

**Corporation Act 2001**  
**A Company Limited by Guarantee**  
**Constitution**

**Of**

Australian Technology Park Sydney Limited

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

- (a) The following definitions apply in this Constitution unless the context requires otherwise:

“**Act**” means the *Corporations Act 2001* (Cth) as amended from time to time;

“**Company**” means ATP Sydney Limited

“**Constitution**” means this constitution of the Company as amended from time to time;

“**Law**” means the *Corporations Act 2001* (Cth) and *Corporations Regulations 2001* (Cth) as amended from time to time;

“**Member**” means a person whose name is entered in the Register as a member of the Company;

“**Office**” means the registered office of the Company;

“**Register**” means the register of Members kept by the Company under the Act;

“**Seal**” means the common seal of the Company;

“**Secretary**” means a person appointed to perform the duties of a secretary of the Company.

- (b) Where any word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

**1.2 References to sections and clauses**

A reference to:

- (a) a section of the Act includes any amendment extension or re-enactment and any corresponding section for the time being in force; or
- (b) this Constitution, where amended, means this Constitution as so amended.

**1.3 Presumptions of interpretation**

Unless the context otherwise requires a word which denotes:

- (a) the singular denotes the plural and vice versa;
- (b) a person denotes an individual and a body corporate; and
- (c) any gender denotes the other genders.

#### 1.4 <sup>12</sup>**Headings and table of contents**

Headings and the table of contents must be ignored in the interpretation of this Constitution.

#### 1.5 **References to and calculations of time**

- (a) Unless the context otherwise requires a reference to a time of day means that time of day in the state or territory in which the Office is situated.
- (b) For the purposes of determining the length of a period (but not its commencement) a reference to:
  - (i) a day means a period of time commencing at midnight and ending 24 hours later; and
  - (ii) a month means a calendar month which is a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of that next month.
- (c) Where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day.
- (d) A provision of this Constitution, except that specifying the time for deposit of proxies with the Company, which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

#### 1.6 **Business day**

A reference to a business day means a day during which banks are open for general banking business in the state or territory in which the Office is situated.

#### 1.7 **Acts of Parliament**

A reference to an Act of Parliament, whether State or Federal, includes a reference to that Act of Parliament as amended from time to time, and a reference to a specific provision of an Act of Parliament means, unless the context demands otherwise, a reference to the equivalent provision in any later amended version of that Act of Parliament, or if the original Act of Parliament has been repealed in any Act of Parliament substituted in its place.

#### 1.8 **Corporations Act**

Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.

#### 1.9 **Replaceable Rules**

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<sup>1</sup> This has been moved to new clause 2.

<sup>2</sup> See new clause 1.8

Each of the provisions of the Act which would but for this clause apply to the Company as a replaceable rule within the meaning of the Act are displaced and do not apply to the Company.

## **2. Nature of the Company**

### **2.1 Name**

The name of the Company is Australian Technology Park Sydney Limited.

### **2.2 Status**

The Company is a public company limited by guarantee.

### **2.3 Liability of Members**

The liability of the Members is limited. Every Member of the Company undertakes to contribute to the property of the Company in the event of the Company being wound up while it is a Member, or within one year after it ceases to be a Member, for payment of the debts and liabilities of the Company (contracted before it ceased to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding twenty dollars (\$20.00).

## **3. OBJECTS**

3.1 The objects (“**Objects**”) for which the Company is established are to:

- (a) establish, maintain and operate a facility of an international standard for the promotion, development and application of sciences and technologies;
- (b) link the resources and skills of institutions of advanced learning with the industrial objectives of private companies and government instrumentalities;
- (c) increase and disseminate knowledge as to sciences and technologies and the importance of them to the socioeconomic development of Australia;
- (d) encourage innovative technologies to assist the development of novel high-value-added products and new industries;
- (e) encourage innovative technologies to assist in the development of environmentally sustainable solutions;
- (f) promote the responsible development and use of sciences and technologies;
- (g) provide consultancy services to industry and government as to the application of sciences and technologies;
- (h) arrange for training and education in matters related to the Objects;
- (i) promote and provide exhibitions, lectures, films, publications and other educational instruction or materials relating to sciences and technologies;
- (j) conduct activities of an educational or cultural nature in accordance with the Objects;
- (k) manage any facility established and trading and income generating activities carried on with the facility;

