

Constitution for Bridging the Gap Foundation Limited

Bridging the Gap Foundation Limited
ACN 607 238 424

A company limited by guarantee
incorporated in Northern Territory of Australia
under the *Corporations Act 2001* (Cth)

Table of contents

1.	Definitions and interpretation	1
1.1	Definitions	1
1.2	Interpretation	3
1.3	Business Day	4
1.4	Replaceable rules	4
2.	Company Limited by Guarantee	4
2.1	Name	4
2.2	Objects	4
2.3	Income and Property	6
2.4	Number of Members	6
2.5	Membership	6
3.	General meetings	7
3.1	Convening and cancelling general meetings	7
3.2	Notice of general meetings	7
3.3	Quorum	8
3.4	Conduct of meetings	8
3.5	Adjournments	9
3.6	Voting at general meetings	9
3.7	When a poll is effectively demanded	9
3.8	Special meetings	10
3.9	Procedure for polls	10
3.10	Chair has casting vote	10
3.11	Representation and voting of Members	10
3.12	Restriction on voting rights	11
3.13	Form of proxy	11
3.14	Number of proxies	12
3.15	Validity of proxies	12
3.16	Circulating resolutions	13
3.17	Sole Member Resolutions	13
4.	Board of Directors	14

4.1	The Board of Directors	14
4.2	Appointment and removal	14
4.3	Vacation of office	16
4.4	Remuneration	16
5.	Proceedings of Directors	17
5.1	Proceedings	17
5.2	Meetings by technology	18
5.3	Chair of Directors	18
5.4	Directors' voting rights and exercise of powers	19
5.5	Material personal interests	19
5.6	Committees	20
5.7	Circulating resolutions	20
5.8	Defects in appointments	21
6.	Execution of Documents	21
6.1	Seals	21
6.2	Execution under Common Seal	21
6.3	Execution without Common Seal	21
6.4	Directors' Interests	22
7.	Notices	22
7.1	Notice requirements	22
7.2	When Notices considered given and received	22
8.	Indemnity of officers, insurance and access	23
9.	Revocation of Deductible Gift Recipient Status	24
10.	Winding up	25
11.	Modification or repeal of this Constitution	25

Constitution for Company Limited by Guarantee

1. Definitions and interpretation

1.1 Definitions

In this Constitution:

Act	means the <i>Menzies School of Health Research Act</i> .
Annual Subscription	means the amount of \$50.00.
Auditor	means the auditor of the Company.
Board	means the Directors present at a meeting, duly convened as a meeting of Directors, at which a quorum is present.
Business Day	means a day on which banks are open for business in Darwin excluding a Saturday, Sunday or public holiday in that city.
Chair	means the person occupying the position of Chair under either rule 4.2(h) or rule 5.3(a) or acting Chair of the Directors under rule 5.3(b) (where appropriate).
Charitable	means charitable within: <ul style="list-style-type: none">(i) the laws of the Northern Territory;(ii) the laws of the Commonwealth; and(iii) the common law.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth) and the <i>Corporations Regulations 2001</i> (Cth) as amended from time to time.
Director	means a director of the Company.

Eligible Entity	means a fund, authority or institution: <ul style="list-style-type: none"> (i) which is Charitable; and (ii) gifts to which are deductible under item 1 of the table in section 30-15 of the Income Tax Assessment Act 1997 (Cth).
Company	means the Bridging the Gap Foundation Limited.
Managing Director	means a Director appointed as, or to perform the duties of, managing director of the Company.
Member	means a member described in rule 2.4.
Related Body Corporate	has the meaning given to it in s 9 of the Corporations Act.
Replaceable Rules	means the replaceable rules referred to in Part 2B.4 and s 141 of the Corporations Act.
School	means the Menzies School of Health Research established under the Act.
Secretary	means a person appointed by the Directors to perform the duties of secretary of the Company.
Member Present	means, in connection with a meeting, the Member present at the venue or venues for the meeting, in person or by proxy, by attorney or, where the Member is a body corporate, by representative.
Trusts	means the trusts and either or any of them as described in rule 2.2.
University	means Charles Darwin University as continued in existence under the <i>Charles Darwin University Act</i> .
ITAA 97	means the <i>Income Tax Assessment Act 1997</i> (Cth)

1.2 Interpretation

In this Constitution unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this Constitution;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Constitution have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, Company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate (whether or not having a separate legal personality);
- (f) a reference to any thing (including any right) includes a part of that thing, but nothing in this rule 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a rule, party, annexure, exhibit or schedule is a reference to a rule of, and a party, annexure, exhibit and schedule to, this Constitution and a reference to this Constitution includes any rule, annexure, exhibit and schedule;
- (h) a reference to a document (including this Constitution) includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing and includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to time is to Darwin time;
- (k) in this Constitution a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (l) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (m) a reference to a body, other than a party to this Constitution (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this Constitution do not limit what else is

included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;

- (o) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (p) a reference to a month is a reference to a calendar month;
- (q) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (r) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day;
- (s) a reference to '\$', 'A\$', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia; and
- (t) an expression which is not defined in this Constitution has the same meaning as given under the Corporations Act.

