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Constitution

Australian National Institute of Technology Pty Ltd
ACN 670 750 900

Amended by Company Special Resolution on [insert date]

Interstate offices
Canberra Sydney

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Australian National Institute of Technology Pty Ltd (Company)

A company limited by shares

Constitution

1. Definitions

In this Constitution:

Academic Board means the academic governing body of the Company established in accordance with the *Higher Education Standards Framework (Threshold Standards) 2021*.

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

Alternate Director means a person appointed as an alternate director under clause 11.15.

Appointing Document has the meaning given in clause 10.8.4.

Business Day means a day other than a Saturday, Sunday or public holiday in Victoria.

Call means a demand for payment by the Company of an amount unpaid on a Share, and **Called** has a corresponding meaning.

Chair of Academic Board means the person holding that office from time to time.

Change in Control means, in the case of a Member which is a corporation, where a person who did not Control that Member at the date when the Member first acquired its Shares, acquires Control of the Member.

Claim means any action, claim, demand or proceeding.

Class Meeting has the meaning given in clause 10.10.1.

Control has the meaning given in s 50AA of the Act.

Director means a director appointed under clause 11.2 and, where appropriate, includes an Alternate Director.

Disposal means, in relation to a Share held by a Member:

- (a) any Change in Control of the Member;
- (b) the grant or creation of a Security Interest over the Share (or over any legal or beneficial interest in or any rights to the Share);
- (c) the sale, transfer or other disposal of the Share (or over any legal or beneficial interest in or any rights to the Share);
- (d) the entry into, making or granting of any warrant, option, right of first refusal or offer in respect of any Share;

- (e) the entry into an agreement, arrangement or understanding about the exercise of the right to vote which attaches to the Share; or
- (f) the entry into an agreement, arrangement or understanding, whether or not subject to any condition precedent or condition subsequent, to do any of the matters set out in paragraphs (a) to (e) of this definition,

and **Dispose** has a corresponding meaning.

Distributions has the meaning given in clause 14.1.1(a).

Ex-Officio Director means a Director appointed by virtue of holding a specified office in accordance with this Constitution.

Hybrid Meeting means a meeting held at one or more physical locations linked with one or more technologies, such that participants may participate in the meeting physically or remotely.

Indemnified Loss means, in relation to any fact, matter or circumstance:

- (a) all Loss arising out of or in connection with that fact, matter or circumstance; and
- (b) all legal and other professional expenses on a solicitor-client basis incurred in defending or resisting (or otherwise in connection with) proceedings, whether criminal, civil, administrative or investigatory in nature arising out of or connected with the fact, matter or circumstance.

Law includes:

- (a) any law, statute, regulation, ordinance, by-law, order or proclamation, and the common law; and
- (b) any authorisation, ruling, judgment, order, decree or other requirement of any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity in Australia.

Loss means damage, liability, action, loss, charge, cost or expense.

Managing Director means a managing Director appointed under clause 12.1.1.

Member means a registered holder of Shares.

Officer means:

- (a) a Director, Alternate Director, Secretary or executive officer of the Company; and
- (b) other officers of the Company or a related body corporate of the Company as the Directors may decide.

Option means an option or other right to call for the issue of a Share.

Register means the register of Members required to be kept under the Act and includes a branch register (if applicable).

Representative means, in relation to a body corporate, a person authorised by the body corporate to act as its representative as allowed by the Act.

Secretary means a secretary of the Company.

Security Interest means:

- (c) any mortgage, pledge, lien, charge or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by way of security, including a security interest (as defined in the *Personal Property Securities Act 2009* (Cth)); and
- (d) any agreement to create or grant any arrangement described in paragraph (a).

Share means a share in the capital of the Company.

Terms of Issue means the rights and any restrictions attaching to a Share or an Option issued under clause 3 and includes any rights and restrictions in relation to a Share or an Option under any employee share scheme.

Transmission Event means:

- (a) in respect of a Member who is a natural person:
 - (i) the Member's death;
 - (ii) the Member's bankruptcy; or
 - (iii) any other circumstances where title in a Share vests in another person by operation of Law; and
- (b) in respect of a Member which is a body corporate, the deregistration of the Member in the jurisdiction in which it is registered or the succession by another body corporate to the assets and liabilities of the Member by operation of Law.

Virtual Meeting means a meeting held using one or more technologies where all participants participate remotely.

2. Constitution

2.1 Application of the Act

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

2.1.2 An expression in a clause of this Constitution that deals with a matter which is dealt with by a provision of the Act or which is defined in the Act has the same meaning as in the Act, unless that expression is given a different meaning in this Constitution.

2.2 Inconsistency

Where:

2.2.1 the Act; or

2.2.2 any Terms of Issue;

confer a right on a Member or on another person, impose a restriction on exercise of rights or powers or require that a particular procedure be followed before:

2.2.3 any right or power under this Constitution is exercised;

2.2.4 any resolution is passed; or

2.2.5 any other thing is done by the Company, the Officers or the Members,

then the provisions of this Constitution will be subject to the exercise of that right or restriction and the Company, Officers and Members must comply with any procedure that is required to be followed.

3. Higher Education Purpose

3.1 Primary Purpose

3.1.1 The primary purpose of the Company is to be an Institute of Higher Education as defined in the *Higher Education Standards Framework (Threshold Standards) 2021*.

3.1.2 To achieve this Higher Education Purpose, the Company will:

- (a) ensure that freedom of speech and academic freedom are upheld and protected;
- (b) ensure that students and staff are treated equitably;
- (c) ensure the wellbeing of students and staff is fostered;
- (d) ensure that informed decision making by students is supported, and that students have opportunities to participate in the deliberative and decision making processes related to them;
- (e) ensure a clear separation of corporate and academic governance;
- (f) ensure equity and diversity, including consideration for participation by Aboriginal and Torres Strait Islander people and sensitivity to Aboriginal and Torres Strait Islander knowledge and cultures;
- (g) ensure that academic and teaching staff are active in scholarship which informs their teaching; and
- (h) ensure compliance will all regulatory and other requirements.

4. Share capital

4.1 Issue of Shares

4.1.1 The Company may issue Shares and grant Options and decide the rights and restrictions attaching to those Shares and Options.

4.1.2 The Company may only issue any other class of preference Share as allowed by the Act.

4.1.3 The Company may require the holders of partly paid Shares to pay Calls in different amounts and at different times.

4.2 Share certificates

4.2.1 Each Member is entitled to receive a certificate in respect of the Shares held by that Member. The certificate will be in the form decided by the Directors.

- 4.2.2 Each certificate must specify the number of Shares in relation to which it is issued and the amount paid up on those Shares.
- 4.2.3 The Company is only required to deliver a certificate to one joint holder of a Share.
- 4.2.4 If a certificate is defaced, lost or destroyed, the Directors may issue a new certificate on any terms the Directors think are appropriate.