- (l) raise funds for the purposes of the Company and conduct business on its own account;
- (m) co-operate with individuals, associations or organisations whether governmental (Commonwealth, State and Local), institutional, corporate or professional in relation to the commercial development of sciences and technologies;
- (n) broaden access to research findings and technological opportunities;
- (o) facilitate technology transfer between research institutions and industry;
- (p) provide incubator facilities for the early stages of commercialisation of new technologies;
- (q) encourage synergy among researchers, designers, entrepreneurs and manufacturers; and
- (r) Contribute to the long-term economic and social sustainability interests of the Redfern-Waterloo and wider community in accord with the strategic priorities of Sydney, New South Wales and Australia.

3.2 The income and property of the Company must be applied solely towards the promotion of the Objects and no portion of them may be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise, to the Members of the Company.

#### **4. MEMBERSHIP**

##### **4.1 Register of Members**

The Company must keep a Register in accordance with the provisions of the Law.

##### **4.2 Member to notify changes**

A Member must notify the directors of any change in the details with respect to that Member recorded to the Register.

##### **4.3 Application for membership**

- (a) Any person may apply to the Company to become a Member by making an application in writing in a form approved by the directors.
- (b) Where the Company receives an application for membership the directors may require the applicant to provide such further information as the directors in their absolute discretion determine.
- (c) An application for membership may only be accepted with the approval of the directors and all of the Members and such approval may be given in the absolute discretion of the directors and the Members.
- (d) The Secretary must notify each applicant for membership of the success or failure, as the case may be, of that person's application.
- (e) The directors and the Members are not required to publish or provide to any person their reasons (if any) for accepting or rejecting any application for membership.

##### **4.4 Registration of Members**

Any Member may resign by notice in writing to the Company, which registration takes effect on the date of receipt by the Company of the notice or on a later date specified in the notice, provided that there is at least one Member of the Company who is a body corporate, or at least 2 members who are natural persons, at the time the registration takes effect.

#### **4.5 Transfer of membership**

- (a) A Member may with the approval of the directors and all of the other Members transfer its membership to another person.
- (b) Where the directors and the Members receive an application for transfer of membership they may, in their absolute discretion approve or disapprove the transfer and, if the application is approved in accordance with clause 4.5(a), the Secretary must enter the transferee's name in the Register.
- (c) Where the Company receives an application for transfer of membership the directors may require the proposed transferee to provide such further information as the directors in their absolute discretion determine.
- (d) The Secretary must notify each applicant for transfer of membership of the success or failure, as the case may be, of that person's application.
- (e) The directors and the Members are not required to publish or provide to any person their reasons (if any) for accepting or rejecting any application for transfer of membership.

#### **4.6 Death of a Member**

- (a) In case of the death of a Member being a natural person the Company shall immediately seek applications from suitably qualified persons to replace such deceased Member.
- (b) In the event that the death of a deceased member brings the membership of the company below 2 Members the Company must appoint a new member to replace the deceased member not later than 6 months from the date of death of the deceased member.

#### **4.7 Restrictions on transfer**

All the limitations, restrictions and provisions of this Constitution relating to the right to transfer, and the registration of transfers of, membership apply to a notice or transfer consequent upon the insolvency of a Member, being a body corporate, as if the insolvency of the Member had not occurred and the notice or transfer were a transfer signed by that Member.

#### **4.8 Rights of Representatives**

Where a Member, being a body corporate, becomes insolvent the liquidator is, on the production of the evidence properly required by the directors, entitled to the same advantages and to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise) as the Member would have been entitled to if it had not become insolvent.

### **5. GENERAL MEETINGS**

#### **5.1 Convening of meetings by directors**

A director may whenever he thinks fit convene a general meeting unless there is only one Member.

## 5.2 **Convening of meetings by Members**

A general meeting may be convened:

- (a) on the requisition or by the requisitionists permitted by the Law; or
- (b) by the Members permitted by the Law on the assumption that no other provision is made by this Constitution.

