



HENRY DAVIS YORK  
LAWYERS

## **Constitution**

### **AINSE Limited**

**A company limited by guarantee and not having share capital**

**Consolidated 25 May 2016**

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# Constitution

## AINSE Limited (Company)

### 1 INTERPRETATION

#### 1.1 Definitions

In this Constitution unless the context otherwise requires:

**ACN** means Australian Company Number.

**Act** means the *Corporations Act 2001* (Cth).

**ANSTO** means the Australian Nuclear Science and Technology Organisation or any successor body. AINSE recognises ANSTO as a significant contributor to the nuclear science and engineering industry in Australia and as a strategic partner in delivering nuclear science and engineering research.

**ASIC** means the Australian Securities & Investments Commission or any successor body.

**Board** means the board of Directors.

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.

**Company** means the company named above.

**Constitution** means this document and includes any variation or replacement of it.

**Director** means a person appointed as a director of the Company or who is appointed to the position of an alternate director and is acting in that capacity.

**Independent Director** means a person appointed as a director of the Company who is not a Member or an associate of a Member (as that term is defined in the Act).

**Individual Member** means a Member, being a natural person admitted by the Directors, in their discretion, as an "individual member" in accordance with clause 6.1 and entered into the Register as such.

**Industry Member** means a Member admitted by the Directors, in their discretion, as an "industry member" in accordance with clause 6.1 and entered into the Register as such.

**Institutional Member** means a Member admitted by the Directors, in their discretion, as an "institutional member" in accordance with clause 6.1 and entered into the Register as such.

**Managing Director** means a person appointed under clause 19.1.

**Member** means a member of the Company admitted under clause 6.1, being either an Institutional Member, Industry Member or Individual Member.

**Office** means the registered office of the Company.

**Personal Representative** means, in respect of a Member, a person who becomes entitled to exercise the rights attaching to membership in the Company held by the Member by reason of the death, mental ill health or bankruptcy of the Member.

**Register** means the register of Members to be kept pursuant to the Act.

**Regulations** means the *Corporations Regulations 2001* (Cth).

**Replaceable Rules** means the replaceable rules under, or as referred to in, the Act.

**Seal** means the common seal of the Company.

**Secretary** means any person appointed to perform the duties of secretary of the Company.

**Special Resolution** has the meaning given in the Act.

**Subsidiary** has the meaning given in the Act.

## 1.2 Interpretation

In this Constitution:

- (a) words importing the singular number include the plural number and vice versa; words importing any gender include every other gender;
- (b) where a word or an expression is defined, another part of speech or grammatical form of that word or expression has a corresponding meaning;
- (c) any reference to a clause is a reference to a clause of this Constitution;
- (d) headings to clauses, and italicised notes in brackets following some clauses, are added for convenience only and do not affect interpretation;
- (e) annotations or words which refer to sections of the Act, Regulations or to Replaceable Rules do not form part of the Constitution;
- (f) where a word or an expression is used which is defined in the Act, it has the same meaning in this Constitution unless the context otherwise requires;
- (g) a reference to any act, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it;
- (h) **includes** means includes without limitation;
- (i) **person** includes a natural person, firm, corporation, body corporate, unincorporated association and a governmental authority; and

- (j) **writing** includes printing, lithography, photography, electronic and digital messages and other modes for reproducing or representing words in a visible form.

### 1.3 **Replaceable Rules**

The Replaceable Rules do not apply in respect of the Company except when they are expressly stated to apply.

### 1.4 **Not used**

Not used

### 1.5 **Written notice**

Written notice includes notice given by way of:

- (a) facsimile; and
- (b) electronic transmission (including email).

### 1.6 **Representatives**

- (a) A Member that is a body corporate may appoint 1 individual as a representative to exercise on that body corporate's behalf all of the powers that the body corporate could exercise at a Members' meeting or in voting on a resolution.
- (b) Not used.
- (c) Not used.

*(This reflects section 250D(4) of the Act.)*

## **2 PUBLIC COMPANY LIMITED BY GUARANTEE**

The Company is a public company limited by guarantee and does not have share capital.

## **3 OBJECTS OF THE COMPANY**

The objects for which the Company is established are:

- 3.1 to facilitate research and investigation in connection with matters associated with nuclear science and engineering, and in related fields;
- 3.2 to arrange for the education and training of scientific researchers and the establishment and award of scientific research grants, studentships and fellowships in matters associated with nuclear science and engineering, and in related fields;

- 3.3 to prepare, seek, collect and distribute information (including papers, memoranda, studies, reports, opinions and submissions) relating to nuclear science and engineering, and in related fields;
- 3.4 to act as the trustee of a charitable trust, established for the purpose of raising funds to provide for scholarships for students and fellowships for people conducting research in nuclear science and engineering and in related fields, to be known as the "AINSE Trust Fund" or any other name nominated by the Company;
- 3.5 to receive grants and funds (from Members and non-members of the Company) and establish programs or trust funds as principal, trustee or agent or in partnership with those non-members for the purposes of advancing and promoting nuclear science and engineering and related fields; and
- 3.6 to do all such other things as may be incidental to or conducive to the attainment of the objects of the Company.

## **4 POWERS OF THE COMPANY**

### **4.1 Legal capacity and powers of the Company**

The Company has the legal capacity and powers of an individual anywhere in the world. The Company also has all the powers of a body corporate, including the power to:

- (a) grant a floating charge over the Company's property;
- (b) arrange for the Company to be registered or recognised as a body corporate in any place outside New South Wales; and
- (c) do anything that it is authorised to do under any law (including a law of a foreign country).

*(This reflects section 124 of the Act.)*

### **4.2 Company may have a Seal**

- (a) The Company may, but need not, have a Seal. If the Company does have a Seal it must have set out on it:
  - (i) if the Company has its ACN in its name - the Company's name; or
  - (ii) otherwise, the Company's name and either:
    - (A) the expression "Australian Company Number" or "ACN" and the Company's ACN; or
    - (B) if the last 9 digits of the company's ABN are the same, and in the same order, as the last 9 digits of its ACN, the expression "Australian Business Number" or "ABN" and the Company's ABN.