4.3 Variation of class rights

- 4.3.1 The rights attached to a class of Shares may be varied as allowed by the Act.
- 4.3.2 The rights of a particular class of Shares (**Relevant Class Shares**) are not varied just because of the:
 - (a) issue of further Shares in the same class as the Relevant Class Shares; or
 - (b) creation or issue of further classes of Shares ranking equally with the Relevant Class Shares.

4.4 Power to alter Share capital

- 4.4.1 The Company may reduce its share capital, buy back its Shares or convert any Shares in any manner allowed by the Act.
- 4.4.2 Where fractions of Shares are or would be created by a reduction, buy back or conversion under clause 4.4.1, the Directors may:
 - (a) issue fractional certificates for those Shares;
 - (b) decide that fractions of Shares are to be disregarded or rounded down to the nearest whole Share; or
 - (c) decide that fractions of Shares are to be rounded up to the nearest whole Share by capitalising any amount available for capitalisation, even though only some of the Members may participate in that capitalisation.

4.5 Pre-emptive rights – issue of Shares

If the Company proposes to issue any Shares, the Company must follow the procedure set out in Schedule 1.

5. Interests in Shares

5.1 Joint holders of Shares

- 5.1.1 Where 2 or more persons are registered as the joint holders of a Share, they hold the Share as joint tenants with rights of survivorship.
- 5.1.2 The joint holders of a Share are jointly and severally liable for all Calls and other payments in respect of the Share.

5.2 Notice of equitable and other claims

- 5.2.1 The Company is not required to recognise:
 - (a) a person as holding a Share on any trust; or

- (b) any claim to or interest in a Share, except an absolute right of ownership in the registered holder,

even if the Company has notice of the trust, claim or interest, unless a Law expressly requires the Company to do so.

- 5.2.2 The Directors may register a transfer of a Share signed by a Member prior to a Transmission Event even if the Company has notice of the Transmission Event.

5.3 Lien on shares

- 5.3.1 The Company has a first lien on each Share, the proceeds of sale of that Share (if sold by the Company under clause 6.6) and all Distributions, for:

- (a) all unpaid Calls and instalments due on that Share if the Share is partly paid;
- (b) any amounts outstanding under loans made by the Company to acquire the Share under an employee incentive scheme (to the extent allowed by the Act);
- (c) all amounts which the Company has paid to third parties where the Company was required to pay that amount by a Law; and
- (d) all interest and expenses due and payable to the Company in relation to any unpaid amounts.

- 5.3.2 The Company's lien on a Share is released if a transfer of the Share is registered by the Company without the Company giving notice of the lien to the transferee.

6. Calls and forfeiture

6.1 Payment of Calls

- 6.1.1 Each Member must pay a Call to the Company in the amount and at the times required by the Terms of Issue.
- 6.1.2 Unless the Terms of Issue say otherwise, each Member must pay a Call to the Company in accordance with a notice given under clause 6.2.3.
- 6.1.3 A Member must still pay a Call even if the Company failed to give notice of the Call to a Member or a Member did not receive the notice.

6.2 Making of Calls

- 6.2.1 The Company may make Calls on a Member for any amount unpaid on a Share.
- 6.2.2 The Company may:
 - (a) make a Call payable by instalments;
 - (b) revoke or postpone a Call;
 - (c) extend the time for payment of a Call; or
 - (d) waive all or any of the Company's rights under this clause 6, either unconditionally or on any terms the Directors think are appropriate.
- 6.2.3 The Company must give a notice to each Member required to pay a Call:

- (a) at least 10 Business Days before the payment is required to be made; and
- (b) specifying the amount to be paid, the method of payment and the date on which payment is due.

6.3 Interest and other amounts

6.3.1 If a Member does not pay a Call in full by the date payment is due, the Member must pay to the Company on demand:

- (a) interest on the unpaid amount from the date payment is due to the date payment is made, at the rate referred to in clause 6.3.2; and
- (b) all Loss of the Company arising from the failure by the Member to pay the Call.

6.3.2 The rate of interest payable to the Company under clause 6.3.1 is:

- (a) the rate (if any) the Directors have decided for these purposes; or
- (b) if the Directors have not made any decision in relation to a rate of interest, a rate per annum 2% higher than the rate prescribed in respect of unpaid judgments in the Supreme Court of Victoria.

6.3.3 Interest payable under clause 6.3.1 accrues daily and may be capitalised monthly or at such intervals as the Directors decide.

6.4 Forfeiture of partly paid shares

6.4.1 If a Member has not paid a Call in full by the date payment is due, the Company may serve a notice on that Member:

- (a) requiring payment of the unpaid amount, together with any amounts required to be paid under clause 6.3, by a date not earlier than 10 Business Days after the date of the notice; and
- (b) stating that, the Company may forfeit the Share if the amount payable under clause 6.4.1(a) is not paid by the time stated.

6.4.2 If the Member does not pay the amount demanded by a notice given under clause 6.4.1 by the required date, the Company may forfeit the relevant Share.

6.5 Effect of forfeiture

6.5.1 If a Share is forfeited:

- (a) notice of the forfeiture must be given to the relevant Member immediately before the forfeiture is registered; and
- (b) the forfeiture must be entered in the Register.

6.5.2 Failure to give notice or enter the forfeiture in the Register does not invalidate the forfeiture.

6.5.3 A forfeited Share becomes the property of the Company.

6.5.4 A Member whose Share has been forfeited:

- (a) ceases to be a Member in relation to the forfeited Share; and

- (b) has no Claim against the Company or any other right or entitlement in relation to the Share, except any rights provided by the Act or specifically provided for in this Constitution.

6.6 Disposal of forfeited Shares

- 6.6.1 The Company may sell, re-issue or otherwise dispose of, or cancel, a Share which has been forfeited under clause 6.4.
- 6.6.2 The proceeds of the sale of a forfeited Share must be used to pay:
 - (a) first, the expenses of the sale; and
 - (b) second, all amounts payable (whether presently or not) by the former holder of the Share to the Company.
- 6.6.3 Any amounts remaining after the payments under clause 6.6.2 have been made must be paid to or at the direction of the former holder, on the former holder delivering to the Company the certificate for the Share or other evidence the Directors require to prove title to the amounts.
- 6.6.4 The Company will not be liable to pay any interest on money payable under this clause 6.6 to a former holder of a Share.
- 6.6.5 A written statement by a Director or Secretary that a Share has been:
 - (a) forfeited under clause 6.4; or
 - (b) sold, reissued, cancelled or otherwise disposed of under this clause 6.6, on a stated date is conclusive evidence of:
 - (c) the facts stated as against all persons claiming to be entitled to the Share; and
 - (d) the right of the Company to forfeit, sell, re-issue, cancel or otherwise dispose of the Share.