## 5.3 **Notice of general meeting**

- (a) A notice of a general meeting:
  - (i) may be given by any form of communication permitted by the Law; and
  - (ii) must specify the place, the day and the hour of meeting, and, except as expressly set out in this Constitution, the general nature of the business to be transacted, and any other matters as are required by the Law.
- (b) The accidental omission to give notice of any general meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.
- (c) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes:
  - (i) the consideration of accounts and the reports of the directors and auditor;
  - (ii) the election of directors in the place of those retiring; or
  - (iii) the appointment and fixing of the remuneration of the auditor.

## 5.4 **Quorum at general meetings**

- (a) Business may not be transacted at a general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) A quorum is present if there is present at the meeting a majority of the body corporate Members.
- (c) If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the chair:
  - (i) and the meeting was convened on the requisition of Members, it must be dissolved; or
  - (ii) in any other case, it must stand adjourned to the same day in the next week at the same time and place or to another day at another time and place determined by the directors.

## 5.5 **Quorum at adjourned general meetings**

- (a) The Member or Members present at an adjourned meeting constitute a quorum and may proceed with the business specified in the notice of meeting if:

- (i) notice of the adjourned meeting is given in the same way as for an original meeting; and
  - (ii) at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting.
- (b) If notice of the adjourned meeting is not given and a quorum is not present at the adjourned meeting, the meeting must be dissolved.

#### **5.6 Representatives of Members**

- (a) At meetings of Members or classes of Members each Member entitled to vote may vote in person or by proxy or by attorney.
- (b) A person attending as a proxy, as the attorney of a Member, or as representing a corporation which is a Member is to be treated as a Member for the purposes of:
- (i) determining whether a quorum is present; and
  - (ii) demanding a poll.

#### **5.7 Appointment of Chair**

- (a) If the directors have elected one of their number as chair of their meetings, that person is entitled to preside as chair at every general meeting.
- (b) The directors present at a general meeting must elect one of their number to be chair of the meeting if:
- (i) a director has not been elected as chair of directors' meetings; or
  - (ii) the chair is not present within 15 minutes after the time appointed for the holding of the meeting or he is unwilling to act.
- (c) The Members present at a general meeting must elect one of their number to be chair of the meeting if:
- (i) there are no directors present within 15 minutes after the time appointed for the holding of the meeting; or
  - (ii) all directors present decline to take the chair.

#### **5.8 Power of the Chair**

Subject to any provisions of the Constitution dealing with adjournment of meetings, the chair's ruling on all matters relating to the order of business, procedure and conduct of the general meeting is final and no motion of dissent from a ruling of the chair may be accepted.

#### **5.9 Adjournment of general meetings**

- (a) The chair may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and to another place.
- (b) The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (d) Except when a meeting is adjourned for 30 days or more, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

#### 5.10 **Voting on show of hands**

- (a) At a general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded.
- (b) If a poll is not duly demanded, a declaration by the chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

#### 5.11 **Demand for a poll**

- (a) A poll may be demanded by:
  - (i) the chair;
  - (ii) any 2 Members who have the right to vote at the meeting; or
  - (iii) any Member or Members representing not less than 10% of the total voting rights of all the Members having the right to vote at the meeting.
- (b) The demand for a poll may be withdrawn.
- (c) The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on a question of adjournment, either at once or after an interval or adjournment or otherwise as the chair directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- (d) If a poll is duly demanded, it must be taken in the manner and, except as to the election of a chair or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the chair directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- (e) A poll demanded on the election of a chair or on a question of adjournment must be taken immediately.

#### 5.12 **Voting rights of Members**

Voting rights shall only subsist in Members who are bodies corporate.

Subject to any rights or restrictions for the time being attached to any membership:

- (a) on a show of hands every person present who is a Member or who represents a Member has one vote; and
- (b) on a poll every person present who is a Member or who represents a Member has one vote.

### 5.13 **Persons representing Members of unsound mind**

If a Member is of unsound mind or is a person whose estate is liable to be dealt with in any way under the law relating to mental health, their committee or trustee or such other person who lawfully has the management of their estate may exercise the rights of the Member in relation to a general meeting as if the committee, trustee or other person is the Member.

### 5.14 **Chair's vote at general meetings**

The chair of a general meeting is not entitled to a second or casting vote.