*(This reflects sections 123 and 149(1) of the Act.)*

- (b) If the Company has a Seal, the Directors must provide for the safe custody of the Seal, which may only be used on the authority of the Directors or of a committee of the Directors authorised by the Directors.

#### 4.3 **Agent exercising the Company's power to make contracts**

Subject to the operation of a law that requires a particular procedure to be complied with in relation to a contract, the Company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the Company's express or implied authority and on behalf of the Company. The power may be exercised without using the Seal.

*(This reflects section 126 of the Act.)*

#### 4.4 **Execution of documents by the Company**

- (a) The Company may execute a document without using a common seal if the document is signed by:
  - (i) 2 Directors; or
  - (ii) a Director and Secretary.
- (b) If the Company has a Seal, the Company may execute a document if the Seal is fixed to the document and the fixing of the Seal is witnessed by:
  - (i) 2 Directors; or
  - (ii) a Director and a Secretary.

*(This reflects section 127 of the Act.)*

### **5 INCOME AND PROPERTY OF THE COMPANY**

#### 5.1 **Income and property to be applied towards objects**

All income and property of the Company must be solely applied towards the promotion of the objects of the Company.

#### 5.2 **No payments to Members**

Subject to clause 5.3, no part of the income or property of the Company may be paid by way of dividend, bonus or otherwise to the Members.

#### 5.3 **Payments in good faith**

Nothing in this Constitution prevents the Company from making payment:

- (a) in good faith:
  - (i) of reasonable and proper remuneration to any employees or Directors of the Company;

- (ii) to any Member in relation to any contract, right or claim in which that Member is interested or which arises other than by virtue of the Member's membership of the Company;
  - (iii) of reasonable interest on any money lent to the Company by any Member;
  - (iv) of reasonable or proper rent for premises let by any Member to the Company; or
  - (v) otherwise to a Member in accordance with the objects of the Company; or
- (b) as a trustee or agent out of funds held on trust or as an agent.

## **6 MEMBERSHIP**

### **6.1 Entry as a Member**

- (a) The three categories of membership are:
  - (i) Institutional Members;
  - (ii) Industry Members; and
  - (iii) Individual Members.
- (b) The Directors may resolve to invite a person (including a natural person) to apply to be a Member in any one of the three categories of membership.
- (c) Any person invited to apply to be a Member under clause 6.1(b) must comply with the conditions or requirements as may be stipulated from time to time by the Directors or approved by the Members in a general meeting.
- (d) Every applicant for membership of the Company must sign an undertaking to be bound by the provisions of this Constitution.
- (e) An application for membership of the Company:
  - (i) may be accepted by the Directors provided that the person's membership is confirmed at the next general meeting by the passing of a resolution of Members. If the person's admission as a Member is not so approved the person ceases to be a Member at the end of that general meeting; and
  - (ii) will be taken to have been accepted if it is approved by the passing of a resolution of Members.
- (f) Admission to membership of the Company will only become effective upon that Member's name and category of membership being entered into the Register. The Register must be updated to record the entry or cessation of a person as a Member as soon as possible after the relevant admission or cessation.



- (g) The rights and privileges of a Member are personal, non transferable and cease on the death of a Member or on the cessation of a Member's membership.
- (h) The Company must have at least one Institutional Member at all times.

## 6.2 Cessation of membership

A Member will cease to be a Member upon the occurrence of any of the following events:

- (a) in the case of an Institutional and Industry Member, the Member gives at least 12 months' written notice to the Secretary that it wishes to cease membership, in which case membership will cease on the date specified in the notice;
- (b) in the case of an Individual Member, the Member ceases to be a Member on non-payment of the annual subscription for the following year;
- (c) if the Member is declared bankrupt or if a liquidator is appointed in connection with the winding up of the Member;
- (d) if an order is made by a Court for the winding up or deregistration of the Member; or
- (e) unless the Directors otherwise determine, if the Member has not paid its annual subscription in accordance with clause 7 in respect of two consecutive years. Notwithstanding cessation of membership, the ex-Member remains liable for the annual subscription which has not been paid.

## 7 SUBSCRIPTIONS, GRANTS AND FACILITIES

### 7.1 Annual subscription

Members must pay annual subscriptions to the Company to be used to meet the administrative and other general expenses of the Company (including to meet any grants, funding requirements and programs established in accordance with the objects of the Company).

### 7.2 Amount and time for payment of annual subscription

- (a) Each Member must pay the Company an annual subscription in such amounts from time to time approved by the Members.
- (b) The annual subscription determined in respect of each Member must be an amount, or an amount based on a formula, that is approved by the Members at a general meeting. Annual subscription amounts may vary between different membership categories and between specific Members.

### 7.3 Period for payment

- (a) Each Institutional Member and each Industry Member must pay the amount of its annual subscription for the following year when invoiced, unless at

least 12 months' written notice is given by that Member at or before the time of the invoice that it wishes to cease its membership for the following year.

- (b) Each Individual Member must pay the amount of its annual subscription for the following year as invoiced, unless that Member indicates before or promptly after receiving the invoice that it wishes to cease its membership for the following year.

#### **7.4 Failure to pay annual subscriptions**

If a Member fails to pay its annual subscription, the Directors may determine in their absolute discretion, whether the Company should continue to provide services to that Member.

#### **7.5 Non-member subscriptions, grants and funds**

- (a) The Company may accept subscriptions, grants and funds from non-members of the Company for the provision of services by the Company to that non-member.
- (b) The amount of a subscription by a non-member accepted by the Company under clause 7.5(a) must be an amount agreed between the Company and the non-member. Non-members paying subscriptions under this clause 7.5 will not have the rights of a Member under this Constitution.
- (c) Grants and funding that the Company receives are to be applied in accordance with the objectives of the Company and, without limitation, the Company may agree to apply the grants and funding for specific purposes within those objectives.