7. Transfer of shares

7.1 Transfer of shares

- 7.1.1 Subject to clause 9, a Member may transfer any of its Shares by a transfer document in any usual form or in any other form approved by the Directors.
- 7.1.2 A transfer document must be:
 - (a) executed by the Member and the transferee; and
 - (b) stamped, if required by Law.
- 7.1.3 The transfer document must be left for registration at the registered office of the Company, or at another place the Directors decide, with:
 - (a) the certificate for the Shares being transferred (if any); and

- (b) any other evidence the Directors require to prove the Member's right to the Shares and the right of the transferee to be registered as the holder of the Shares.

7.1.4 Subject to clause 7.2, the Directors must register a transfer document that complies with this clause 7.1. The Directors must retain the transfer document.

7.1.5 The Company must not charge a fee for registering a transfer of a Share.

7.2 Power to decline or suspend registration of transfers

7.2.1 The Directors may refuse to register a transfer of a Share in their absolute discretion. The Directors are not required to give reasons for any refusal to register a transfer of a Share.

7.2.2 The Directors must refuse to register a transfer of a Share if:

- (a) clauses 7.1.2 and 7.1.3 or clause 7.3 have not been complied with;
- (b) the registration of the transfer may breach any Law;
- (c) the transfer is not allowed by the Terms of Issue or any requirements for the transfer contained in the Terms of Issue have not been followed;
- (d) on registration of the transfer the number of Members would exceed any maximum number allowed by the Act for a proprietary company ;or
- (e) clause 9 has not been complied with.

7.2.3 The Directors may suspend the registration of transfers of Shares at any time and for any period not exceeding a total of 30 days in any year.

7.3 Transfer of stapled securities

If the Terms of Issue of a Share provide for the Share to be stapled to any notes, stocks, debentures, warrants, options or any other securities, then the Member who holds that Share is not able to transfer that Share unless the notes, stocks, debentures, warrants, options or other securities that are stapled to it are transferred to the same person at the same time.

8. Transmission of Shares

8.1 If a Member dies

8.1.1 If a Member dies, the legal representative of the deceased (if the deceased was a sole holder) or the survivor (if the deceased was a joint holder), will be the only person the Company recognises as having any title to the Member's Share.

8.1.2 Clause 8.1.1 does not release the estate of a deceased Member from any liability in respect of a Share.

8.2 Person entitled to deceased Member's Share

8.2.1 A person who becomes entitled to a Share because of a Transmission Event may, on providing all evidence the Directors require to prove that entitlement, choose to:

- (a) be registered as the holder of the Share, by giving notice of that choice to the Company; or

- (b) nominate another person to be registered as holder of the Share, by executing a written transfer of the Share to that person and otherwise complying with clause 7.1.

8.2.2 If 2 or more people are jointly entitled to any Share because of a Transmission Event, after registration they will be taken to hold the Share as joint tenants and clause 5 will apply to them.

9. Pre-emptive rights – transfer of Share

A Member must not Dispose of a Share held by it unless the Member:

- 9.1.1 obtains the consent of all other Members before the Disposal of the Share occurs; or
- 9.1.2 follows the procedure set out in Schedule 2.

10. General meetings

10.1 Calling general meetings

- 10.1.1 The Directors may call a general meeting at any time.
- 10.1.2 A Member may only call a general meeting in accordance with the Act.
- 10.1.3 Subject to clause 10.1.4, the Directors may postpone or cancel a general meeting or change the venue at which the general meeting will be held.
- 10.1.4 A general meeting called under s 249D of the Act may not be postponed beyond the date by which s 249D requires it to be held. A general meeting called under s 245D of the Act may not be cancelled without the consent of the requisitioning Member or Members.

10.2 Notice of general meetings

- 10.2.1 The Company must give Members and other people entitled to receive notice of the general meeting the period of notice required by the Act.
- 10.2.2 The notice of a general meeting must set out the general nature of the business to be transacted at the meeting and any other matters required by the Act. The Directors may decide what other content to include in the notice of a general meeting.
- 10.2.3 A person may waive the right to receive notice of a general meeting by notice to the Company.
- 10.2.4 If a person entitled to receive a notice of a general meeting does not receive that notice, or the Company fails to give that notice, every act performed or resolution passed at the general meeting will still be effective, as long as:
 - (a) the failure to receive or give notice occurred by accident or error; or
 - (b) before or after the meeting, the person:
 - (i) has waived or waives notice of that meeting under clause 10.2.3; or

- (ii) has given or gives the Company notice of the person's agreement to that act or resolution.

10.2.5 A person waives any objection that person may have to any failure to give notice, or a defective notice, of a general meeting if the person attends the general meeting. That person will not have waived any objection if the person objects to the holding of the meeting at the beginning of the meeting.

10.3 Quorum at general meetings

10.3.1 No business may be transacted at any general meeting unless a quorum of members is present when the meeting proceeds to business. This requirement does not apply to the election of a chairperson or the adjournment of the meeting.

10.3.2 A quorum for a general meeting is 2 Members entitled to vote on a resolution at the meeting, or if there is only one member, that member.

10.3.3 Each individual present at a general meeting may only be counted once towards a quorum.

10.3.4 If a Member has appointed more than one proxy, attorney or Representative, only one of them may be counted towards a quorum.

10.3.5 If a quorum is not present within 30 minutes after the commencement time of a general meeting:

- (a) if the meeting was convened on the requisition of Members, the meeting will be dissolved; and
- (b) in any other case, the meeting is adjourned to the day, and at the time and place, the chairperson of the meeting or the Directors decide. If they do not make a decision, the meeting is adjourned to the same day in the next week at the same time and place.

10.4 Chairperson of general meetings

10.4.1 The chairperson of Directors must act as chairperson at a general meeting if the chairperson of Directors is present within 15 minutes after the time appointed for a general meeting and is willing to act.

10.4.2 If:

- (a) there is no chairperson of Directors; or
- (b) the chairperson of Directors is not present at a general meeting; or
- (c) the chairperson of Directors is not willing to act as chairperson of the meeting,

one of the other Directors present at the general meeting must act as chairperson.

10.5 Conduct of general meetings

10.5.1 The chairperson of a general meeting is responsible for the general conduct of the meeting and for deciding the procedures to be adopted at the meeting.

10.5.2 In particular, the chairperson of a general meeting may:

- (a) require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for proper and orderly debate or discussion or for the proper and orderly casting or recording of votes at the meeting; and
- (b) terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting.

10.5.3 A decision of the chairperson on any matter under this clause 10.5.2 is final.

10.5.4 A general meeting may be held at one or more physical locations, as a Virtual Meeting or as a Hybrid Meeting. The Directors may determine the technology or technologies to use for conducting a general meeting as a Virtual Meeting or a Hybrid Meeting, as long as any technology used complies with any requirements of the Act.

10.5.5 Where a general meeting is held as a Virtual Meeting or a Hybrid Meeting:

- (a) a Member participating remotely in such a meeting is taken to be present in person at the meeting;
- (b) all the provisions in this Constitution relating to general meetings apply, so far as they can and with necessary changes, to meetings using the technology;
- (c) the meeting is taken to be held at the place determined by the chairperson of the meeting, if at least one Member was at that place for the duration of the meeting; and
- (d) a vote taken at the meeting must be taken on a poll, and not on a show of hands.