### 5.15 **Objections to voter qualification**

- (a) No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) An objection to the qualification of a vote must be referred to the chair of the meeting, whose decision is final.
- (c) A vote not disallowed according to an objections as provided in this Constitution is valid for all purposes.

### 5.16 **Resolution in writing**

If the Company has only one Member and the Member records the Member's decision to a particular effect then the recording of that decision is taken as the passing by the Member of a resolution to that effect, as provided in the Law, and is taken to be an unanimous decision of the Members to that effect for the purposes of this Constitution.

## **6. PROXIES**

### 6.1 **Appointment of proxies**

- (a) A document appointing a proxy must be in writing, signed:
  - (i) by the appointor or the attorney of the appointor duly authorised in writing; or
  - (ii) if the appointor is a corporation, either under seal or by an officer or attorney of the appointor duly authorised in writing.
- (b) If the notice of the general meeting for which a proxy is appointed states that proxies may be sent to a specified facsimile number for or on behalf of the Company, a document generated from the image of a document appointing a proxy that is transmitted to that facsimile number is:
  - (i) deemed to be in writing;
  - (ii) deemed to be signed if bearing a facsimile of a signature; and
  - (iii) deemed to be under seal if bearing a facsimile of a seal.

A proxy need not be a Member.



- (i) the document appointing the proxy; and
  - (ii) the power of attorney or other authority (if any) under which the document is signed or a notarially certified copy of that power of attorney.
- (b) Those documents must be either:
- (i) deposited at the Office, or at another place specified for that purpose in the notice convening the meeting at least 24 hours before the time for holding the meeting or adjourned meeting or, in the case of a poll, the time appointed for the taking of the poll; or
  - (ii) produced to the chair of the meeting or adjourned meeting before the proxy votes.

#### **6.5 Validity of proxies**

A proxy document is invalid if it is not deposited or produced prior to a meeting or a vote being taken as required by this Constitution.

#### **6.6 Revocation of appointment of proxy**

A vote given in accordance with the terms of a document or proxy or power of attorney is valid despite the occurrence of any one or more of the following events if no intimation in writing of any of these events has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the document is used:

- (a) the previous death or unsoundness of mind of the appointor;
- (b) the revocation of the appointment or of the authority under which the document was executed; or
- (c) the transfer of the membership in respect of which the document or power is given.

### **7. APPOINTMENT AND RETIREMENT OF DIRECTORS**

#### **7.1 Number of directors**

- (a) Until otherwise determined in accordance with this Constitution, the number of directors must not be less than 3 nor more than 14 provided that the minimum number of directors must always include the directors appointed by the Members pursuant to clause 7.2(a).
- (b) The Company may by resolution, increase or reduce the number of directors but the number must not be reduced below 3.
- (c) Alternate and associate directors are not to be treated as directors for the purpose of determining the minimum or maximum number of directors holding office.

#### **7.2 Appointment of directors**

- (a) If the Company has only one Member, being a body corporate, that Member may by notice to the Company appoint a maximum of 7 directors.
- (b) Members, being bodies corporate, may by unanimous decision appoint any one or more of the following persons as directors:
  - (i) a person selected by the body corporate Members;
  - (ii) a person nominated by the Government of the State of New South Wales; and
  - (iii) a person nominated by the Government of the Commonwealth of Australia.
- (c) The directors may with the approval of all of the body corporate Members appoint up to 2 persons who are representatives of one or more commercial enterprises.
- (d) The appointment of a director appointed pursuant to clause 7.2(a) takes effect on the date of giving the notice to the Company or on a later date specified in the notice given to the Company.
- (e) The appointment of a director appointed pursuant to clause 7.2(b) takes effect on the date that notice of the Members' decision is given to the Company or on a later date specified in the notice given to the Company.
- (f) The appointment of a director appointed pursuant to clause 7.2(c) takes effect on the date of the resolution of the directors or on a later date specified in the resolution.