1.3 Business Day

If anything under this Constitution is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.

1.4 Replaceable rules

If any of these rules is inconsistent with a provision of the Replaceable Rules, these rules will prevail to the extent of the inconsistency. To the extent that these rules do not modify or displace a Replaceable Rule, that Replaceable Rule applies.

2. Company Limited by Guarantee

2.1 Name

The name of the Company is Bridging the Gap Foundation Limited (hereinafter referred to as "the Company").

2.2 Objects

The objects for which the Company is established are to either

- (i) in its own right; or
- (ii) as the trustee of one or more of the Trusts, the objects of which are to,

support and assist the School, the University and such other organisations in the health, research and education sectors but only for so long as such entities

and organisations respectively remain an Eligible Entity and to encourage and foster the interest and financial support of those persons and organisations interested in assisting and promoting the School, the University and such other organisations in the health, research and education sectors and in particular and without limiting the generality of the foregoing:

- (i) to extend invitations to those persons and organisations interested in assisting and promoting the School, the University and such other organisations in the health, research and education sectors to become Members of the trustee of the Trusts and through such membership to participate and enjoy more actively and effectively in supporting and assisting the Board to promote and carry out the activities of the School, the University and such other organisations in the health, research and education sectors:
- (ii) to encourage the making of gifts and testamentary dispositions to the Trusts or generally for the benefit of the School, the University and such other organisations in the health, research and education sectors or any of its funds or accounts or any trusts or funds established to benefit the School, the University and such other organisations in the health, research and education sectors;
- (iii) to enlist the support including the financial support of those persons and organisations interested in assisting and promoting the School, the University and such other organisations in the health, research and education sectors:
 - (A) to improve the education provided by the School, the University and such other organisations in the health, research and education sectors including the employment of teaching staff with special skills;
 - (B) the carrying out of research into indigenous health and the advancement and improvement of indigenous health and education throughout Australia or elsewhere in the world as determined by the Board;
 - (C) the carrying out of research into tropical health and the advancement and improvement of tropical health and education throughout Australia or elsewhere in the world as determined by the Board;
 - (D) the provision of funds to scholarships, bursaries and educational allowances, visits from distinguished academics, scholars, research fellows and others with qualifications which enable them to contribute to:
 - (1) the education of the students and teaching staff of the School, the University and such other organisations in the health, research and education sectors;
 - (2) the acquisition of books, works of art, plant and equipment, land and buildings and the construction and maintenance of buildings and facilities;
- (iv) to raise money for the purposes aforesaid by any method that seems desirable.

2.3 Income and Property

The Company shall not be carried on for the purposes of profitable gain to its individual Members and the whole of the income and property of the Company whencesoever derived shall be applied solely towards the promotion of the objects of the Company as set out in rule 2.2, and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to the members of the Company, provided that nothing herein shall prevent the payment in good faith of reasonably and proper remuneration to any officer or servant of the Company or to any Member of the Company in return for any services actually rendered to the Company nor prevent the payment of interest at a rate not exceeding interest at the rate for the time being charged by Australian banks for overdrawn accounts on money lent, or reasonable and proper rent for premises demised or let by any Member of the Company.

2.4 Number of Members

- (a) The Company is a company limited by guarantee and the liability of the Members is limited. Every Member of the Company undertakes to contribute to the assets of the Company in the event of the Company being wound up while or within one (1) year after the person ceases to be a Member, for payment of the debts and liabilities of the Company contracted before the person ceased to be a Member, and of the costs, charges and expenses of winding-up and for the adjustment of the rights of contributories among themselves, such amount as may be required, not exceeding twenty dollars (\$20.00).
- (b) The Company must have at least one Member.
- (c) The number of Members with which the Company is proposed to be registered is One Thousand (1,000) but the Board may from time to time resolve to increase the number of Members.
- (d) The Members of the Company shall consist of:
 - (i) The School; and
 - (ii) The "Chairperson" of the School (as defined in the Act) (not being a subscriber) upon agreeing in writing to become a member of the Company and to be bound by this Constitution;
 - (iii) The "Director" of the School (as defined in the Act) (not being a subscriber) upon agreeing in writing to become a member of the Company and to be bound by this Constitution; and
 - (iv) Such other persons as shall be admitted to membership in accordance with this Constitution.

