction, the Trustee's appointment shall be determined.

4.5 Appointment and Removal of Trustee

- (a) The Appointor may by notice in writing:
 - (i) remove any Trustee;
 - (ii) appoint any person as Trustee, other than the Founder, either to fill a vacancy arising for any reason or as an additional trustee; and
 - (iii) determine the number of Trustees.
- (b) If the Appointor named in the Schedule, is for any reason, unable to exercise its power including the statutory and other rights of removing and appointing the Trustee, that power may be exercised by the Trustee or by the legal personal

representatives of or, if the Trustee be a corporation, the liquidator of the last surviving Trustee.

4.6 Sole Trustee May Act

One person may continue to act or be appointed to act as Trustee even if more than one person is named or described as Trustee in this Deed.

4.7 Transfer of Assets & Records Upon Retirement

A Trustee who has retired or been removed must take all reasonable steps necessary and capable of being done by that Trustee to transfer the assets of the Foundation and deliver the books and records relating to the Foundation to the new or remaining Trustee.

4.8 Liability of Retiring Trustee

Subject to sub-clauses 4.4, 4.7 and 4.8(b) upon retirement:

- (a) the Trustee is released from all obligations and liability under this deed.
- (b) This sub-clause 4.8 does not affect any liability of the Trustee in respect of any act, matter or thing arising before the retirement of the Trustee.

4.9 Determination Or Resolution By Trustee

- (a) A determination or resolution of the Trustee made under this deed must be recorded in a written minute signed by the Trustee or, if the Trustee is a corporation, recorded in the minutes of the corporation.
- (b) If the Trustee is a corporation, a decision or resolution must be passed by a meeting of directors in accordance with its articles of association.
- (c) The Trustee must ensure the record of any determination or resolution by the Trustee is kept with the accounts and records of the Trust Fund.

5. INVESTMENT POWERS

5.1 Trustee Investments

The Fund may be invested in any one or more of the kinds of investment from time to time sanctioned by the law of Western Australia for the investment of trust funds.

5.2 Trustee Powers

Subject to sub-clause 5.1, the Trustee shall have and may exercise at any time, its powers:

- (a) to allow any investment or asset at any time forming part of the Fund to remain in the original form which it was received by the Trustee and at any time or times to sell call in or convert the same into money or other securities or property;

- (b) to accumulate the income of the Fund by investing the same or the resulting income therefrom in any of the modes of investment authorised by this Deed;
- (c) to change, vary or transpose any investments or assets for the time being forming part of the Fund for other investments hereby or otherwise by law authorised;
- (d) to pay all insurance premiums, rates, taxes, rents and other outgoings in connection with any real or personal property subject to the trusts hereof and to manage the said property and effect such repairs as the Trustee may consider necessary or advisable to such property and where the Trustee is unable to charge such expenditure against income the Trustee shall be at liberty to resort to capital;
- (e) to apply any moneys for the time being forming part of the Fund in improving or developing property which or an interest in which or the proceeds of sale of the whole or part of which may for the time being be subject to the trusts hereof and in erecting, enlarging, improving or rebuilding such property;
- (f) to lease or licence all or any part of any real or personal property for the time being subject to the trusts hereof for any period upon such terms and conditions and for such rent as the Trustee shall in its absolute discretion think fit and make allowances to and with tenants and others and accept surrenders and waive breaches of covenants and determine tenancies and licences and raise out of the capital or income any sum from time to time required and in the Trustee's opinion properly payable thereout for the exercise of any of the powers and discretions herein contained and generally to deal with the said real and personal property in a proper manner and in due course of management as if beneficially entitled thereto;
- (g) to determine whether any moneys shall for the purposes of this Deed be considered as capital or income and out of what part of the Fund whether out of income or capital any expenses, outgoings or losses shall or ought to be paid or borne;
- (h) to exercise as the Trustee shall in its absolute discretion think fit all the voting powers attaching to any shares, stock, debentures, debenture stock, bonds, notes, options or other securities (hereinafter together called "securities") at any time forming part of the Fund;
- (i) to surrender and deliver up any securities forming part of the Fund for such consideration and upon such terms and conditions as the Trustee shall think fit to any company reducing its capital and the Trustee may receive such consideration in the form of cash, securities or other assets as may be agreed upon between the Trustee and such company;
- (j) to consent to any reorganisation or re-construction of any company the securities of which form part of the Fund and to consent to any reduction of capital or other dealing with such securities as the Trustee may consider advantageous or desirable;