### 7.3 Retirement of directors

- (a) The directors, however appointed, are not required to retire from office at an annual general meeting of the Company.
- (b) Each director appointed pursuant to clause 7.2(b), or clause 7.2(c) must retire from office on the third anniversary of his appointment.
- (c) A director may retire from office by giving notice in writing to the Company of his intention to retire. A notice of resignation takes effect at the time which is the later of:
  - (i) the time of giving the notice to the Company; or
  - (ii) the expiration of the period, if any, specified in the notice.
- (d) A director retiring from office pursuant to clause 7.3(a) or clause 7.3(c) who is not disqualified by law from being appointed as a director of the Company may be re-appointed pursuant to clause 7.2(a), clause 7.2(b) or clause 7.2(c) if a vacancy for such appointment exists.

### 7.4 Membership qualification

A director or alternate director is not required to be a Member in order to hold office as a director or alternate director.

### 7.5 Removal from office

- (a) A director appointed pursuant to clause 7.2(a) may be removed at any time by the Member who appointed him giving notice in writing to the Company terminating the

director's appointment and may at any time appoint a new director in place of the removed director.

- (b) A director appointed pursuant to clause 7.2(b) or 7.2(c) may be removed at any time by a body corporate Member giving notice in writing to the Company terminating the director's appointment, provided that the action has the approval of all the body corporate Members.
- (c) The termination of the appointment of a director pursuant to this clause 7.5 takes effect on the date of giving the notice or on a later date specified in the notice.

## **7.6 Vacation of office**

- (a) In addition to the circumstances in which the office of a director becomes vacant by virtue of the Law or another provision of this Constitution, the office of director becomes vacant if the director:
  - (i) becomes an insolvent under administration;
  - (ii) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to the mental health;
  - (iii) is absent without the consent of the directors from the meetings of the directors held during a continuous period of 6 months and the board resolves that the office of that director be vacated;
  - (iv) becomes prohibited from being a director by reason of an order made under the Law; or
  - (v) dies.

## **8. DIRECTORS' REMUNERATION**

### **8.1 Remuneration of directors**

The directors shall be paid such remuneration as is from time to time decided by the Company in general meeting.

### **8.2 Payment for expenses**

The directors must be paid all travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings or otherwise in the execution of their duties as directors.

### **8.3 Nothing in this Constitution prohibits:**

- (a) the payment in good faith of remuneration, to any officers or servants of the Company or to any member of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
- (b) the payment of interest, at a rate not exceeding the rate for the time being fixed for the purpose of this paragraph by the directors on money borrowed from any members of the Company; or

- (c) the payment of reasonable and proper rent for premises let by any member to the Company.

## **9. POWERS AND DUTIES OF DIRECTORS**

### **9.1 Management of Company**

- (a) The business of the Company is to be managed by the directors, who may pay all expenses incurred in promoting and registering the Company, and may exercise all those powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Company in general meeting.
- (b) Without limiting the powers of management conferred on the directors by any other provision of this Constitution, the directors may exercise all the powers of the Company to:
  - (i) borrow money;
  - (ii) mortgage or charge any property or business of the Company or all or any of its uncalled capital;
  - (iii) issue debentures; and
  - (iv) give any other security for any debt, liability or obligations of the Company or of any other person.

### **9.2 Attorneys**

- (a) The directors may from time to time by power of attorney appoint a corporation, firm, or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the Company.
- (b) The attorney may be granted all powers, authorities, and discretions (not exceeding those vested in or exercisable by the directors under this Constitution) for the period and subject to the conditions which the directors think fit.
- (c) A power of attorney may contain any provisions for the protection and convenience of persons dealing with the attorney which the directors think fit. It may also authorise the attorney to delegate all or any of the powers, authorities, and discretions vested in him under the power of attorney.

### **9.3 Cheques**

Cheques, promissory notes, bankers drafts, bills of exchange, and other negotiable instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed, or otherwise executed by any 2 persons appointed by the directors to sign, draw, accept, endorse or otherwise execute the document or a class of documents in which that document is included.

### **9.4 Indemnity**

If the directors or any of them or an officer of the Company becomes or is about to become personally liable for the payment of any sum primarily due from the Company, the directors may execute or cause to be executed an indemnity and a mortgage charge or security over or

affecting the whole or part of the assets of the Company to secure the indemnity in favour of the directors or persons against loss in respect of that liability.