2.5 Membership

- (a) Any person wishing to become a Member of the Company (other than the persons described in rule 2.4(d)(i), rule 2.4(d)(ii) and rule 2.4(d)(iii) shall make

application for membership in writing in such form as shall be prescribed by the Board from time to time.

- (b) An application from a corporation shall include the nomination (which may be altered from time to time by giving written notice to the Company) of an individual natural person to represent such applicant and that person alone shall be able to represent act on behalf of and exercise membership rights of such member.
- (c) The Board shall accept or decline to accept such application without assigning any reason for its decision.
- (d) When an applicant has been accepted for membership, the Secretary shall forthwith send to the applicant written notice of acceptance whereupon the applicant shall be deemed to be admitted to membership.
- (e) The Members listed in 2.4(d)(i), (ii) and (iii) will be Members in perpetuity. All other Members shall be admitted for a term of five (5) years or such shorter term as the Board specifies.

3. General meetings

3.1 Convening and cancelling general meetings

- (a) For so long as the Company is registered as a charity with the Australian Charities and Not-for-profits Commission or its successor the Directors;
 - (i) may determine whether or not to hold meetings of Members including Annual General Meetings; and
 - (ii) must ensure that the Australian charities and Not-for-profits Commission Governance Standards are complied with.

3.2 Notice of general meetings

- (a) If a general meeting of Members, including an annual general meeting, is to be convened, at least 14 days' notice of that meeting must be given to each person who is at the date of the notice:
 - (i) a Member of the Company eligible to receive notices of meetings;
 - (ii) a Director of the Company; or
 - (iii) an auditor of the Company.
- (b) A notice of a general meeting is to specify the place and time of the meeting, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted at the meeting and any other matters required by law.

- (c) A meeting of Members may be held in two or more places linked together by any technology so long as it:
 - (i) gives the Members as a whole in those places a reasonable opportunity to participate in proceedings;
 - (ii) enables the Chair to be aware of the proceedings in each place, and
 - (iii) enables the Members in each place to vote on a show of hands and on a poll.

3.3 Quorum

- (a) No business may be transacted at any general meeting except, subject to rule 3.4, the election of the Chair unless a quorum of Members is present at the beginning of the business (and during the whole of the meeting).
- (b) Except as otherwise provided in this Constitution, a quorum shall be 50% of the number of Members at the time, and must include at least two of the members listed in rule 2.4(d)(i), (ii) and (iii).
- (c) If there is not a quorum at a general meeting within 30 minutes after the time specified in the notice of the meeting, the meeting is dissolved unless the Chair or the Directors adjourn the meeting to a date, time and place determined by the Chair or the Directors. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

3.4 Conduct of meetings

- (a) The Chair or, in the Chair's absence, the deputy Chair is entitled to preside as Chair at every general meeting.
- (b) The Members at a meeting of the Company must elect a Member present to chair the meeting (or part of it) if:
 - (i) the Chair of Directors is not present, available or declines to act as chair for the meeting; and
 - (ii) the Directors have not elected a chair to preside at the meeting or that chair is not present, available or declines to act as chair for the meeting.
- (c) The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the chair of the meeting.
- (d) The chair of the meeting may make rulings without putting the question (or any question) to the vote if the chair of the meeting considers action is required to ensure the orderly conduct of the meeting.

- (e) At any time the chair of the meeting considers it necessary or desirable for the proper and orderly conduct of the meeting, the chair of the meeting may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members Present.
- (f) Any determination by the chair of the meeting in relation to matters of procedure (including any procedural motions moved at, or put to, any meeting) or any other matter arising directly or indirectly from the business is final (including any procedural motions moved at, or put to, any meeting). Any challenge to:
 - (i) a right to vote (whether on a show of hands or on a poll); or
 - (ii) a determination to allow or disregard a vote, may only be made at the meeting and may be determined by the chair of the meeting.

3.5 **Adjournments**

- (a) During the course of the meeting the chair of the meeting may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the chair of the meeting. If the chair of the meeting exercises a right of adjournment of a meeting under this rule, the chair of the meeting has the sole discretion to decide whether to seek the approval of the Members Present to the adjournment and, unless the chair of the meeting exercises that discretion, no vote may be taken by the Members Present in respect of the adjournment.
- (b) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for one month or more, notice of the adjourned meeting must be given as in the case of an original meeting. Otherwise, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

3.6 **Voting at general meetings**

- (a) Each question submitted to a general meeting is to be decided by a show of hands of the Members Present and entitled to vote, unless a poll is demanded.
- (b) Unless a poll is demanded, a declaration by the Chair following a vote on a show of hands that a resolution has been passed or lost is conclusive.