- (k) to act upon the opinion or advice of or information obtained from any financial adviser, lawyer, accountant, valuer, surveyor, auctioneer or other expert or professional person and so that the Trustee shall not be responsible for any loss, depreciation or damage occasioned by acting or not acting in accordance therewith;
- (l) to seek and procure the registration of the Foundation in accordance with the provisions of any act or law from time to time in force relating to charities or charitable funds if the Trustee shall think fit so to do;
- (m) to manage or superintend the management of the Fund or any part of parts thereof and, without limiting the Trustee's powers generally in respect of any part of the Fund being land or any interest in land of any tenure, manage, use or let the same and erect demolish or repair buildings and carry out improvements of any kind and generally deal with such land without being responsible for any loss;
- (n) to set aside out of the capital or income of the Fund from time to time such sum of moneys as may in the opinion of the Trustee be sufficient to meet any debt or obligation due or to accrue due; and
- (o) to raise or borrow money either bearing or free of interest and to secure the repayment of moneys borrowed and any interest thereon by mortgage or charge over all of any of the investments or assets of the Fund and to apply such money for any of the purposes for which either the income or the capital of the Fund is for the time being applicable thereunder including the investment of money as provided by this Deed and no lender shall be concerned to enquire as to whether or not the necessity for such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed.

6. ADDITIONAL POWERS OF THE TRUSTEE

6.1 Additional Powers

In addition to the powers in clause 5, the Trustee shall have, and may exercise at any time, its powers:

- (a) to arrange for the collection of donations from public and private sectors of the community (whether periodic or otherwise) and to receive all donations and legacies made to the Foundation and to sponsor, organise and undertake such other fund raising activities as the Trustee may think fit and for the issue of appeals to the public for donations;
- (b) to enter into any arrangements with any government or authority, municipal, local or otherwise, that may seem conducive to the objects of the Foundation or any of them and to obtain from any such government or authority any rights, privileges or

concessions the Trustee thinks fit to obtain, and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;

- (c) to pay out of the capital or income of the Fund the salaries, wages and other emoluments of all officers and servants and all other expenses of and incidental to the administration of the Foundation and the management of the Fund or any purpose connected with the trusts hereof including any legal or other professional fees, costs or expenses incurred in the establishment or maintenance of the Foundation or in maintaining proper records and accounts relating to the Foundation and any expenses incurred by the Trustee;
- (d) to provide for the making of rules and for the making of additions to and alterations and rescissions of any rule or rules relating to the operation, management or administration of the Foundation from time to time in force; and
- (e) to do all such other lawful acts and things as are incidental to or conducive to the attainment of the objects of the Foundation.

6.2 Contractors and Personnel

In carrying out all or any of the trusts and powers contained in this Deed the Trustee may hire, engage, employ and otherwise avail itself of the services of personnel, specialist firms and companies including brokers, bankers, agents, accountants, solicitors, architects, surveyors, consultants, managers, secretaries, clerks or other persons, firms or companies as it thinks fit and may remunerate them out of the Fund.

6.3 Trustee May Refuse Donation

The Trustee may in its absolute discretion refuse to accept any sum of money or other real or personal property which may be tendered to it as a donation to the Fund and shall not be required to give any reason therefor.

6.4 Delegation

In carrying out all or any of its duties and powers contained in this Deed, the Trustee may delegate any of those duties and powers (except this power of delegation) to any person or persons.

7. APPLICATION OF INCOME AND CAPITAL OF THE FUND

7.1 Application of Income & Capital

The Trustee shall apply the income and capital of the Fund in furtherance of such of the objects referred to in clause 3 as the Trustee considers appropriate from time to time and the Fund shall be paid or applied in accordance with clause 3 PROVIDED THAT the Trustee shall not

apply the capital of the Fund in any way unless immediately after application not less than \$100.00 remains as capital (which shall include income capitalised by the Trustee) of the Fund.

7.2 Accumulation of Income

Any income not so applied by the Trustee shall, subject to clause 5, be accumulated by the Trustee insofar as the law may allow and shall be added to and form part of the capital of the Fund.

8. MANAGEMENT COMMITTEE

8.1 Appointment of Committee

The Appointor shall nominate and appoint a Management Committee established and having the duties and powers as provided in this clause 8.

8.2 Composition of Committee

The Management Committee shall comprise:

- (a) not fewer than one person who shall have demonstrated expertise and success in the management of the financial affairs of public companies, private companies, non-profit institutions, public authorities or other similar organisations;
- (b) not fewer than two directors of the Trustee; and
- (c) such other qualified or appropriate person or persons (if any) as the Trustee may determine in its unfettered discretion.
- (d) *a majority of responsible persons as defined in clause 1.1*

8.3 Initial Committee Members

The initial Committee Members will be those people listed in Item 4 of the Schedule.

8.4 Chairperson – Appointment, Termination & Powers

The Trustee shall appoint a member of the Management Committee as Chairperson of that Committee. The Trustee may at any time and from time to time terminate the appointment of the Chairperson and appoint a new Chairperson. The Chairperson shall have the powers and responsibilities, which usually accrue to the holder of that office, except that he shall not have a casting vote in addition to his deliberative vote.