## **10. PROCEEDINGS OF DIRECTORS**

### **10.1 Convening of directors' meetings**

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

### **10.2 Mode of meeting for directors**

- (a) The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) The directors are to be regarded as present together when in communication by telephone or other means of audio or audio visual communication if each of the directors participating in the communication is able to hear each of the other participating directors.

### **10.3 Notice of directors' meetings**

- (a) Notice of each meeting of the directors must be given to each director at least 24 hours before the meeting or at another time determined by resolution of the directors.
- (b) However:
  - (i) all directors may waive in writing the required period of notice for a particular meeting; and
  - (ii) it is not necessary to give a notice of a meeting of directors to a director who is out of Australia or who has been given leave of absence.

### **10.4 Quorum at directors' meetings**

- (a) At a meeting of directors, a quorum is present if there are present at the meeting a majority of the directors.
- (b) If a body corporate Member entitled by clause 7.2(a) to appoint a maximum of 7 directors does not appoint a least 3 directors, a director may give notice in writing requiring that body corporate Member to appoint further directors such that the number of directors appointed by that Member is at least 3.
- (c) If the body corporate Member fails to appoint a director or the directors required by the notice, and while that failure continues, the directors whose presence is necessary to constitute a quorum does not include a director or the directors appointed by that body corporate Member.

### **10.5 Voting at directors' meetings**

- (a) Questions arising at a meeting of directors must be decided by a majority of votes of directors present and voting. A decision of the majority is for all purposes a decision of the directors.

### **10.6 Appointment of chair of directors**

- (a) The directors may elect a chair of their meetings and determine the period for which the person elected is to hold office.
- (b) If a chair has not been elected, or if at any meeting the chair is not present within 10 minutes after the time appointed for holding the meeting or is unwilling to act, the directors present may choose one of their number to be chair of the meeting.

#### 10.7 **Chair's vote at directors' meetings**

A chair does not have a second or casting vote at meetings of directors.

#### 10.8 **Disclosure of director's interests**

- (a) A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company must declare the nature of his interest at a meeting of the directors in accordance with Section 191 of the Act.
- (b) The Secretary must record every declaration of interest in the minutes of the meeting at which it is made.
- (c) A director is not to be regarded as interested or to have been at any time interested in a contract or proposed contract merely because:
  - (i) where the contract or proposed contract relates to a loan to the Company, he has guaranteed or joined in guaranteeing the repayment of the loan or a part of the loan; or
  - (ii) where the contract or proposed contract has been or will be made with or for the benefit of or on behalf of a body corporate which by virtue of the Act is deemed to be related to the Company, he is a director of that body corporate.

#### 10.9 **Director's contracts**

- (a) Despite a failure by a director to declare the nature of the director's interest as required by this Constitution and the Act:
  - (i) a director or intending director is not disqualified by holding office as director from contracting or entering into any arrangement with the Company, whether as vendor, purchaser or otherwise;
  - (ii) a contract or arrangement entered into by or on behalf of the Company in which a director is in any way, whether directly or indirectly, interested, is not liable to be avoided; and
  - (iii) a director is not liable to the Company for a profit realised from that contract or arrangement by reason of the director holding that office.
- (b) A director and a firm in which the director is interested may act in a professional capacity for the Company. The director and that firm are entitled to remuneration for professional services as if the director was not a director of the Company.
- (c) Nothing in this Constitution authorises a director or a firm in which the director is interested to act as auditor of the Company.

#### 10.10 **Directors holding office of profit**

A director may hold any other office or place of profit under the Company (except that of auditor) in conjunction with the office of director for the period and on the terms as to remuneration and otherwise as the directors' may determine.

#### **10.11 Participation where directors interested**

Directors must absent themselves (by leaving the room) from the consideration and voting on a matter presented at a meeting where they have a direct or indirect pecuniary interest in that matter. Directors must exercise high levels of judgement in considering their interest in each matter presented to the meetings so as to ensure that a conflict of interest and/or a perception of a conflict interest does not arise.

#### **10.12 Delegation of powers to committee**

- (a) The directors may delegate any of their powers to committees consisting of directors or other persons as they think fit to act in Australia or elsewhere.
- (b) The exercise of a power by a committee in accordance with this Constitution is to be regarded as the exercise of that power by the directors.
- (c) In the exercise of any powers delegated to it, a committee formed by the directors must conform to the directions of the directors.