3.7 **When a poll is effectively demanded**

- (a) A poll may be demanded by:
 - (i) at least five Members entitled to vote on the resolution;

- (ii) Members with at least five per cent of the votes that may be cast on the resolution on a poll; or
 - (iii) the chair of the meeting.
- (b) The poll may be demanded before a vote is taken, before the voting results on a show of hands are declared or immediately after the voting results on a show of hands are declared.

3.8 **Special meetings**

All the provisions of this Constitution as to general meetings apply to any special meeting of Members which may be held pursuant to this Constitution.

3.9 **Procedure for polls**

- (a) When demanded, a poll may be taken in the manner and at the time the chair of the meeting directs.
- (b) The result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) as the chair of the meeting considers appropriate.
- (c) The demand for a poll does not prevent a meeting from continuing in relation to any transaction or any business other than that on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

3.10 **Chair has casting vote**

In the event of an equality of votes on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any vote to which the chair of the meeting may be entitled as a Member or as a proxy, attorney or properly appointed representative of a Member.

3.11 **Representation and voting of Members**

Subject to this Constitution:

- (a) at meetings of Members, each Member entitled to attend and vote may attend and vote in person or by proxy, by attorney or (where the Member is a body corporate) by representative;
- (b) on a show of hands:
 - (i) subject to rules 3.11(b)(ii) and 3.11(b)(iii), each Member Present has one vote;
 - (ii) where a Member has appointed more than one person as representative, proxy or attorney for the Member, only the first (in order of time nominated or order of name on the relevant nomination

document where nomination of more than one is made at the same time) of the representatives, proxies or attorneys is entitled to vote; and

- (iii) where a person is entitled to vote because of rule 3.11(b) in more than one capacity, that person is entitled only to one vote; and
- (c) on a poll:
- (i) only Members Present may vote; and
 - (ii) every Member Present has the right to one vote per membership held.
 - (iii) if a Member has appointed two proxies and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half of that Member's votes.

3.12 Restriction on voting rights

A Member is not entitled to attend or vote at a general meeting unless all calls and other sums presently payable by the Member in respect of his, her or its membership have been paid.

3.13 Form of proxy

- (a) A Member who is entitled to attend and vote at a meeting of the Company may appoint a person as a proxy to attend and vote for the Member in accordance with the Corporations Act. A proxy appointed in accordance with the Corporations Act to attend and vote may exercise the rights of the Member on the basis and subject to the restrictions provided in the Corporations Act.
- (b) The instrument appointing a proxy:
 - (i) shall be in writing (in the common or usual form) under the hand of the appointer or of his attorney duly authorised in writing or, if the appointer is a corporation, either under seal or under the hand of an officer or attorney duly authorised;
 - (ii) shall be deemed to confer authority to demand or join in demanding a poll;
 - (iii) must be in accordance with the Corporations Act; and
 - (iv) may be in the following form or any other form (including electronic) which the Directors shall prescribe or approve:

'Bridging the Gap Foundation Limited ACN 607 238 424 (Company)

I, [insert name] of [insert address] being a Member of the Company hereby appoint [insert name] of [insert address] or, failing him/her [insert name] of [insert address] as my proxy to vote for me on my behalf at the

(annual general or general as the case may be) meeting of the Company to be held on [insert date] and at any adjournment thereof.

*My proxy is hereby authorised to vote *In favour of/*against the following resolution:*

**Strike out whichever is not required.'*

[insert resolution]

Dated: [insert date]

[Insert duly authorised execution block]

(Note: In the event of the member desiring to vote for or against any resolution he shall instruct his proxy accordingly. Unless otherwise instructed, the proxy may vote as he thinks fit).

- (c) Any appointment of proxy under this rule 3.13 which is incomplete may be completed by the Secretary on the authority of the Directors and the Directors may authorise completion of the proxy by the insertion of the name of any Director as the person in whose favour the proxy is given.
- (d) Where a notice of meeting provides for electronic lodgement of proxies, a proxy lodged at the electronic address specified in the notice is taken to have been received at the registered office and validated by the Member if there is compliance with the requirements set out in the notice.

3.14 **Number of proxies**

- (a) A Member may appoint not more than two proxies.
- (b) A proxy need not be a Member.