#### **7.6 Facilities provided to non-members of the Company**

The Company may provide or arrange for the provision of facilities, fellowships or other benefits for research or training by non-members of the Company in the area of nuclear science and engineering and in related fields upon such terms and conditions, including charges, as the Directors may determine. In making such agreements, the Directors must ensure that one of the purposes of the arrangement is to promote nuclear science, engineering and related fields. The Directors must require the non-members to enter into an agreement on terms to be agreed between the Company and the non-member. To the extent that the non-member is legally able to do so including taking into account any confidentially requirements or the intellectual property rights of the non-member, the non-member will disclose to the Company, at no charge, scientific information arising out of assistance provided or arranged for by the Company.

#### **7.7 Restriction on use of annual subscriptions**

The Company must not apply any annual subscriptions received by the Company towards the assets of the charitable trust referred to in clause 3.4.

## **8 CIRCULATING RESOLUTIONS OF MEMBERS**

### **8.1 Circulating resolutions when more than 1 Member**

- (a) Except in the case of a resolution under section 329 of the Act to remove an auditor, or any other resolution which the Act or this Constitution requires to be passed at a general meeting, the Company may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Member signs the document.
- (d) This clause does not affect any rule of law relating to the assent of Members not given at a general meeting.

### **8.2 Resolutions of Company when 1 Member**

If the Company has only 1 Member, that Member may pass a resolution by the Member recording it and signing the record.

*(This reflects section 249B(1) of the Act.)*

## **9 CALLING MEETINGS OF MEMBERS**

### **9.1 Calling of meetings of Members by a Director**

A Director may call a meeting of the Members.

*(This reflects section 249C of the Act which is a Replaceable Rule.)*

### **9.2 Calling of general meeting by Directors when requested by Members**

- (a) The Directors must call and arrange to hold a general meeting on the request of:
  - (i) Members with at least 5% of the votes that may be cast at the general meeting; or
  - (ii) at least 100 Members (or such different number as may be prescribed by the Regulations) who are entitled to vote at the general meeting.
- (b) The request must:
  - (i) be in writing;
  - (ii) state any resolution to be proposed at the meeting;
  - (iii) be signed by the Members making the request; and

- (iv) be given to the Company.
- (c) Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.
- (d) The Directors must call the meeting within 21 days after the request is given to the Company. The meeting is to be held not later than 2 months after the request is given to the Company.

*(This reflects section 249D of the Act.)*

### 9.3 Failure of Directors to call a general meeting

- (a) Members with more than 50% of the votes of all of the Members who make a request under clause 9.2 may call and arrange to hold a general meeting if the Directors do not do so within 21 days after the request is given to the Company.
- (b) The meeting must be called in the same way, so far as is possible, in which general meetings of the Company may be called. The meeting must be held not later than 3 months after the request is given to the Company.
- (c) To call the meeting the Members requesting the meeting may ask the Company for a copy of the Register. The Company must give the Members a copy of the Register within 7 days after the request without charge.
- (d) The Company must pay the reasonable expenses the Members incurred because the Directors failed to call and arrange the meeting.
- (e) The Company may recover the amount of the expenses under clause 9.3(d) from the Directors. However, a Director is not liable for the amount if they prove that they took all reasonable steps to cause the Directors to comply with clause 9.2. The Directors who are liable are jointly and individually liable for the amount. If a Director who is liable for the amount does not reimburse the Company, the Company must deduct the amount from any sum payable as fees to, or remuneration of, the Director.

*(This reflects section 249E of the Act.)*

### 9.4 Calling of general meeting by Members

- (a) Members with at least 5% of the votes that may be cast at a general meeting of the Company may call, and arrange to hold, a general meeting. The Members calling the meeting must pay the expenses of calling and holding the meeting.
- (b) The meeting must be called in the same way, so far as is possible, in which general meetings of the Company may be called.

*(This reflects section 249F of the Act.)*

### 9.5 Amount of notice of meetings

- (a) Subject to clause 9.5(b) and (c) at least 21 days' notice must be given of a meeting of the Members and the agenda, proposed resolutions and any

explanatory information must be given to Members at least 7 days before the meeting.

- (b) Subject to clause 9.5(c), the Company may call on shorter notice:
  - (i) an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree beforehand; and
  - (ii) any other general meeting, if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (c) At least 21 days notice must be given of a meeting of the Company at which a resolution will be moved to:
  - (i) remove an auditor under section 329 of the Act; or
  - (ii) remove a Director under clause 15.3(b) or appoint a Director in place of a Director removed under that clause.

*(This reflects section 249H of the Act.)*

#### 9.6 Notice of meetings of Members to Members and Directors

- (a) Written notice of a meeting of the Members must be given individually to each Member entitled to vote at the meeting and to each Director.

*(This reflects section 249J(1) of the Act.)*

- (b) The Company may give the notice of a meeting to a Member:
  - (i) personally;
  - (ii) by sending it by post to the address of the Member in the Register or the alternative address (if any) nominated by the Member;
  - (iii) by sending it to the facsimile number or email address nominated by the Member;
  - (iv) by notifying the Member that the notice of meeting is available in accordance with clause 9.6(c).or
  - (v) by any other means permitted under the Act.

*(This reflects section 249J(3) of the Act.)*

- (c) If the Member nominates:
  - (i) an electronic means (**nominated notification means**) by which the Member may be notified that notices of meeting are available; and
  - (ii) an electronic means (**nominated access means**) the Member may use to access notices of meeting,

the Company may give the Member notice of the meeting by notifying the Member (using the nominated notification means) that the notice of meeting

is available and how the Member may use the nominated access means to access the notice of meeting.

*(This reflects section 249J(3A) of the Act.)*

- (d) A notice of meeting sent by:
- (i) post is taken to be given 3 days after it is posted;
  - (ii) facsimile is taken to be given on the day on which the sender obtains machine acknowledgment of successful transmission; and
  - (iii) email is taken to be given when the email is sent, unless the sender has been notified, by a system or person involved in the delivery of the email to the addressee, that the email has not been successfully delivered.