10.5.6 If the technology used for a general meeting encounters a technical difficulty, whether before or during the meeting, and as a result a Member is not able to participate in the meeting, the chairperson may:

- (a) allow the meeting to continue, if a quorum of Members remains able to participate in the meeting; or
- (b) adjourn the meeting either for a reasonable period to fix the technology or to another time and location that the chairperson decides,

unless required to do otherwise by the Act.

10.5.7 The chairperson of a general meeting may, and must if directed by the meeting, adjourn the meeting from time to time and from place to place. No new business may be transacted at any adjourned meeting. An adjourned meeting must only transact the business left unfinished at the meeting from which the adjournment took place.

10.5.8 If the meeting is adjourned for more than 30 days, notice of an adjournment or of the business to be transacted at an adjourned meeting does not need to be given.

10.6 Decisions at general meetings

10.6.1 Except for a resolution which the Act requires to be passed by a special majority, questions at a general meeting must be decided by a majority of votes cast by the Members present at the meeting and entitled to vote on the resolution.

10.6.2 If there is an equal number of votes for and against a proposed resolution the chairperson of the meeting will have a casting vote.

- 10.6.3 A resolution proposed at a general meeting must be decided on a show of hands unless a poll is required by this Constitution or demanded in a manner which complies with this Constitution.
- 10.6.4 No proof of the number or proportion of the votes recorded in favour of or against the resolution is required if:
- (a) the chairperson of a general meeting declares that a resolution has been carried or lost on a show of hands; and
 - (b) an entry to that effect is made in the minutes of the meeting.
- 10.6.5 A poll may be demanded by the chairperson of the meeting or by any Member present and having the right to vote on the resolution:
- (a) before the vote is taken;
 - (b) before the result of the show of hands is declared; or
 - (c) immediately after the result of the show of hands is declared.
- 10.6.6 If a poll is demanded on a resolution at a general meeting, all other business of the meeting can continue.
- 10.6.7 A poll cannot be demanded on the election of a chairperson of a general meeting or on the adjournment of a meeting.
- 10.6.8 The demand for a poll may be withdrawn at any time before the poll commences.
- 10.6.9 If a poll is demanded at a general meeting in accordance with clause 10.6.3, the chairperson of the meeting will decide the manner in which the poll is conducted and whether the poll should be taken immediately or after an interval or adjournment.

10.7 Voting rights

- 10.7.1 Each Member present at a general meeting and entitled to vote on a resolution has:
- (a) one vote on a show of hands for that resolution; and
 - (b) one vote for each Share held by that Member on a poll for that resolution.
- 10.7.2 A Member is not entitled to vote at a general meeting:
- (a) unless all Calls and other amounts payable by that Member in respect of all Shares held by the Member have been paid; or
 - (b) if the Terms of Issue of the Shares held by that Member do not entitle the Member to vote at a general meeting.
- 10.7.3 A joint holder of a Share may vote at any general meeting as if that person was the sole holder. If more than one joint holder tenders a vote, only the vote of the holder named first in the Register will be accepted.
- 10.7.4 A person entitled to a Share because of a Transmission Event may vote in respect of that Share at any general meeting as if that person was the registered holder of the Share if, before the general meeting, the Directors have:

- (a) acknowledged that person's right to vote at that meeting in respect of the Share; or
- (b) been satisfied of that person's right to be registered as the holder of, or to transfer, the Share under clause 8.2.

Any vote tendered by the person entitled to the Share will be accepted to the exclusion of a vote by the registered holder of the Share.

10.7.5 An objection to the qualification of a person to vote at a general meeting:

- (a) must be raised before or at the meeting; and
- (b) must be referred to the chairperson of the meeting.

10.7.6 The chairperson will decide all objections to the qualifications of a person to vote. The decision of the chairperson is final.

10.8 Representation at general meetings

10.8.1 Each Member entitled to vote at a general meeting may vote in person, by proxy, by attorney or, if a Member is a body corporate, by its Representative.

10.8.2 A proxy, attorney or Representative may be a Member of the Company but is not required to be a Member for the appointment to be effective.

10.8.3 A proxy, attorney or Representative may be appointed for all general meetings, for any number of general meetings or for a particular general meeting.

10.8.4 A document appointing a proxy, attorney or Representative (**Appointing Document**) must be lodged at the Company's registered office, or given to the Company using technology (if any) specified in the notice of meeting, in each case no later than 48 hours before the commencement time for a general meeting unless the notice of meeting sets out a different place for lodgement or a different time, in which case that different place or time will apply.

10.8.5 An Appointing Document may contain limits on the power or authority of the proxy, attorney or Representative. If the Appointing Document does not contain any limits, the proxy, attorney or Representative will have the authority to:

- (a) agree to a meeting being convened on shorter notice than is required by the Act or this Constitution, including when a special resolution is proposed or passed;
- (b) speak to any proposed resolution on which the proxy, attorney or Representative may vote;
- (c) demand or join in demanding a poll on any resolution on which the proxy, attorney or Representative may vote;
- (d) vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
- (e) vote on any procedural motion; and
- (f) attend and vote at any rescheduled or adjourned meeting or at any new venue.

- 10.8.6 A proxy, attorney or Representative must comply with:
- (a) any limits on the powers of the proxy, attorney or Representative; or
 - (b) any directions as to how the proxy, attorney or Representative is to vote on a particular resolution,
- which are set out in the Appointing Document.
- 10.8.7 If a person present at a general meeting is the proxy, attorney or Representative of more than one Member, the person is entitled to one vote only on a show of hands.
- 10.8.8 Subject to clause 10.8.9, a vote cast in accordance with the terms of an Appointing Document is valid despite:
- (a) a Transmission Event occurring in relation to the appointor; or
 - (b) the revocation of the Appointing Document or of the authority under which the Appointing Document was executed.
- 10.8.9 Clause 10.8.8 does not apply if a notice of the Transmission Event or revocation has been received by the Company by the time and at one of the places at which the Appointing Document was required to be deposited or produced.
- 10.8.10 A vote cast in accordance with the terms of an Appointing Document is valid even if the Share in respect of which the Appointing Document was given has been transferred, provided that the transfer is not registered at the time at which the Appointing Document is required to be lodged with the Company under clause 10.8.4.
- 10.8.11 The appointment of a proxy or attorney is not revoked by the appointor attending and taking part in the general meeting but, if the appointor votes on a resolution, the person acting as proxy or attorney for the appointor is not entitled to vote as the appointor's proxy or attorney on the resolution.