3.15 **Validity of proxies**

- (a) A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:
 - (i) the previous death or unsoundness of mind of the principal;
 - (ii) the revocation of the instrument (or of the authority under which the instrument was executed) or the power; or
 - (iii) the transfer of the Membership in respect of which the instrument or power is given,

if no notice in writing of the death, unsoundness of mind, revocation or transfer (as the case may be) has been received by the Company at its registered office before the commencement of the meeting, or adjourned meeting at which the instrument is used or the power is exercised.

- (b) A proxy is not revoked by the principal attending and taking part in the meeting unless the principal actually votes at the meeting on a resolution for which the proxy is proposed to be used.
- (c) Voting instructions given by a Member to a Director or employee of the Company who is appointed as proxy (**Company Proxy**) are valid only if:
 - (i) the voting instructions are contained in the document form of appointment of the Company Proxy; or
 - (ii) in the case of new instructions or variations to earlier instructions, the new instructions or variations to earlier instructions are either:
 - (A) received at the registered office of the Company before the meeting or adjourned meeting by a notice in writing signed by the Member; or
 - (B) otherwise validated by the Member in a manner acceptable to the Directors in their discretion prior to the commencement of the meeting.

3.16 **Circulating resolutions**

- (a) If all Members entitled to receive notice of a general meeting and to vote on a resolution of Members, sign a document containing a statement that they are in favour of the resolution set out in the document, a Members' resolution in those terms is passed when the last Member signs such a document.
- (b) For the purpose of this rule 3.16(b):
 - (i) two or more separate documents in identical terms, each of which is signed by one or more Members, will be treated as one document; and
 - (ii) an email or facsimile containing the text of the document expressed to have been signed by a Member that is sent to the Company is deemed to be a document signed by that Member at the time of its receipt by the Company.

3.17 **Sole Member Resolutions**

Where the Company has only one Member it may pass a resolution by the member recording it and signing the record.

4. Board of Directors

4.1 The Board of Directors

The business and affairs of the Company shall be managed by the Board of Directors (hereinafter referred to as "the Directors") consisting of up to ten (10) Directors who shall be appointed as follows:

- (a) The "Board" of the School (as defined in the Act) shall from time to time, nominate and appoint two (2) Directors. It shall not be a precondition of nomination or appointment that such Director be a member of the "Board" of the School;
- (b) The Council of the University shall from time to time, nominate and appoint two (2) Directors. It shall not be a precondition of nomination or appointment that such Director be a member of the "Council" of the University;
- (c) The Members may elect up to three (3) Directors in accordance with rule 4.2(e);
- (d) The Directors (or, where there is only one Director in office at the relevant time, that Director) may appoint any person to be a Director, or to fill a vacancy except in the case of a vacancy of director elected pursuant to rule 4.1(a) or (b), provided:
 - (i) the Chair provides the name of any proposed appointee to the Directors nominated under rules 4.1(a) and (b); and
 - (ii) neither of those Directors, or if those Directors do not hold office with their nominating institution the nominating institution, disagree with the proposed appointment;
 - (iii) Any disagreement under rule 4.1(d)(ii) must be notified to the Chair within 30 days of the proposed appointee's name being provided to the relevant Director or nominating institution.

4.2 Appointment and removal

- (a) The first Director or Directors of the Company are the persons specified in the application to register a Company lodged under the Corporations Act and who have consented to become Directors of the Company.
- (b) The Directors appointed pursuant to rule 4.1(a) or (b) shall hold office until removal by the nominating institution (by notice under rule 4.2(e) or (f)) or vacation of office under rule 4.3.
- (c) The Directors elected pursuant to rule 4.1(d) shall:
 - (i) hold office for a period of three (3) years, or until vacation of office under rule 4.3;
 - (ii) be eligible for re-appointment or re-election;

(iii) must not hold office of a Director for any more than nine (9) consecutive years unless otherwise resolved by a special resolution of Members;

(iv) a person having held office as a Director for nine (9) consecutive years is eligible for re-election or re-appointment once a period of two years has expired since that person last held office as a Director of the Company.

(d) The Directors elected pursuant to rule 4.1(c) shall:

(i) be elected by the Members at the Annual General Meeting of the Company and will hold office for a period of three (3) years, or until vacation of office under rule 4.3;

(ii) be eligible for reappointment or re-election;

(iii) must not hold office of a Director for any more than nine (9) consecutive years unless otherwise resolved by a special resolution of Members;

(iv) a person having held office as a Director for nine (9) consecutive years is eligible for re-election or re-appointment once a period of two years has expired since that person last held office as a Director of the Company.