*(This substitutes for section 249J(4) of the Act which is a Replaceable Rule.)*

- (e) A notice of meeting given to a Member under clause 9.6(c)(ii) is taken to be given on the Business Day after the day on which the Member is notified that the notice of meeting is available.

*(This reflects section 249J(5) of the Act which is a Replaceable Rule.)*

#### 9.7 Auditor entitled to notice and other communications

The Directors must give the Company's auditor, if any:

- (a) notice of a general meeting in the same way that a Member is entitled to receive notice; and
- (b) any other communications relating to the general meeting that a Member is entitled to receive.

*(This reflects section 249K(1) of the Act.)*

#### 9.8 Contents of notice of meetings of Members

A notice of a meeting of the Members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state the resolution; and
- (d) if a Member is entitled to appoint a proxy, contain a statement setting out the following information:
  - (i) that the Member has a right to appoint a proxy;
  - (ii) whether or not the proxy needs to be a Member; and

- (iii) that a Member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

*(This reflects section 249L of the Act.)*

#### 9.9 Notice of adjourned meetings

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

*(This reflects section 249M of the Act which is a Replaceable Rule.)*

#### 9.10 Accidental omission or non-receipt of notice

The accidental omission to give notice of a meeting or the non-receipt of notice by any person (including the inability of a person to access the notice) does not invalidate any proceeding at that meeting unless the court, on the application of the person concerned, a person entitled to attend the meeting or ASIC, declares proceedings at the meeting to be void.

*(This reflects section 1322(3) and 1322(3AA) of the Act.)*

#### 9.11 Cancelled meetings

Where notice of a meeting has been given, the Board may, by notice given to all persons entitled to be given notice of the meeting, postpone or cancel the meeting. Notice under this clause 9.11 can be given in the same manner as set out in clause 9.6.

### 10 MEMBERS' RIGHTS TO PUT RESOLUTIONS AT GENERAL MEETINGS

#### 10.1 Members' resolutions

- (a) The following Members may give the Company notice of a resolution that they propose to move at a general meeting:
  - (i) Members with at least 5% of the votes that may be cast on the resolution; or
  - (ii) at least 100 Members (or some different number as may be prescribed by the Regulations) who are entitled to vote at a general meeting.
- (b) The notice must:
  - (i) be in writing;
  - (ii) set out the wording of the proposed resolution; and
  - (iii) be signed by the Members proposing to move the resolution.

- (c) Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.

*(This reflects section 249N of the Act.)*

## 10.2 Company giving notice of Members' resolutions

- (a) If the Company has been given notice of a resolution under clause 10.1, the resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given.
- (b) The Company must give all of its Members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (c) The Company is responsible for the cost of giving Members notice of the resolution if the Company receives the notice in time to send it out to Members with the notice of meeting.
- (d) The Members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Company in giving Members notice of the resolution if the Company does not receive the Members notice in time to send it out with the notice of meeting. At a general meeting, the Company may resolve to meet the expenses itself.
- (e) The Company need not give notice of the resolution if:
  - (i) it is more than 1,000 words long or defamatory; or
  - (ii) the Members making the request are to bear the expenses of sending the notice out, unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

*(This reflects section 249O of the Act.)*

## 11 MEMBERS' STATEMENTS TO BE DISTRIBUTED

### 11.1 Grounds for statement

Members may request the Company to give to all of its Members a statement provided by the Members making the request about:

- (a) a resolution that is proposed to be moved at a general meeting; or
- (b) any other matter that may be properly considered at a general meeting.

### 11.2 Who may request

The request must be made by:

- (a) Members with at least 5% of the votes that may be cast on the resolution; or



- (b) at least 100 Members (or such different number as may be prescribed by the Regulations) who are entitled to vote at the meeting.

### 11.3 How request to be made

The request must be:

- (a) in writing;
- (b) signed by the Members making the request; and
- (c) given to the Company.

### 11.4 Copies for signing

Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.

### 11.5 Distribution of statement

After receiving the request, the Company must distribute to all of the Members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.

### 11.6 When Company bears cost

The Company is responsible for the cost of making the distribution if the Company receives the statement in time to send it out to Members with the notice of meeting.

### 11.7 When Members bear cost

The Members making the request are jointly and individually liable for the expenses reasonably incurred by the Company in making the distribution if the Company does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the Company may resolve to meet the expenses itself.

### 11.8 When Company need not comply with request

The Company need not comply with the request if:

- (a) the statement is more than 1,000 words long or defamatory; or
- (b) the Members making the request are responsible for the expenses of the distribution, unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

*(This reflects section 249P of the Act.)*

## 12 HOLDING MEETINGS OF MEMBERS

### 12.1 Purpose

A meeting of Members must be held for a proper purpose.

*(This reflects section 249Q of the Act.)*

### 12.2 Time and place for meetings of Members

A meeting of Members must be held at a reasonable time and place.

*(This reflects section 249R of the Act.)*

### 12.3 Technology

The Company may hold a meeting of its Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

*(This reflects section 249S of the Act.)*

### 12.4 Quorum

- (a) No business may be transacted at any general meeting unless a quorum of Members entitled to vote is present at the time when the meeting proceeds to business. A quorum is constituted by:
- (i) if there is only 1 Member, that Member; or
  - (ii) if there are 2 or more Members, the number of Institutional Members representing at least one third of the total number of Institutional Members of the Company.

For the purposes of this clause and clause 12.4(b), "Member" or "Institutional Member" includes a person attending as a proxy or a body corporate representative. If a person has appointed more than 1 proxy or representative, only 1 of those proxies or representatives is to be counted in determining whether a quorum is constituted.

- (b) If within 15 minutes from the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Directors may determine, and if at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the Member or Members present constitute a quorum.

*(This substitutes for section 249T of the Act which is a Replaceable Rule.)*

### 12.5 Chairing meetings of Members

- (a) The chair, if any, of the Board is to be the chair at every general meeting of the Company. If the chair of the Board cannot or will not chair a general meeting or is not present within 15 minutes after the time appointed for the holding of the meeting, the deputy chair of the Board, if any, will be the chair

of the meeting, Where no such officers are present within 15 minutes after the time appointed for holding the meeting, the Directors present may elect one of their number to be the chair of the meeting but if they do not do so the Members present must elect the chair of the meeting.