#### **10.13 Proceedings of committees**

Except as provided in a direction of the directors, the meetings and proceedings of a committee formed by the directors must be governed by the provisions of this Constitution, in so far as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the directors.

#### **10.14 Validity**

All acts done by a meeting of the directors or of a committee of directors or by a person acting as a director are valid even if it is later discovered that there is a defect in the appointment of a person to be a director or member of the committee or that they or any of them were disqualified or were not entitled to vote.

#### **10.15 Minutes**

- (a) The directors must cause minutes of all proceedings of general meetings, of meetings of the directors and of committees formed by the directors to be entered, within one month after the relevant meeting is held, in books kept for the purpose.
- (b) The directors must cause all minutes, except those deemed to constitute minutes by virtue of clause 10.16, to be signed by the chair of the meeting at which the proceedings took place or by the chair of the next succeeding meeting.

#### **10.16 Resolution in writing**

A resolution in writing signed by at least those directors sufficient to constitute a quorum at meetings of directors is to be regarded as a determination of the directors passed at a meeting of the directors duly convened and held.

#### **10.17 Form of resolution in writing**

- (a) A resolution in writing may consist of several documents in like form, each signed by one or more directors and if so signed it takes effect on the date on which the last director to make up a quorum signs one of the documents.
- (b) If a resolution in writing is signed by an alternate director, it must not also be signed by his appointor and vice versa.
- (c) In relation to a resolution in writing:
  - (i) a document generated by electronic means which purports to be a facsimile of a resolution of directors is to be regarded as a resolution in writing; and
  - (ii) a document bearing a facsimile of a signature is to be regarded as signed.

## **11. ALTERNATE DIRECTORS**

### **11.1 Appointment of alternate directors**

- (a) A director may, with the consent of:
  - (i) the body corporate Member who appointed the director in the case of a director appointed under clause 7.2(a);
  - (ii) all the body corporate Members in the case of a director appointed under clause 7.2(b); and
  - (iii) the directors with the approval of all the body corporate Members in the case of a director appointed under clause 7.2(c),

appoint a person to be an alternate director in the director's place, during the period that the director thinks fit but not exceeding 3 months.

- (b) The appointment of an alternate director must be in writing, signed by the director.
- (c) The appointment of an alternate director takes effect immediately upon the signing of the notice of appointment by the director.

### **11.2 Powers of alternate director**

- (a) An alternate director is subject in all respects to the terms and conditions applying to the other directors except:
  - (i) for the provisions of this Constitution relating to the election of directors and the power to appoint an alternate director; and
  - (ii) as expressly provided in this Constitution.
- (b) An alternate director is entitled to:
  - (i) perform all the duties of a director while the director who appointed the alternate director is not exercising or performing them;
  - (ii) receive notice of meetings of the directors; and
  - (iii) attend and vote at meetings of the directors if the director who appointed the alternate director is not present.

### **11.3 Termination of appointment of alternate director**

The appointment of an alternate director is immediately terminated if:

- (a) the director who appointed the alternate director ceases to be a director; or
- (b) the director who appointed the alternate director gives notice of termination of the appointment to the alternate director or the Company.

## **12. SECRETARY**

### **12.1 Appointment of Secretaries**

The directors may appoint one or more Secretaries and may at any time terminate the appointment or appointments.

### **12.2 Terms of appointment of Secretaries**

The directors may determine the terms and conditions of appointment of a Secretary, including remuneration.

### **12.3 Secretaries may act separately**

Any one of the Secretaries may carry out any act or deed required by this Constitution, the Act or by any other statute to be carried out by the secretary of the Company.

## **13. SEAL**

### **13.1 Custody of Seal**

The directors must provide for the safe custody of the Seal.

### **13.2 Affixing the Seal**

- (a) The Seal may be used only by the authority of the directors.
- (b) Every document to which the Seal is affixed must be signed by any 2 persons appointed by the directors to countersign that document or a class of documents in which that document is included.