(e) The election of Directors by the Members to the Board shall take place in the following manner:

(i) Any two (2) Members shall be at liberty to nominate any other Member to serve as a member of the Board;

(ii) The nominations shall be in writing and signed by the member and the member's proposer and seconder and shall be lodged with the Secretary at least twenty one (21) days before the Annual General Meeting of the Company at which the election is to take place;

(iii) A list of candidates' names in alphabetical order (showing also the proposers' and seconds' names) shall be posted in a conspicuous place at the Company's registered office or provided to Members in such other manner determined appropriate by the Board at least fourteen (14) days immediately preceding the Annual General Meeting;

(iv) If the number of candidates standing for election exceeds the number of vacancies, balloting lists shall be prepared containing the names of the candidates only in alphabetical order and each Member present at the Annual General Meeting shall be entitled to vote for the nominated candidates. The candidate receiving the most number of votes will be deemed to be elected to fill the vacancy and in the event of two (2) or more candidates receiving an equal number of votes for one vacancy the Chair of the meeting shall have a casting vote;

(v) If there are no nominations then the Chair of the Meeting may accept nominations from Members from the floor of the Annual General Meeting.

- (f) The "Board" of the School (as defined in the Act) shall be entitled to appoint and remove the Director appointed by it pursuant to rule 4.1(a) by written notice to the Company and to fill any casual vacancy in this position in the same manner.
- (g) The Council of the University shall be entitled to appoint and remove the Director appointed by it pursuant to rule 4.1(b) by written notice to the Company and to fill any casual vacancy in this position in the same manner.
- (h) The Chair of the Board shall be any Director nominated in writing from time to time by the "Board" of the School (as defined in the Act) and failing such nomination appointed by the Board.
- (i) The "Board" of the School (as defined in the Act) shall be entitled to terminate the appointment of any Chair appointed pursuant to rule 4.2(h) by notice in writing to the Board.

4.3 Vacation of office

- (a) In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:
 - (i) is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
 - (ii) resigns by notice in writing to the Company;
 - (iii) is absent without the consent of the Directors from meetings of the Directors held during a continuous period as determined by the Board from time to time; or
 - (iv) dies.
- (b) Where a person is a Director of the Company and that person's employment is terminated with the Company or any of its subsidiaries this does not result in the termination of the office of the Director.

4.4 Remuneration

- (a) The Directors are also entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the Directors, committee of the Directors, general meeting of the Company or otherwise in connection with the business or affairs of the Company.
- (b) If any Director, with the approval of the Directors, performs extra services or makes any special exertions for the benefit of the Company, the Directors may approve the payment to that Director of special and additional remuneration as the Directors determine having regard to the value to the Company of the extra

services or special exertions. Any special or additional remuneration must not include a commission on or percentage of profits or operating revenue or turnover.

- (c) A Director may be engaged by the Company in any other capacity (other than Auditor) and may be appointed on terms as to remuneration, tenure of office and otherwise as may be agreed by the Directors.

5. Proceedings of Directors

5.1 Proceedings

- (a) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they determine.
- (b) The Directors shall hold no less than two (2) Director's meetings per annum.
- (c) The Chair may at any time and the Secretary shall upon the request in writing of two Directors convene a meeting of the Board.
- (d) A notice may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by all the Directors.
- (e) A Notice of the Meeting is to be sent to all Directors that sets out:
 - (i) the date, time and place of the meeting; and
 - (ii) the items that are to be included on the agenda.
- (f) In the Notice of Meeting all the items that are to be discussed at the meeting must be listed in the agenda as no other business shall be discussed other than those items listed in the agenda. Directors may also request for an item to be placed on the agenda.
- (g) No business may be transacted at a Directors' meeting unless there is a quorum of Directors at the time the business is dealt with. A quorum consists of three (3) Directors, provided that at least two (2) of the Directors referred to in either rule 4.1(a), 4.1(b) or 4.2(h) are present.
- (h) In the event of a vacancy or vacancies in the office of a Director or offices of Directors, where the number of remaining Directors is not sufficient to constitute a quorum of a meeting of Directors, they shall be deemed to constitute a quorum of a meeting of Directors or act to convene a general meeting of the Company.
- (i) Where there is only a sole Director, the sole Director may pass a resolution by recording it and signing it.

5.2 Meetings by technology

- (a) For the purposes of the Corporations Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Directors' meeting:
- (i) video conferencing;
 - (ii) telephone;
 - (iii) any other technology which permits each Director to communicate with every other Director; or
 - (iv) any combination of these technologies.

A Director may withdraw the consent given under this rule in accordance with the Corporations Act.

- (b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:
- (i) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Directors, taken to be assembled together at a meeting and to be present at that meeting; and
 - (ii) all proceedings of those Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were physically present in the one location.