- (b) The chair must adjourn a meeting of the Members if the Members present with a majority of votes at the meeting (subject to the maximum voting entitlements and voting adjustments set out in clause 13) agree or direct that the chair must do so.

*(This substitutes for section 249U of the Act which is a Replaceable Rule.)*

## 12.6 Auditor's right to be heard at general meetings

- (a) The Company's auditor (if any) is entitled to attend any general meeting of the Company.
- (b) The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
- (c) The auditor is entitled to be heard even if:
  - (i) the auditor retires at the meeting; or
  - (ii) the meeting passes a resolution to remove the auditor from office.
- (d) The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any general meeting.

*(This reflects section 249V of the Act.)*

## 12.7 Adjourned meetings

- (a) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

*(This reflects section 249W(1) of the Act.)*

- (b) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

*(This substitutes for section 249W(2) of the Act which is a Replaceable Rule.)*

## 12.8 Annual general meetings

### (a) Holding of annual general meetings

The Company must, if required by the Act, hold an annual general meeting.

*(See the requirements of section 250N of the Act.)*

### (b) Business of annual general meeting

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting;

- (i) the consideration of the annual financial report, Directors' report and auditor's report;
- (ii) the election of Directors;
- (iii) the appointment of the auditor; and
- (iv) the fixing of the auditor's remuneration.

*(This reflects section 250R(1) of the Act.)*

(c) **Questions at annual general meetings**

- (i) The chair of an annual general meeting must allow a reasonable opportunity for Members as a whole at the meeting to ask questions about or make comments on the management of the Company.
- (ii) If the Company's auditor or their representative is at the meeting, the chair of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

*(This reflects sections 250S and 250T of the Act.)*

## 13 VOTING AT A MEMBERS' MEETING

### 13.1 How many votes a Member has

- (a) On a show of hands, each Member has 1 vote.
- (b) On a poll, and subject to paragraphs (c) and (d) of this clause 13.1, each Member has 1 vote at a Members' meeting.
- (c) On a poll, Industry Members may, in aggregate, hold a maximum of 30% of the total voting entitlement at a Member's meeting.
- (d) On a poll, Individual Members may, in aggregate, hold a maximum of 10% of the total voting entitlement at a Member's meeting.
- (e) The chair does not have a casting vote in addition to any vote they have as a Member.

### 13.2 Voting adjustments when voting is carried out on a poll

- (a) Voting entitlements will be adjusted in accordance with this clause 13.2 only if a poll is demanded.
- (b) If the number of Industry Members or Individual Members (or both) (each, a **Member Group**) present (in person, by representative or by proxy) and entitled to vote on a resolution results in the total voting entitlement of the Member Group exceeding its maximum voting entitlement specified in clause 13.1(c) or (d) (as applicable), then, following the casting of votes, the

number of votes cast in favour of the resolution by the Member Group will be adjusted to the following value:

$$\frac{F_M}{P_M} \times (P_T \times M)$$

Where:

- F<sub>M</sub>** is the number of votes cast by a Member Group in favour of the resolution
- P<sub>M</sub>** is the number of persons in the Member Group present (in person, by proxy or by representative) and entitled to vote on the resolution
- P<sub>T</sub>** is the total number of Members present (in person, by proxy or by representative) and entitled to vote on the resolution
- M** is the maximum voting entitlement expressed, as a percentage, of the Member Group as set out in clause 13.1.

- (c) If the voting entitlement of a Member Group is adjusted in accordance with clause 13.2(b), then the number of votes cast in favour of the resolution by the Institutional Members will be adjusted to the following value:

$$\frac{F_I}{P_I} \times A$$

Where:

- F<sub>I</sub>** is the number of votes cast by the Institutional Members in favour of the resolution
- P<sub>I</sub>** is the number of Institutional Members present (in person, by proxy or by representative) and entitled to vote on the resolution
- A** is the number of Institutional Members present (in person, by proxy or by representative) and entitled to vote on the resolution (i.e. P<sub>I</sub>) **plus** the number of persons by which each Member Group exceeds the maximum voting entitlement as set out in clause 13.1.

- (d) The result of a vote adjusted in accordance with this clause will be the aggregate of the number of votes in favour of the resolution cast by each Member Group and the Institutional Members (as adjusted) divided by the total number of Members present (in person, by proxy or by representative) and entitled to vote on the resolution.

*(This substitutes for section 250E of the Act which is a Replaceable Rule.)*

### 13.3 **Objections to right to vote at a meeting of the Members**

A challenge to a right to vote at a Members' meeting:

- (a) may only be made at the meeting; and
- (b) must be determined by the chair, whose decision is final.

*(This reflects section 250G of the Act which is a Replaceable Rule.)*

### 13.4 **Votes need not all be cast in the same way**

A person may attend a Members' meeting in their capacity as an Individual Member, in their capacity as a representative of an Institutional or Industry Member(s), or both of those capacities. On a poll, a person who attends a Members' meeting in more than one capacity:

- (a) need not cast all their votes in each capacity; and
- (b) may cast their votes in each capacity in different ways.

*(This substitutes for section 250H of the Act.)*

### 13.5 **How voting is carried out**

- (a) A resolution put to the vote at a Members' meeting must be decided on a show of hands unless a poll is demanded. Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (b) On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.
- (c) Subject to this Constitution and the Act, resolutions of Members are to be decided by simple majority of votes cast (as may be adjusted in accordance with clause 13.2) in respect of the relevant resolution.

*(This substitutes for section 250J of the Act which is a Replaceable Rule.)*

### 13.6 **Matters on which a poll may be demanded**

- (a) A poll may be demanded on any resolution proposed at a Members' meeting.
- (b) Without limiting clause 13.6(a), a poll can be demanded on any resolution concerning:
  - (i) the election of the chair of a meeting; or
  - (ii) the adjournment of a meeting.