8.5 Functions of Committee

The functions of the Management Committee shall, in addition to its other functions and responsibilities outlined in this Deed, be as follows:

- (a) to give expert advice to the Trustee on appropriate means of ensuring the preservation of the Fund and, consistently therewith, maximising the income thereof;
- (b) to make recommendations to the Trustee for re-investment or changes in investment of the Fund;
- (c) to give advice and make recommendations to the Trustee on the financial aspects of applying part or all of the Fund in pursuit of the Trust objects;
- (d) to report not less frequently than every six months to the Trustee on the state of the Fund and any investment of the Fund; and
- (e) to perform such other functions of a financial nature as the Trustee may stipulate.

8.6 Resignation of Committee Member

A member of the Management Committee may resign office upon written notice to the Trustee.

8.7 Removal of Committee Member

At any time and from time to time the Trustee may remove a member of the Management Committee by notice in writing to that member if in the opinion of the Trustee that member is not able to fulfil or has not fulfilled the duties and responsibilities imposed on him as a member of the Management Committee.

8.8 Committee Meetings

The Management Committee shall meet as determined or directed by the Trustee, but shall meet not less frequently than once in every three Month period.

8.9 Quorum of Meeting

The quorum for a meeting of the Management Committee shall be two, or one-half the number of its members, whichever is the greater number, all of whom must be personally present.

8.10 Decisions of Committee

A decision or recommendation of the Management Committee shall be two, or one half the number of its members, whichever is the greater number, all of whom must be personally present.

8.11 Procedure at Meetings

In respect of the meetings referred to in sub-clause 8.8, the Management Committee shall:

- (a) in the absence of the Chairperson referred to in sub-clause 8.4, appoint a Chairperson from their own number for each meeting;

- (b) determine the procedure for each meeting which may (provided the requirements of sub-clause 8.9 are satisfied) be conducted with the aid of conference telephone.

8.12 Remuneration of Members

A member of the Management Committee shall be entitled, pursuant to sub-clause 6.1(c), to remuneration in respect of the performance of his or her functions.

8.13 Reimbursement of Members Expenses

A member of the Management Committee shall be entitled to be reimbursed out of the Fund in respect of costs and expenses properly incurred in the performance of his or her functions.

9. ADMINISTRATION OF THE FUND

9.1 Maintenance of Accounts

The Trustee shall keep or cause to be kept accounts, in accordance with generally accepted accounting principles, of all receipts, payments, assets and liabilities relating to the Fund and of all other matters necessary for showing a true state of affairs and condition of the Fund.

This account must only include any money or property which is a gift to the Foundation or which is received because of such gifts including, without limitation, interest received on any monies in the account.

All receipts for gifts must issue in the name of the foundation.

9.2 Preparation of Annual Accounts

The Trustee shall as soon as practicable after the last day of each Financial Year prepare or cause to be prepared a statement of income and expenditure in respect of that Year and a balance sheet disclosing the assets and liabilities of the Fund as at the last day of the Year.

9.3 Auditing of Accounts

The Trustee shall have the accounts of the Fund audited within 12 weeks after the end of each Year by the Auditor, who shall be appointed by the Trustee.

9.4 Auditor to be Registered

No person shall be eligible for appointment as the Auditor unless he is a registered company auditor carrying on practice in Western Australia.

9.5 Auditor to be Separate from Trustee

The Auditor cannot be a member or director of the Trustee or be closely related to, or an associate of, any such member or director.

9.6 Auditor's Report

The Auditor shall report to the Trustee as to whether:

- (a) the accounts have been properly drawn up so as to give a true and fair view of the income and expenditure of the Fund for the Year and the state of affairs of the Fund as at the end of the Year;
- (b) proper provision has been made in the accounts of the Fund for bad and doubtful debts;
- (c) the accounting records have in his opinion been properly kept;
- (d) he has obtained all information and explanations regarding the Fund required by him; and
- (e) there are any defects or irregularities in the accounts and,

9.7 Auditor to Give Reasons

Where the Auditor comments adversely upon any matter he shall report his reasons for such comments.

9.8 Auditor's Tenure, Removal & Appointment

The Auditor shall continue in office until he resigns or is removed by the Trustee. The Trustee shall appoint another auditor to act as Auditor in the place of any auditor so removed and such new Auditor shall have signified his willingness to act as Auditor prior to such appointment.

9.9 Submissions at Trustee Meetings

A director of the Trustee may put forward a submission or recommendation to a meeting of the directors of the Trustee, notwithstanding that member will not be in attendance at such meeting.

9.10 Taking Minutes

The Trustee shall cause minutes to be made of:

- (a) all appointments, retirements and removals of its directors;
- (b) all proceedings at meetings of the directors of the Trustee; and
- (c) all determinations of the Trustee relating to the Foundation.