5.3 Chair of Directors

- (a) Subject to rule 4.2(h), the Directors may elect one of their number as their Chair and may decide the period for which the Chair is to hold office as Chair. References to the Chair in this Constitution include, in the absence of the Chair, the deputy Chair (unless the context otherwise requires).
- (b) Where a meeting of Directors is held and:
- (i) a Chair has not been appointed as provided by rule 4.2(h) or elected as provided by rule 5.3(a); or
 - (ii) the Chair is not present at the time appointed for the holding of the meeting or does not wish to Chair the meeting,

the deputy Chair is Chair of the meeting or the Directors present may elect one of their number to be Chair of the meeting.

5.4 **Directors' voting rights and exercise of powers**

- (a) Subject to this Constitution, questions arising at a meeting of Directors are decided (where there is more than one Director of the Company) by a majority of votes of Directors present and voting.
- (b) In the case of an equality of votes, the Chair of the meeting has a casting vote in addition to the Chair's deliberative vote.
- (c) Subject to rule 5.5 and the Corporations Act, a Director:
 - (i) who has an interest in a matter may vote in respect of that matter if it comes before the Directors and be counted as part of the quorum;
 - (ii) may enter into contracts with, or otherwise have dealings with, the Company; and
 - (iii) may hold other offices in the Company.
- (d) A Director is not liable to account to the Company for any profit realised by any contract or arrangement, by reason only of holding the office of Director or of the fiduciary relationship established by the office.
- (e) Subject to the Corporations Act, a Director or any person who is an associate of a Director may participate in any issue by the Company of financial products.
- (f) Despite having an interest in any contract or arrangement a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing or otherwise.

5.5 **Material personal interests**

- (a) A Director is not disqualified from the Director's office by contracting with the Company or any Related Body Corporate of the Company in any capacity by reason of holding of the office of Director.
- (b) In relation to a contract or arrangement in which a Director has a material personal interest:
 - (i) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
 - (ii) a contract or arrangement made by the Company or any Related Body Corporate with a Director may not be voided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
 - (iii) the Director will not be liable to account to the Company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.

- (c) If a Director has a material personal interest in a matter that relates to the affairs of the Company and that interest has been disclosed in accordance with the Corporations Act or is of a type that does not require disclosure:
 - (i) the Director may vote on matters that relate to the interest;
 - (ii) any transactions that relate to the interest may proceed;
 - (iii) the Director can retain benefits from the transaction even though the Director has the interest; and
 - (iv) the Company cannot avoid the transaction merely because of the existence of the interest.
- (d) If the material personal interest of a Director requires disclosure in accordance with the Corporations Act, rule 5.5(c)(iii) and rule 5.5(c)(iv) only apply if the disclosure is made before the transaction is entered into.
- (e) Nothing in the preceding provisions of this rule affects the duty of a Director who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Directors' duties or interests as a Director, to declare at a meeting of Directors, the fact and the nature, character and extent of the conflict.
- (f) The Secretary must record any declarations made or notices given by a Director under this Constitution in the minutes of the meeting.
- (g) Rules 5.5(d) and 5.5(e) do not apply to a Director who is a sole Director of the Company.

5.6 Committees

- (a) The Directors may delegate any of their powers to committees consisting of any one or more Directors or any other person or persons as the Directors think fit. In the exercise of delegated power, any committee formed or person or persons appointed to the committee must conform to any regulations that may be imposed by the Directors. A delegate of the Directors may be authorised to sub-delegate any of the powers for the time being vested in the delegate.
- (b) The meetings and proceedings of any committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Directors so far as they are applicable and are not in conflict with or superseded by, any regulations made by the Directors under rule 5.6(a).
- (c) Nothing in this rule 5.6 limits the power of the Directors to delegate.

5.7 Circulating resolutions

A resolution in writing, signed by all of the Directors for the time being entitled to receive notice of a meeting of the Directors, shall be as valid and effectual as if it had been

passed at a meeting of the Directors duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more of the Directors.

5.8 Defects in appointments

All actions at any meeting of the Directors or by a committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been properly appointed and was qualified and continued to be a Director or a member of the committee.

6. Execution of Documents

6.1 Seals

- (a) The Company may have a common seal and a duplicate common seal which are to be used by the Company as determined by the Directors.
- (b) The seal must be used only by the authority of the Board.

6.2 Execution under Common Seal

If the Company does have a common seal then it may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:

- (a) two Directors of the Company;
- (b) a Director and a Company Secretary;
- (c) if the Company has a sole director who is also the sole Company Secretary – that Director; or
- (d) any person duly authorised to sign on behalf of the Company, whether under authority of a power of attorney or otherwise.