10.9 Decisions without general meetings

- 10.9.1 If the Company has one member, that member may pass a resolution by recording it and signing the record.
- 10.9.2 If the Company has more than one Member, the Company may pass a resolution (except a resolution to remove an auditor) without holding a general meeting if all the Members entitled to vote on the resolution sign a document setting out the resolution and containing a statement that they are in favour of that resolution.
- 10.9.3 If a Share is jointly held, each joint holder must sign the document referred to in clause 10.9.2.
- 10.9.4 For the purposes of clause 10.9.2:
- (a) the resolution is passed when the last person signs the document; and
 - (b) separate copies of a document may be used for signing by Members if the wording of the resolution and the statement is identical in each copy.
- 10.9.5 The passing of a resolution in accordance with clause 10.9.2 satisfies any requirement in the Act or in this Constitution that the resolution be passed at a general meeting.

10.10 Class meetings

10.10.1 All clauses of this Constitution which relate to general meetings apply to meetings of holders of a class of Shares (**Class Meeting**), to the extent they are capable of applying and with any necessary changes.

10.10.2 At a Class Meeting:

- (a) A quorum is 2 Members who hold Shares of the relevant class or, if only one Member holds Shares of that class, that Member; and
- (b) Any Member who holds Shares of the relevant class may demand a poll.

11. Directors

11.1 Number of Directors

11.1.1 There must be at least 3 Directors.

11.1.2 The Company may by resolution increase or reduce the minimum, and may set a maximum, number of Directors.

11.2 Appointment of Directors

11.2.1 Subject to clause 11.3, the Directors may appoint any natural person to be a Director:

- (a) to fill a casual vacancy; or
- (b) in addition to the existing Directors,

as long as the total number of Directors does not exceed the maximum number referred to in clause 11.1.1 (as increased or decreased under clause 11.1.2).

11.2.2 The person holding office from time to time as Chair of Academic Board:

- (a) is, by virtue of holding that office, appointed as an Ex-Officio Director; and
- (b) has the same rights, powers, duties and obligations as any other Director under this Constitution and the *Corporations Act 2001* (Cth).

11.3 Qualification for office

No person may be appointed as a Director unless the person qualifies as a fit and proper person for the purposes of the *Tertiary Education Quality and Standards Agency Act 2011* (Cth), the *Education Services for Overseas Students Act 2000* (Cth) and any other relevant legislation that impacts on the business of the Company.

11.4 Termination of office

11.4.1 A person ceases to be a Director:

- (a) if an act, matter or thing occurs which results in the person ceasing to be a director as required by the Act;
- (b) the person ceases to satisfy clause 11.3;
- (c) if the Director is removed from office by resolution of the Company; or

(d) if the Director resigns by notice in writing to the Company.

11.4.2 An Ex-Officio Director appointed under clause 11.2.2 automatically ceases to be a Director upon ceasing to hold the office of Chair of Academic Board.

11.5 Remuneration of Directors

11.5.1 Each Director is entitled to remuneration as the Directors decide. If, however, the Company in general meeting has fixed a limit on the amount of remuneration payable to the Directors, the aggregate remuneration of the Directors under this clause 11.5.1 must not exceed that limit.

11.5.2 The remuneration of a Director may be a salary or a fixed sum for attendance at each meeting of Directors or both and will be taken to accrue from day to day.

11.5.3 A Director is entitled to be paid all travelling and other expenses properly incurred by that Director in connection with the affairs of the Company.

11.5.4 If a Director performs extra or special duties for the Company, the Directors may arrange for special remuneration to be paid to that Director. Acceptance of a delegation made under clause 11.16.1 may be treated as an extra or special duty performed by the Director for the purposes of this clause 11.5.4.

11.5.5 Clause 11.5.1 does not restrict the remuneration which may be paid to a Director in a capacity other than Director.

11.5.6 The Directors may:

- (a) at any time after a Director ceases to hold office, pay to the former Director or a legal personal representative, spouse, relative or dependant of the former Director, a pension or lump sum payment in respect of past services rendered by that former Director; or
- (b) establish or support funds and trusts to provide pension, retirement, superannuation or similar payments or benefits to or in respect of a Director or former Director.

11.6 Share qualification

11.6.1 A Director is not required to hold any Shares.

11.6.2 A Director who is not a Member is entitled to attend and speak at general meetings and at Class Meetings.

11.7 Interested Directors

11.7.1 A Director may:

- (a) hold any office or place of profit in the Company, except that of auditor;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into any contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connected with them; or

- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor.

11.7.2 If a Director does any of the things set out in clause 11.7.1, that Director may:

- (a) participate in and be counted in a quorum for any meeting, resolution or decision of the Directors, and be present at any meeting where any matter is being considered by the Directors;
- (b) sign or participate in the execution of a document by or on behalf of the Company; and
- (c) exercise the voting power conferred by securities in any entity held by the Company, including in circumstances where a Director may be interested in the exercise, such as a resolution appointing a Director as an officer of the entity or providing for the payment of remuneration to officers of the entity.

11.7.3 A Director may do any of the things listed in clause 11.7.1:

- (a) without any liability to the Company for any direct or indirect benefit accruing to the Director; and
- (b) without affecting the validity of any contract or arrangement.

11.7.4 Nothing in this clause 11.7 relieves a Director from:

- (a) complying with the requirements of the Act relating to the disclosure of, and voting of matters involving, material personal interests; and
- (b) the obligation to act in good faith and in the best interests of the Company as a whole.

11.8 Powers of Directors

11.8.1 The Directors are responsible for managing the business of the Company. The Directors may exercise all the powers of the Company which are not required by the Act or this Constitution to be exercised by the Company in general meeting.

11.8.2 While the Company is a wholly owned subsidiary, its Directors may act in the best interests of the Company's holding company.

11.9 Calling and holding meetings of Directors

11.9.1 The Directors may hold, adjourn and regulate their meetings as they think fit. Without limitation, a Directors' meeting may be held at 1 or more physical locations or as a Virtual Meeting or as a Hybrid Meeting.

11.9.2 Any Director may call a Directors' meeting by giving at least 48 hours' notice to the other Directors (unless the Directors unanimously agree on a shorter notice period).

11.9.3 A Director may waive notice of a Directors' meeting by notifying the Company. If a person attends a meeting of Directors, that person waives any objection that person may have to a failure to give notice of the meeting. A waiver under this clause 11.9.3 binds:

- (a) any Alternate Director appointed by that person; or

- (b) if the person is an Alternate Director, the Director who appointed that person as Alternate Director and any other Alternate Director appointed by that Director.

11.9.4 A Secretary must call a Directors' meeting at the request of a Director.

11.9.5 Anything done and any resolution passed at a Directors' meeting are not invalidated by:

- (a) an accidental failure to send a notice of that meeting to any Director; or
- (b) any Director's failure to receive that notice.

11.10 Directors' meetings as Virtual Meetings or Hybrid Meetings

11.10.1 This clause 11.10 applies if a Directors' meeting is held as a Virtual Meeting or a Hybrid Meeting.

11.10.2 By agreeing to be a director and on adoption of this Constitution, each Director provides their standing consent to the use of any technology to hold a Directors' meeting as a Virtual Meeting or a Hybrid Meeting. Each Director agrees that the use of such technology will assist the efficient conduct of the Company's business. A Director may only withdraw their consent to the use of specified technology by giving 14 days' notice to the Secretary. Each Director agrees this is a reasonable notice period and acknowledges the withdrawal of consent will not apply to a Directors' meeting convened in accordance with this Constitution, held before the expiry of the relevant 14-day notice period.