- (c) A demand for a poll may be withdrawn.

### 13.7 When a poll is effectively demanded

- (a) At a Members' meeting a poll may be demanded by:
  - (i) at least 5 Members entitled to vote on the resolution;
  - (ii) Members with at least 5% of the votes that may be cast on the resolution on a poll; or
  - (iii) the chair.
- (b) The poll may be demanded:
  - (i) before a vote is taken on the proposed resolution;
  - (ii) before the voting results on a show of hands on the proposed resolution are declared; or
  - (iii) immediately after the voting results on a show of hands on the proposed resolution are declared.

*(This reflects section 250L of the Act.)*

### 13.8 When and how polls must be taken

- (a) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- (b) A poll on the election of a chair or on the question of an adjournment must be taken immediately.

*(This reflects section 250M of the Act which is a Replaceable Rule.)*

- (c) The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

### 13.9 Personal Representative's right to vote

A Personal Representative of a Member may vote at any general meeting in the same manner as if the Personal Representative was the Member, if at least 48 hours before the time of holding the meeting (or adjourned meeting), at which the Personal Representative proposes to vote, the Personal Representative has satisfied the Directors of the Personal Representative's entitlement or the Directors have previously admitted the Personal Representative's right to vote at such meeting.

## 14 PROXIES

### 14.1 Who can appoint a proxy

Each Member who is entitled to attend and vote at a meeting of the Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.

*(This reflects section 249X(1) of the Act.)*

### 14.2 Rights of proxies

A proxy appointed to attend and vote for a Member has the same rights as the Member:

- (a) to speak at the meeting, except while the Member is present;
- (b) to vote on a poll and on a show of hands (but only to the extent allowed by the appointment); and
- (c) to join in a demand for a poll.

*(This reflects section 249Y(1) of the Act.)*

### 14.3 Company sending appointment forms or lists of proxies must send to all Members

If the Company sends a Member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (a) if the Member requested the form or list, the Company must send the form or list to all Members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (b) otherwise, the Company must send the form or list to all its Members entitled to appoint a proxy to attend and vote at the meeting.

*(This reflects section 249Z of the Act.)*

### 14.4 Appointing a proxy

- (a) An appointment of a proxy is valid if it is signed, or otherwise authenticated in a manner prescribed by the Regulations, by the Member making the appointment and contains the following information:
  - (i) the Member's name and address;
  - (ii) the Company's name;
  - (iii) the proxy's name or the name of the office held by the proxy; and
  - (iv) the meetings at which the appointment may be used if it is not a standing one.

An appointment may be a standing one.



- (b) The chair of the Board may determine in its absolute discretion that a proxy is valid even if it does not contain all of the information referred to in clause 14.4(a).
- (c) An undated appointment is taken to have been dated on the day it is given to the Company.
- (d) An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
  - (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
  - (ii) if the proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
  - (iii) if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and
  - (iv) if the proxy is not the chair, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.
- (e) If a proxy is also a Member, this clause does not affect the way that the person can cast any votes they hold as a Member.
- (f) An appointment does not have to be witnessed.
- (g) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

*(This reflects section 250A of the Act.)*

#### 14.5 Proxy documents

- (a) For an appointment of a proxy for a meeting of Members to be effective, the following documents must be received by the Company at least 48 hours before the meeting:
  - (i) the proxy's appointment; and
  - (ii) if the appointment is signed or otherwise authenticated in a manner prescribed by the Regulations by the appointor's attorney, the authority under which the appointment was signed or authenticated or a certified copy of the authority.
- (b) If a meeting of Members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- (c) The Company receives an appointment or an authority when it is received at any of the following:
  - (i) the Office;

- (ii) a fax number at the Office; or
  - (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting.
- (d) If the notice of meeting specifies other electronic means by which a Member may give the appointment or authority, then the appointment or authority will be received by the Company as prescribed by the Regulations.

*(This reflects section 250B of the Act.)*

#### 14.6 **Validity of proxy vote**

- (a) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

*(This reflects section 250C(1) of the Act.)*

- (b) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
- (i) the appointing Member dies;
  - (ii) the Member is mentally incapacitated;
  - (iii) the Member revokes the proxy's appointment; or
  - (iv) the Member revokes the authority under which the proxy was appointed.

*(This substitutes for section 250C(2) of the Act which is a Replaceable Rule.)*

## 15 **DIRECTORS**

### 15.1 **Number of Directors**

The Company must have at least 7 but no more than 10 Directors (not counting alternate Directors) of which at least 2 must be ordinarily resident in Australia.

### 15.2 **Composition of Board**

The Board will be comprised of:

- (a) up to three Directors appointed by ANSTO;
- (b) up to three Directors from the Australian university sector appointed by resolution of the Members;
- (c) up to two Independent Directors appointed by resolution of the Members;
- (d) the Managing Director of the Company appointed by the Directors pursuant to clause 19.1; and

- (e) subject to clause 15.1, any Director appointed pursuant to clause 15.3.

*(This substitutes for section 201G of the Act which is a replaceable rule).*

### 15.3 Appointment and removal of Directors

#### (a) Directors may appoint other Directors

- (i) Subject to clause 15.1, the Directors may appoint a person as a Director. A person can be appointed as a Director in order to make up a quorum for a Directors meeting even if the total number of Directors of the Company is not enough to make up a quorum.
- (ii) Any person so appointed as a Director under clause 15.3(a)(i) must be confirmed in office at the Company's next general meeting. If the appointment is not confirmed, the person ceases to be a Director of the Company at the end of the general meeting.

*(This reflects section 201H of the Act which is a Replaceable Rule.)*

#### (b) Company may remove Directors

The Company in general meeting may by resolution remove a Director from office despite anything in this Constitution, any agreement between the Company and the Director or any agreement between any or all Members and the Director. If the Director was appointed to represent the interests of particular Members, the resolution to remove the Director does not take effect until a replacement to represent their interests has been appointed.