### **13.3 Official seal**

- (a) The Company may have for use in place of the Seal outside the jurisdiction where the Seal is kept one or more official seals, each of which must be a facsimile of the Seal with the addition on its face of the name of every place where it is to be used.
- (b) The directors may from time to time appoint persons to affix an official Seal and to sign and countersign a document to which the official Seal is affixed.
- (c) A person affixing the official Seal must certify in writing signed by him, on the instrument to which it is affixed, the date on which and the place at which it is affixed.

## **14. INPECTION OF RECORDS**

### **14.1 Discretion of directors**

The directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them are to be open to the inspection of body corporate Members other than directors.

#### **14.2 Members' rights**

A body corporate Member other than a director does not have any right to inspect the accounting records or other documents of the Company except as provided by the Law or other statute, the approval of the directors or by the Company in general meeting.

#### **14.3 Single Member's rights**

Notwithstanding clauses 14.1 and 14.2, if there is only one Member of the Company, that Member has full rights to inspect the accounting records and other documents of the Company at any time.

### **15. CAPITALISATION OF PROFITS**

#### **15.1 Authority to capitalise**

The Company in general meeting may resolve to capitalise a sum, being the whole or a part of the amount for the time being standing to the credit of any of the Company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution.

#### **15.2 Resolution to capitalise**

The Company may not pass a resolution to capitalise a sum unless the resolution has been recommended by the directors.

#### **15.3 Giving effect to resolution**

The directors must do all things necessary to give effect to any resolution of the Company under this clause 15.

### **16. NOTICES**

#### **16.1 Form of notice**

A notice by either the Company or a Member in connection with this Constitution may be given on behalf of the Company or Member by a solicitor, director or company secretary of the Company or Member.

#### **16.2 Means of giving notices**

In addition to the mode for giving notices provided by the Act or any applicable statute, a notice by the Company or a Member in connection with this Constitution may be given to the addressee by:

- (a) delivering it to the street address of the addressee;
- (b) sending it by prepaid ordinary post (airmail if outside Australia) to the address to the addressee; or
- (c) sending it by telex or facsimile to the telex or facsimile number of the addressee.

#### **16.3 Addresses for giving notices**

- (a) Until a Member gives notice to the Company of another address for the giving of notices, the address of a Member for the purpose of this Constitution is the street address, postal address, telex number or facsimile number shown in the Register.
- (b) Until a person entitled to membership in consequence of the death or bankruptcy of a Member gives notice to the Company of an address for the giving of notices, the address of that person is the address of the deceased or bankrupt Member.
- (c) The address of the Company for the purpose of giving notices to the Company under this Constitution is:
  - (i) the street address of the Office; or
  - (ii) the street address, telex number or facsimile number of the Company's principal place of business in Australia.

#### **16.4 Time notices are given**

A notice given in accordance with this Constitution is to be taken as given, served and received:

- (a) if delivered in writing to the street address of the addressee, at the time of delivery;
- (b) if it is sent by post to the street address of the addressee, on the 3<sup>rd</sup> (7<sup>th</sup> if outside Australia) day after posting; or
- (c) if sent by telex or facsimile to the telex or facsimile number of the addressee at the time transmission is completed.

#### **16.5 Proof of giving notices**

Proof of the sending of a notice by telex or facsimile and the time of completion of transmission may be established by production of:

- (a) if the notice is sent by telex, evidence of the answerback code of the addressee after transmission of the telex; or
- (b) if the notice is sent by facsimile, a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in, its entirety to the facsimile number of the addressee.

#### **16.6 Persons entitled to notice of meeting**

- (a) Notice of every general meeting must be given in the manner authorised by this Constitution to:
  - (i) every Member;
  - (ii) every person entitled to membership in consequence of the death or bankruptcy of a Member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and
  - (iii) the auditor for the time being of the Company.
- (b) No other person is entitled to receive notices of general meetings.

**17. WINDING UP**

If on the winding up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, that property must be paid to or distributed among the Members of the Company at the time of winding up in equal shares.

**18. INDEMNITY**

Every officer, auditor, or agent of the Company is entitled to be indemnified out of the property of the Company against any liability incurred by him in his capacity as officer, auditor or agent in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation to those proceedings in which relief is granted to him by the Court under the Act.

**19. VARIATION OR AMENDMENT**

No variation or amendment may be made to this Constitution without the approval of the Members at the time of the purported variation or amendment in accordance with the Act.