11.10.3 All persons attending the meeting remotely are taken for all purposes to be present in person at the meeting while so attending.

11.10.4 Unless the Act provides otherwise, the meeting is taken to be held at the place decided by the chair of the meeting, if at least 1 Director was at that place for the duration of the meeting. The time for the meeting is taken to be the time at the place for the meeting.

11.10.5 If technical difficulties arise before or during the meeting such that a Director cannot participate in the meeting, then the chair may, unless the Act otherwise requires:

- (a) adjourn the meeting either for a reasonable period to fix the technology, or to another time and place that the chair decides; or
- (b) allow the meeting to continue (with the same technology or with different technology selected by the chair), if a quorum of Directors remains able to participate in the meeting. For clarity, any resolution passed at the continued meeting is valid.

11.11 Quorum at meetings of Directors

11.11.1 No business may be transacted at a meeting of Directors unless a quorum of Directors is present when the meeting proceeds to business. This requirement does not apply to the election of a chairperson or the adjournment of the meeting.

11.11.2 A quorum for a meeting of Directors is 2, or if only one director, that director.

11.11.3 If the number of Directors is not sufficient to constitute a quorum, the remaining Director or Directors may act only:

- (a) in an emergency;
- (b) to increase the number of Directors to a number sufficient to constitute a quorum; or
- (c) to call a general meeting of the Company.

11.12 Chairperson of Directors

11.12.1 The Directors may elect one of the Directors as a chairperson of Directors and may decide the period for which that Director is to be chairperson of Directors.

11.12.2 The chairperson of Directors must act as chairperson at a meeting of Directors if that person is present within 15 minutes after the time appointed for the holding of a meeting of Directors and willing to act.

11.12.3 One of the other Directors must act as chairperson of the meeting if:

- (a) there is no chairperson of Directors; or
- (b) the chairperson of Directors is not present at a meeting of Directors; or
- (c) the chairperson of Directors is not willing to act as chairperson of the meeting.

11.13 Decisions of Directors

11.13.1 Questions arising at a meeting of Directors will be decided by a majority of votes of Directors present and entitled to vote.

11.13.2 If there is an equal number of votes for and against a proposed resolution the chairperson of the meeting will have a casting vote.

11.14 Written resolutions

11.14.1 If the Company has one Director, that Director may pass a resolution by recording it and signing the record. The resolution may be recorded in electronic form and may be electronically signed.

11.14.2 The Directors may pass a resolution without holding a Directors' meeting if all the Directors entitled to vote on the resolution (excluding a Director on leave of absence approved by the other Directors, or a Director who is uncontactable by the other Directors despite reasonable efforts for at least 48 hours after the resolution is circulated) sign a document setting out the resolution and containing a statement that they are in favour of the resolution.

11.14.3 In relation to the document referred to in clause 11.14.2:

- (a) it may be in electronic form and may be electronically signed;
- (b) separate copies of it may be used for signing by Directors if the wording of the resolution and statement is identical in each copy; and
- (c) the resolution is passed when the last Director signs it.

11.15 Alternate Directors

- 11.15.1 A Director may, with approval of a majority of the other Directors, appoint an alternate director for a specified period.
- 11.15.2 An Alternate Director is entitled to receive notices of Directors' meetings. An Alternate Director may, if the appointor does not attend a meeting of Directors, attend and vote in place of and on behalf of the appointor.
- 11.15.3 An Alternate Director has a separate vote for each Director the Alternate Director represents. The votes are in addition to any vote that person may have as a Director in their own right.
- 11.15.4 An Alternate Director may, in the absence of the appointor, exercise any powers that the appointor may exercise.
- 11.15.5 The office of an Alternate Director is vacated when the appointor ceases to be a Director.
- 11.15.6 A Director who appoints an Alternate Director may terminate that appointment at any time.
- 11.15.7 An appointment of an Alternate Director or termination of that appointment must be by written notice to the Company.
- 11.15.8 Rules in this Constitution which apply to Directors also apply to each Alternate Director, except that an Alternate Director is not entitled to:
- (a) appoint another Alternate Director; or
 - (b) receive from the Company any remuneration, or retirement or other benefit, of a Director, except as provided in clause 11.15.9.
- 11.15.9 The Directors must decide the remuneration, if any, payable to an Alternate Director and whether that remuneration is payable in addition to, or in reduction of, the remuneration payable to the appointor.
- 11.15.10 An Alternate Director, while acting as a Director, is responsible to the Company for their own acts and defaults. An Alternate Director is not the agent of the appointor.

11.16 Delegation by Directors

- 11.16.1 The Directors may delegate any of their powers to:
- (a) a committee of Directors; or
 - (b) a Director; or
 - (c) any other person, including as attorney or agent.
- 11.16.2 The delegate must exercise the powers delegated in accordance with any directions of the Directors.
- 11.16.3 The exercise of a power by a delegate is as effective as if the Directors had exercised it.
- 11.16.4 The rules applying to meetings and resolutions of Directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of Directors.

11.17 Validity of acts

An act by a person acting as a Director or by a meeting of Directors or a committee of Directors attended by a person acting as a Director is valid despite:

11.17.1 a defect in the appointment of the person as a Director;

11.17.2 the person being disqualified to be a Director or having vacated office; or

11.17.3 the person not being entitled to vote,

if the person or the Directors or committee (as the case may be) were not aware of the relevant circumstances when the act was done.

12. Executive officers

12.1 Managing Director

12.1.1 The Directors may appoint one or more of the directors to the office of the Managing Director.

12.1.2 A Managing Director's appointment automatically terminates if the Managing Director ceases to be a Director.

12.2 Secretary

The Directors may appoint one or more people as Secretary.

13. Distribution of profits

13.1 Dividends

The Directors may:

13.1.1 declare or determine that a dividend is payable;

13.1.2 fix a record date for the dividend, and the amount and time for payment; and

13.1.3 authorise the payment to, or at the direction of, each Member entitled to the dividend.

13.2 Capitalisation of profits

13.2.1 The Directors may capitalise and distribute among those Members entitled to receive dividends any amount available for distribution to Members.

13.2.2 The Directors may resolve that all or any part of the capitalised amount is to be applied:

(a) in paying up in full securities of the Company to be issued to Members; or

(b) in paying up any amounts unpaid on securities of the Company.

13.2.3 The Members entitled to share in the distribution referred to in clause 13.2.1 must accept any application under clause 13.2.2 in full satisfaction of their interests in the capitalised amount.

- 13.2.4 If the Company distributes securities in the Company to a Member under this clause 13.2, the Member appoints the Company as its agent to do anything needed to give effect to that transfer.