6.3 Execution without Common Seal

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

- (a) two Directors of the Company;
- (b) a Director and a Company Secretary;
- (c) if the Company has a sole director who is also the sole Company Secretary – that Director; or

- (d) any person duly authorised to sign on behalf of the Company, whether under authority of a power of attorney or otherwise.

6.4 **Directors' Interests**

A Director may sign a document to which the seal of the Company is fixed notwithstanding that the director is interested in the contract or arrangement to which the document relates.

7. Notices

7.1 Notice requirements

Any notice, demand, approval, consent or other communication under this Constitution (**Notice**) must be in writing and must be delivered:

- (a) personally;
- (b) by facsimile;
- (c) by prepaid registered post; or
- (d) sent by email to a current email address for notices,

to a party at the address of the party set out in the relevant Company register, or in the case of the Company at its registered office or where to be served by email to the Company's then current notified legal email address (**Nominated Contact Details**).

7.2 When Notices considered given and received

A Notice given in accordance with rule 7.1 takes effect when received (or such later time as specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, two Business Days after the date of posting (or five Business Days after the date of posting if posted to or from outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the Notice, unless within four business hours (being a period of time between 9.00 am and 5.00 pm on a Business Day) after the transmission, the recipient informs the sender that it has not received the entire Notice; or
- (d) if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00 pm on a Business Day, the Notice is taken to be received at 9.00 am on the Business Day after that delivery, receipt or transmission.

8. Indemnity of officers, insurance and access

- (a) The Company is to indemnify each officer of the Company out of the assets of the Company to the extent permitted at law against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer, except for fraud and wilful misconduct or any liability arising out of conduct involving lack of good faith.
- (b) Subject to rule 8, where the Directors consider it appropriate, the Company may execute an indemnity document in any form in favour of any officer of the Company or a subsidiary.
- (c) Where the Directors consider it appropriate, the Company may to the relevant extent:
 - (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company or a subsidiary against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer; and
 - (ii) bind itself in any contract or deed with any officer of the Company to make the payments.
- (d) Where the Directors consider it appropriate, the Company may:
 - (i) give a former Director access to certain papers, including documents provided or available to the Directors and other papers referred to in those documents; and
 - (ii) bind itself in any contract with a Director or former Director to give the access.
- (e) In this rule 8:
 - (i) **officer** means:
 - (A) a Director, Secretary or executive officer; or
 - (B) a person appointed as a trustee by, or acting as a trustee at the request of, the Company,and includes a former officer;

- (ii) **duties of the officer** includes, in any particular case where the Directors consider it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company or, where applicable, the subsidiary of the Company to any other corporation;
- (iii) **to the relevant extent** means:
 - (A) to the extent the Company is not precluded by law from doing so;
 - (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
 - (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation; and
- (iv) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

9. Revocation of Deductible Gift Recipient Status

- (a) If the Company's endorsement as a deductible gift recipient under the ITAA 97 is revoked, any surplus of the following assets shall be transferred to the School, so long as the School remains an Eligible Entity, or if the School is no longer an Eligible Entity, some other institution or institutions having objects similar to that of the Company and is also an Eligible Entity:
 - (i) gifts of money or property made to the Company for the principal purpose of the Company;
 - (ii) contributions made to the Company (that are not gifts) which are described in items 7 or 8 of the table in section 30-15 of the ITAA 97 in relation to an eligible fundraising event held for the principal purposes of the Company; and
 - (iii) money received by the Company because of such gifts and contributions.

- a. The institution or institutions under rule 9(a) is to be determined by the Members by special resolution. If the Members do not make this decision, the Company must apply to the Supreme Court of the Northern Territory to make this decision.

10. Winding up

- a. Subject to rule 9, if upon winding up or dissolution of the Company, there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed amongst:
 - (i) the Members of the Company except, in the case of the School unless it is in accordance with rule 10(a)(iii), nor
 - (ii) the Directors,
but shall be given or transferred to:
 - (iii) the School, so long as the School remains an Eligible Entity; or
 - (iv) if the School is no longer an Eligible Entity, some other institution or institutions having objects similar to those of the Company and is also an Eligible Entity, and which shall prohibit the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Company under or by virtue of rule 2.3.
- b. The institution or institutions under rule 10(a)(iv) is to be determined by the Members by special resolution at or before the time of the winding up or dissolution. If the members do not make this decision, the Company must apply to the Supreme Court of the Northern Territory to make this decision.

11. Modification or repeal of this Constitution

This Constitution and any of its provisions may be modified, repealed or replaced by special resolution of the Members.