*(This reflects section 203D(1) of the Act.)*

*(As to further provisions regarding removal see sections 203D(2) to (7) and section 203E of the Act.)*

#### (c) Automatic removal of Directors

- (i) Subject to clause 15.1, a Director's appointment to office is automatically terminated on a failure by that Director to attend 3 consecutive Board meetings.
- (ii) Subject to this Constitution, any Director terminated from office pursuant to clause 15.3(c)(i) may be reinstated to the office of Director by the passing of a resolution of Members.

#### (d) Resolution for appointment

A resolution passed by the Company in general meeting appointing or confirming the appointment of 2 or more Directors is void unless:

- (i) a resolution is passed that the appointments or confirmations may be voted on together; and
- (ii) no votes are cast against the resolution.

*(This reflects section 201E(1) of the Act.)*

## 15.4 Interested Directors

### (a) Director may enter into certain contracts

Notwithstanding any rule of law or equity to the contrary, a Director may contract, transact, or enter into an arrangement with the Company and no such contract, transaction or arrangement entered into by or on behalf of the Company or any other contract, transaction or arrangement in which a Director is in any way interested is avoided or rendered voidable because of that person being a Director.

### (b) Disclosure of material interest

A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of the interest unless section 191(2) of the Act says otherwise.

*(This reflects section 191(1) of the Act.)*

### (c) Voting by interested Directors

- (i) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
  - (A) be present while the matter is being considered at the meeting; or
  - (B) vote on the matter,unless;
  - (C) subclauses 15.4(c)(ii), 15.4(c)(iii) or 15.4(c)(iv) allow the Director to be present; or
  - (D) the interest does not need to be disclosed under section 191 of the Act.
- (ii) The Director may be present and vote if Directors who do not have a material personal interest in the matter have passed a resolution that:
  - (A) identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Company; and
  - (B) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present.
- (iii) The Director may be present and vote if so entitled under a declaration or order made by ASIC under section 196 of the Act.
- (iv) If there are not enough Directors to form a quorum for a Directors' meeting because of subclause 15.4(c)(i)(A) or 15.4(c)(i)(B), 1 or more of the Directors (including those who have a material personal

interest in that matter) may call a general meeting and the general meeting may pass a resolution to deal with the matter.

*(See the provisions of sections 195 and 196 of the Act.)*

#### 15.5 Remuneration of Directors

- (a) The Directors are entitled to be reimbursed for all expenses properly incurred in attending or in connection with their attendance at any meeting of the Company or of the Board or any committee of Directors.
- (b) In addition to the reimbursement of expenses referred to in clause 15.5(a), Independent Directors appointed under clause 15.2(c) may be entitled to receive an additional amount of compensation as may be approved by the Members from time to time, if the Directors pass a resolution to that effect at a Board meeting.

*(This substitutes for section 202A of the Act which is a Replaceable Rule.)*

#### 15.6 Vacation of office

The office of a Director automatically becomes vacant if the Director:

- (a) resigns by giving written notice to the Company at its Office;
- (b) is removed pursuant to the provisions of section 203D of the Act;
- (c) is removed from office in accordance with this Constitution or the Act; or
- (d) is disqualified from managing corporations under Part 2D.6 of the Act.

*(This reflects sections 203A and 203B of the Act.)*

#### 15.7 Financial benefits

The Company must not provide financial benefits to a Director except as permitted by, and in accordance with, the provisions of the Act.

*(See in particular, but not exclusively, Chapter 2E of the Act.)*

#### 15.8 Defect in appointment

Notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director, or to act as a Director, or that a person so appointed was disqualified, all acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director are valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the committee.

## 16 POWERS AND DISCRETIONS OF DIRECTORS

### 16.1 Business of the Company

Subject to clause 16.2, the business of the Company must be managed by or under the direction of the Directors who may exercise all the powers of the Company except any powers that the Act or this Constitution, require to be exercised by the Company in general meeting. No resolution made by the Company in general meeting invalidates any prior act of the Directors which would have been valid if the resolution had not been made.

*(This substitutes for section 198A of the Act which is a Replaceable Rule.)*

### 16.2 Major policy issues

- (a) Notwithstanding any other provision of this Constitution, the Company must not undertake any of the following acts or transactions unless it is approved by the Members in general meeting by more than 50% of the Members or in writing by a majority of Members (in either case subject to the maximum voting entitlements and voting adjustments set out in clause 13):
- (i) the submission of any tender, bid or proposal relating to any obligation or commitment or incurring any liability of \$500,000 or more (which includes a series of obligations, commitments or liabilities) or such other amount that may be approved by the Members (except to the extent that a third party has provided funding to discharge the obligation, commitment or liability);
  - (ii) entering into any transaction which is not proposed on a commercial 'arms length' basis or of any unreasonably onerous nature;
  - (iii) execution of any service, employment or consultancy contract (excluding the Managing Director's employment contract) with a term of more than 12 months and with a financial commitment of \$250,000 per annum or more;
  - (iv) provision of any encumbrance by the Company over any of its assets, property or undertaking or securing an amount in excess of \$500,000 or such other amount that may be approved by the Members; and
- (b) Notwithstanding any other provision of this Constitution, the Company must not undertake any of the following acts or transactions unless it is approved by the Members in general meeting by way of a Special Resolution or in writing by at least 75% of the Members (in either case subject to the maximum voting entitlements and voting adjustments set out in clause 13):
- (i) ceasing to carry on the business or a substantial part of the business of the Company;
  - (ii) the Company providing any relief to debtors of the Company;
  - (iii) substantially altering the strategic direction of the Company or the commencement of any new, substantial business to be conducted

by the Company not in accordance with the objects of the Company;

- (iv) obtaining new external borrowings where the total of all external borrowings exceeds \$500,000 or any other value that may be approved by the Members from time to time; and
- (v) any merger of the Company with another entity of all or a substantial part of any business which is conducted by the Company.

### 16.3 Appointment of attorneys and auditors

- (a) The Directors may by power of attorney appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors), for the period and subject to such conditions as the Directors think fit.
- (b) The Company must appoint an auditor of the Company 1 month after the day on which the Company is registered as a Company unless the Company at a general meeting has appointed an auditor. The Company must appoint an auditor to fill any vacancy in the office of auditor at each subsequent general meeting.