13.3 Reserves

- 13.3.1 The Directors may set aside reserves or provisions out of the Company's profits for any purposes they decide.
- 13.3.2 The Directors may appropriate to the Company's profits any amount previously set aside as a reserve or provision.
- 13.3.3 An amount set aside as a reserve or provision does not need to be kept separate from the other assets of the Company and reserved amounts may be used as the Directors decide.

14. Distributions

14.1 Payment of dividends and other distributions

- 14.1.1 Subject to the Terms of Issue of any Share:
- (a) dividends or other distributions to a Member (**Distributions**) must be paid in proportion to the number of Shares held by a Member; and
 - (b) Distributions must be apportioned and paid proportionately to the amounts paid or credited as paid on a Share during any portion of the period in respect of which the Distribution is paid.
- 14.1.2 For the purposes of 14.1.1, an amount paid or credited as paid on a Share in advance of a Call is to be ignored.
- 14.1.3 Interest is not payable by the Company in respect of any Distribution.
- 14.1.4 A Distribution in respect of a Share must be paid to the person who is registered, or entitled under clause 7.1.4 to be registered, as the holder of the share if:
- (a) the Directors have fixed a record date for the Distribution, on that date; or
 - (b) the Directors have not fixed a record date for the Distribution, on the date the Distribution is paid.
- 14.1.5 If a person is entitled to a Share as a result of a Transmission Event, the Directors may retain any Distributions payable in respect of that Share until that person becomes registered as the holder of the Share or transfers it to a third party.
- 14.1.6 The Directors may:
- (a) direct payment of a Distribution wholly or partly by the distribution of specific assets; and
 - (b) direct that a Distribution be paid to particular Members wholly or partly out of a particular fund or reserve or out of profits derived from a particular source and to the remaining Members wholly or partly out of any other particular fund or reserve or out of the profits derived from any other particular source or generally.

- 14.1.7 The Directors may deduct from any Distribution payable to a Member any amount presently payable by the Member to the Company and apply the amount deducted towards satisfaction of the amount owing.
- 14.1.8 A Distribution to be made in cash may be paid using any payment method chosen by the Company, including:
- (a) by cheque sent through the post directed to the address of the Member in the Register or, in the case of joint holders, to the address of the holder named first in the Register;
 - (b) by cheque sent through the post to another address notified by the Member to the Company;
 - (c) by electronic transfer to an account notified by a Member to the Company; or
 - (d) by another method of direct credit determined by the Directors, to or at the direction of a Member.

14.2 Ancillary powers

- 14.2.1 The Directors may also:
- (a) settle any difficulty that arises in making Distribution, and in particular may issue fractional certificates or make cash payments in cases where securities become issuable in fractions;
 - (b) fix the value of any specific assets to be transferred in satisfaction of the Distribution;
 - (c) pay cash or issues securities to any Member in order to adjust the rights of all parties;
 - (d) vest any specific assets, cash or securities in any trustee for the Members entitled to the Distribution; and
 - (e) on behalf of all Members entitled to receive securities as a result of the Distribution, authorise any person to make an agreement with another body corporate providing for securities credited as fully paid up to be issued to them, and any agreement made is binding on all Members concerned.

If the Company transfers securities in the Company or in another body corporate or trust to a Member in satisfaction of a Distribution, the Member appoints the Company as its agent to do anything needed to give effect to that transfer.

15. Indemnity and insurance

15.1 Indemnification of Officers

- 15.1.1 Subject to clause 15.1.2, the Company must pay to a person who is or has been an Officer on demand an amount equal to all Indemnified Loss of the Officer as a result of or in connection with that person's role as an Officer.
- 15.1.2 To the extent permitted by Law, the Company may make a payment (whether by way of advance, loan or otherwise) to an Officer for the Officer's legal costs.
- 15.1.3 The obligation of the Company in clause 15.1.1:

- (a) is enforceable without the Officer having to first incur any expense or make any payment;
- (b) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer of the relevant company;
- (c) applies to Loss incurred both before and after the date of the adoption of this Constitution; and
- (d) does not operate in respect of any liability of the Officer to the extent that liability is covered by insurance.

15.1.4 The obligation of the Company in this clause 15.1 will not apply to the extent that:

- (a) the Company is not allowed by Law to indemnify an Officer against the Indemnified Loss;
- (b) an indemnity by the Company of the Officer against Indemnified Loss would, if given, be legally ineffective under any Law; or
- (c) the Company is not allowed by Law to make a payment for legal costs.

15.2 Insurance

To the extent allowed by Law, the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer against a Loss incurred by the person as an Officer. Any premium will be paid in addition to any remuneration paid to a Director by the Company under this Constitution.

15.3 Agreement

The Company may enter into an agreement or deed with a person who is or has been an Officer about the matters referred to in this clause 15.

16. Access to records

16.1.1 A person who is not a Director does not have the right to inspect any of the board papers, books, records or documents of the Company, except as:

- (a) allowed or required by Law; or
- (b) as authorised by the Directors or by resolution of the Members.

16.1.2 The Company may agree to provide continuing access for a specified period after a person ceases to be an Officer to board papers, books, records or documents of the Company and any relevant related bodies corporate which relate to the period during which the person was an Officer.

17. Winding up

17.1 Excess property

17.1.1 If the Company is wound up and the property of the Company is more than sufficient:

- (a) to pay all of the debts and liabilities of the Company; and

(b) the costs, charges and expenses of the winding up,

the excess must be divided among the Members in proportion to the number of Shares held by them, irrespective of the amounts paid or credited as paid on the Shares. This is subject to the Terms of Issue of any Share.

17.1.2 For the purpose of calculating the excess referred to in clause 17.1.1 any amount unpaid on a Share is to be treated as property of the Company.

17.2 Reduction in distribution

17.2.1 The amount of the excess that would otherwise be distributed to the holder of a partly paid Share under clause 17.1.1 must be reduced by the amount unpaid on that Share at the date of the distribution.

17.2.2 If the effect of the reduction under clause 17.2.1 would be to reduce the distribution to the holder of a partly paid Share to a negative amount, the holder must contribute that amount to the Company.

18. Execution and use of common seal

18.1 Execution and seal

18.1.1 A document (including a deed) may be executed by the Company by being signed by any person or persons authorised by a Directors' resolution.

18.1.2 If the Company has a common seal, the Directors may decide any procedures they consider appropriate for use of the seal.

18.2 No limit on execution methods

18.2.1 Clause 18.1 does not limit the ways in which the Company can execute documents (including deeds) in accordance with the Act.

19. Notices

19.1 Delivery of notice

19.1.1 A notice required by this Constitution must be in writing and may be delivered:

- (a) personally;
- (b) by leaving it at the person's address in the Register;
- (c) by posting it by prepaid post addressed to that person at the person's address for service;
- (d) by facsimile to the person's facsimile number; or
- (e) by electronic mail to the person's email address.