9.11 Foundation Bank Accounts

The Trustee shall open and maintain in the name of the Foundation, or in such other name or names as they recommend, an account or accounts in such bank or banks as the Trustee shall from time to time determine and shall determine who shall be entitled to operate any such account or accounts.

10. REMUNERATION AND EXPENSES

10.1 No Remuneration for Trustee

The Trustee shall not be entitled to any fee or remuneration in respect of the performance of its functions.

10.2 Reimbursement of Trustee Expenses

The Trustee shall be entitled to be reimbursed out of the Fund in respect of its costs and expenses properly incurred by it in the performance of its functions.

11. LIABILITY OF THE TRUSTEE

11.1 Payments to Trustee

The receipt in writing of the Trustee for any money or other real or personal property paid or transferred to the Trustee shall effectively discharge the person paying or transferring the same therefrom and from being concerned to see to the application thereof.

11.2 Payments by Trustee

In applying the capital or income of the Fund as provided by clause 7, the Trustee may make payment to a person which in the Trustee's opinion is the proper officer for the receipt of such moneys and shall not be responsible to see to the application of the moneys so paid.

11.3 Liability of Trustee Members

No director of the Trustee shall be liable for any loss or damage caused in connection with the Foundation or the Fund unless incurred as a result of the fraud, dishonesty, wilful breach of duty or wilful neglect of that director.

11.4 No Obligation to Investigate

Nothing in this Deed shall impose any obligation upon the Trustee to investigate the accounts or management control of any person in which any of the assets for the time being held on the trusts of this Deed may be invested nor shall the Trustee be under any obligation to bring any action, suit or proceedings or, in any other manner, to seek to interfere with the constitution, management or control of any such entity.

12. AMENDMENT OF THE FOUNDATION DEED

(1) The Trustee shall be entitled from time to time, by deed or other written instrument to amend, modify or replace all or any of the provisions of this Deed

PROVIDED THAT no such amendment, modification or replacement shall have the effect of:

- (a) conferring a benefit which is not permitted by clause 15; and/or
 - (b) incorporating objects which are not considered to be charitable within the meaning of the Income Tax Assessment Act 1936.
- (2) The Australian Taxation Office must be notified of any alterations made to the public fund requirements contained in this Trust Deed, and no such alteration will be valid unless the Commissioner of Taxation consents to the amendment, modification or replacement.

13. TERMINATION OF TRUST

13.1 Distribution of Surplus

Subject to sub-clause 13.2 the Trustee may with the consent of the Management Committee terminate the Trust. Upon such termination the Trustee shall apply and distribute the surplus capital of the Fund together with all accrued income to a charitable organisation or organisations as selected by the Trustee in its absolute discretion, having objects similar to those of the Trust.

13.2 Gifts Must be Deductible

If the Trust is wound up or if the endorsement (if any) of the organisation as a deductible gift recipient is revoked, any surplus assets of the Fund remaining after the payment of liabilities attributable to it shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made.

14. GOVERNING LAW

14.1 Governing Law

This Deed shall be governed by and constituted in accordance with the law of Western Australia.

14.2 Jurisdiction

The parties hereby submit to the non-exclusive jurisdiction of the Courts of Western Australia in respect of any proceedings in connection with this Deed.

15. EXCLUSION FROM BENEFITS

It is hereby declared that no benefit shall be conferred upon any member or the Trustee or former members of the Trustee except as provided for in clause 10.

Schedule**Item 1. Founder**

Edward Douglas GRAHAM of 42 Marita Rd Nedlands WA 6009.

Item 2. Appointor

HMAS SYDNEY SEARCH PTY LTD ACN 096 017 275 of Owen Legal and Corporate Level 3 220 St Georges Terrace Perth WA 6000.

Item 3. Trustee

HMAS SYDNEY SEARCH PTY LTD ACN 096 017 275 of Owen Legal and Corporate Level 3 220 St Georges Terrace Perth WA 6000.

Item 4. Management Committee

Robert Neil TROTTER of 1/9 Cornwall St. Swanbourne WA 6010
(Chairperson)

Ronald Edward BIRMINGHAM QC of 25 Kildare Rd Floreat Pk WA 6014

Edward Douglas GRAHAM of 42 Marita Rd Nedlands WA 6009.

Paul Kim KIRSNER of 50 Thomas St Nedlands WA 6009.

Donald Francis PRIDMORE of 86 Dalkeith Rd Nedlands WA 6009.

Keith Bowden Rowe of

EXECUTED AS A DEED on the day, month and year set out above.

SIGNED by **Edward Douglas Graham** in the presence of:



Witness:

Name (please print)

SIGNED for **HMAS SYDNEY SEARCH PTY LTD** ACN 096 017 275 by authority of its directors pursuant to Section 127 of the Corporations Law:



Director:

Director

Witness:

Name (please print)