19.1.2 If the person receiving the notice is a company, the notice or other communication may be delivered to the company's registered office.

19.1.3 A person may change their address, facsimile number or email address by giving notice to the Company.

19.2 Service on joint holders and transferees of Shares

- 19.2.1 The Company may give a notice to joint holders of a Share by giving the notice to the joint holder who is named first in the Register for the Share.
- 19.2.2 A notice given to a person who is entitled to a Share because of a Transmission Event may be served on the Member in whose name the Share is registered, whether or not the Company has notice of the occurrence of a Transmission Event.
- 19.2.3 A person who, because of a transfer of a Share, becomes entitled to any Share registered in the name of a Member, is taken to have received every notice which, before that person's name and address is entered in the Register for that Share, is given to the Member in accordance with this clause 19.1.

19.3 Time of service

A notice or other communication is deemed delivered:

- 19.3.1 if delivered personally or left at the person's address, upon delivery;
- 19.3.2 if posted within Australia to an Australian address, 2 Business Days after posting and in any other case, 5 Business Days after posting;
- 19.3.3 if delivered by facsimile, subject to clause 19.3.5, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- 19.3.4 if delivered by electronic mail, subject to clause 19.3.5, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and
- 19.3.5 if received after 5.00pm in the place it is received or on a day which is not a business day in the place it is received, at 9.00am on the next business day.

20. Interpretation

20.1 Words and headings

In this Constitution, unless expressed to the contrary:

- 20.1.1 words denoting the singular include the plural and vice versa;
- 20.1.2 the word 'includes' in any form is not a word of limitation;
- 20.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- 20.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Constitution

20.2 Specific references

In this Constitution a reference:

- 20.2.1 to a partly paid Share is a reference to a Share on which there is an amount unpaid;

- 20.2.2 to a Call or an amount Called in respect of a Share includes a reference to a sum that, by the Terms of Issue of a Share, becomes payable on issue or at a fixed date;
- 20.2.3 in general terms to a person holding or occupying an office or position includes a reference to any person who occupies or performs the duties of that office or person for the time being;
- 20.2.4 to a gender includes every other gender;
- 20.2.5 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 20.2.6 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 20.2.7 writing includes writing in digital form;
- 20.2.8 'this Constitution' is to this Constitution as amended from time to time;
- 20.2.9 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 20.2.10 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Constitution;
- 20.2.11 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 20.2.12 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 20.2.13 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee;
- 20.2.14 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body; and
- 20.2.15 a Member 'signing' a document or any communication to the Company, means that the Member may sign:
 - (a) electronically or by any method permitted by Law; or
 - (b) in any manner approved by the Directors.

21. General

21.1 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the courts of Victoria.

21.2 Severability

21.2.1 Any provision of this Constitution that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

21.2.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Constitution that is unlawful or unenforceable will be severed from this Constitution and the remaining provisions continue in force.

21.3 Business Day

If a payment or other act is required by this Constitution to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

Schedule 1 Pre-emptive procedures – issue of Shares

1. Definitions

In this Schedule 1:

Declined Shares Proportional Entitlement means, in relation to each Member on any date, the number of Shares held by that Member as a proportion of the number of issued Shares held by those Members who accepted the offer of Offered Shares.

Proportional Entitlement means, in relation to each Member on any date, the number of Shares held by that Member as a proportion of the total number of issued Shares.

2. Procedure

2.1 The Company will calculate the Proportional Entitlement of each Member at 10.00am on the day immediately prior to the day on which the Company proposes to make the offer to issue Shares.

2.2 The Company must first offer the Shares to Members in the same proportion as their Proportional Entitlement calculated under paragraph 2.1.

2.3 Any offer required by paragraph 2.2 must be made by notice to each Member (**Notice of Issue**). The Notice of Issue must set out:

2.3.1 the total number of Shares to be issued (**Offered Shares**);

2.3.2 the issue price for the Offered Shares;

2.3.3 the Terms of Issue for the Offered Shares;

2.3.4 the number of Offered Shares that the Member is entitled to subscribe for based on the Member's Proportional Entitlement; and

2.3.5 the last date on which the Member may subscribe for the Member's Proportional Entitlement of the Offer Shares (**Final Subscription Date**).

2.4 If a Member does not take up some or all of its Proportional Entitlement to the Offered Shares by the Final Subscription Date (**Declined Shares**), the Company must offer the Declined Shares to other Members willing to subscribe for the Declined Shares, on the basis of their Declined Shares Proportional Entitlement.

2.5 The offers made under paragraphs 2.2 and 2.4 must remain open for acceptance for a period of 10 Business Days.

2.6 If all of the Declined Shares are not subscribed for in the offer made under paragraph 2.4, the Company may issue the Declined Shares to a third party at a price per Share not less than the price per Share, and on Terms of Issue not more favourable than, those specified in the Notice of Issue. The issue of Shares to the third party must occur within 2 months of the Final Subscription Date.

Schedule 2 Pre-emptive rights – transfer of Shares

1. Definitions

In this Schedule 2:

Declined Shares Proportional Entitlement means, in relation to each Member on any date, the number of Shares held by that Member as a proportion of the number of issued Shares held by those Members who accepted the offer for Transfer Shares.

Proportional Entitlement means, in relation to each Member on any date, the number of Shares held by that Member as a proportion of the total number of issued Shares less the number of Shares held by the Proposed Transferor.

2. Procedure

- 2.1 A Member (**Proposed Transferor**) wishing to transfer a Share must give a Transfer Notice to the Company.
- 2.2 A Transfer Notice must set out:
- 2.2.1 the number of Shares the Proposed Transferor wishes to transfer (**Transfer Shares**); and
- 2.2.2 the price and all other terms of the proposed transfer of the Transfer Shares, including the identity of the proposed transferee (if any).
- 2.3 The Proposed Transferor appoints the Company as the agent for the sale of the Transfer Shares at the price and on the terms set out in the Transfer Notice.
- 2.4 The Company must:
- 2.4.1 forward a copy of the Transfer Notice to all other Members within 10 Business Days of the Company receiving the Transfer Notice from the Proposed Transferor;
- 2.4.2 offer the Transfer Shares to the Members (other than the Proposed Transferor) in their Proportional Entitlements; and
- 2.4.3 notify the Members of the last date on which a Member may accept the offer for that Member's Proportional Entitlement of the Transfer Shares (**Final Acceptance Date**).
- 2.5 If a Member does not take up some or all of its Proportional Entitlement to the Transfer Shares by the Final Acceptance Date (**Declined Shares**), the Company must offer the Declined Shares to other Members willing to purchase the Declined Shares, on the basis of their Declined Shares Proportional Entitlement.
- 2.6 The offers made under paragraphs 2.4.2 and 2.5 must remain open for acceptance for a period of 10 Business Days.
- 2.7 If all of the Declined Shares are not taken up in the offer made under clause 2.5, any remaining Declined Shares may be transferred to a third party on terms no less favourable than those set out in the Transfer Notice.