*(This reflects section 327A of the Act.)*

*(For other requirements see sections 327, 328 repealed and 329 of the Act.)*

### 16.4 Audit and Accounts

- (a) The Directors will cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Act.
- (b) The Directors will cause the financial records of the Company to be audited in accordance with the requirements of the Act.
- (c) Without limiting clause 16.4(b), if the Company's total annual income exceeds or may reasonably be expected to exceed \$100,000 in a financial year, the Directors must cause a report by a registered company auditor on the accounts of the Company to be made for that financial year and to be submitted to every Member (and where the Member is a university to its council or governing body) within 90 Business Days after the end of that financial year.

### 16.5 Negotiable instruments

All cheques, bills of exchange, promissory notes and other negotiable instruments will be signed, drawn, accepted, made or endorsed as the case may be for and on behalf of the Company in such manner as the Directors may from time to time determine.

*(This substitutes for section 198B of the Act which is a Replaceable Rule.)*

## 16.6 Directors discretion

Unless otherwise provided, if the Directors are given a power or discretion under this Constitution, subject to law they may exercise the power or discretion in any manner that they, in their absolute discretion, see fit.

## 16.7 Delegation

### (a) Power to delegate

The Directors may delegate any of their powers to:

- (i) a committee of Directors;
- (ii) a Director;
- (iii) an employee of the Company; or
- (iv) any other person.

*(This reflects section 198D(1) of the Act.)*

### (b) Delegate to act in accordance with directions

The delegate must exercise the powers delegated in accordance with any directions of the Directors.

*(This reflects section 198D(2) of the Act.)*

### (c) Effectiveness of exercise of delegates power

The exercise of the power by the delegate is as effective as if the Directors had exercised it.

*(This reflects section 198D(3) of the Act.)*

### (d) Meetings of committees

The meetings and proceedings of a committee must be carried out in accordance with the provisions in this Constitution relating to the meetings and proceedings of Directors, subject to any necessary changes and any directions made by the Directors.

### (e) Directors liable for delegate

If the Directors delegate a power under clause 16.7(a), a Director is responsible for the exercise of the power by the delegate as if the power had been exercised by the Directors themselves unless exonerated under section 190(2) of the Act.

*(This reflects section 190(1) of the Act.)*



## **17 DIRECTORS RESOLUTIONS AND MEETINGS**

### **17.1 Circulating resolutions**

- (a) The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director signs.

*(This reflects section 248A of the Act which is a Replaceable Rule.)*

### **17.2 Calling Directors' meetings**

A Directors' meeting may be called by a Director giving reasonable notice individually to every other Director.

*(This reflects 248C of the Act which is a Replaceable Rule.)*

### **17.3 Use of technology**

A Directors' meeting may be called or held by telephone, facsimile, electronic mail or by using any other technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

*(This reflects section 248D of the Act.)*

### **17.4 Chairing Directors' meetings**

The Directors may appoint a Director to chair their meetings and determine the period for which the chair is to hold office. The chair must not be a Director appointed pursuant to clause 15.2(a). The Directors may also appoint a deputy chair of the Board to chair their meetings in the absence of the chair and determine the period for which the deputy chair is to hold office. If no such chair or deputy chair is appointed, or if at any meeting neither the chair nor the deputy chair is present within 15 minutes after the time appointed for holding the meeting, the Directors may elect one of their number present to chair the meeting.

*(This substitutes for section 248E of the Act which is a Replaceable Rule.)*

### **17.5 Quorum at Directors' meetings**

- (a) A quorum for a meeting of the Board is constituted by 5 Directors with at least:
  - (i) a Director appointed pursuant to clause 15.2(a);
  - (ii) a Director appointed pursuant to clause 15.2(b);
  - (iii) a Director, if any, appointed pursuant to clause 15.2(c); and

(iv) a Director appointed pursuant to clause 15.2(d).

(b) The quorum must be present at all times during the meeting.

*(This substitutes for section 248F of the Act which is a Replaceable Rule.)*

## 17.6 **Passing of Directors' resolutions**

Questions arising at any Board meeting must be decided by a majority of votes cast by Directors entitled to vote on the resolution. Each Director present at a Board meeting has 1 vote on each resolution of the Board on which the Director is entitled to vote. In the case of an equality of votes, the chair has a second or casting vote.

*(This reflects section 248G of the Act which is a Replaceable Rule.)*

## 17.7 **Deadlock**

(a) If the Board is unable to make a decision on an issue, then the Board must confer to resolve a course of action within 30 days of the deadlock.

(b) If after exhausting the procedure set out in clause 17.7(a), the Board does not make a decision on the relevant issue causing the deadlock then the issue must be put to a resolution of the Members at the next general meeting of the Company.

## 18 **ALTERNATE DIRECTORS**

### 18.1 **Appointment of an alternate**

A Director may appoint an alternate Director to exercise some or all of the Director's powers for a specified period.

### 18.2 **Notice of Director's meetings**

If the appointing Director requests the Company to give the alternate Director notice of Directors' meetings, the Company must do so.

### 18.3 **Power of an alternate Director**

The exercise of a Director's power by an alternate Director has the same effect as would the exercise of the power by the Director.

### 18.4 **Termination of an alternate Director**

The appointing Director may terminate the alternate Director's appointment at any time.

### 18.5 **Notice of appointment, termination and vacation of office**

(a) An appointment or its termination must be in writing. A copy must be given to the Company at its registered office.

- (b) An alternate Director automatically vacates office if the appointor vacates office as a Director or terminates the alternate Director's appointment.

*(This substitutes for section 201K of the Act which is a Replaceable Rule.)*

## **19 MANAGING DIRECTOR**

### **19.1 Appointment**

The Directors may appoint a person to the office of Managing Director of the Company for the period and on the terms (including as to remuneration) as the Directors see fit.

*(This substitutes for section 201J of the Act which is a Replaceable Rule.)*

### **19.2 Effect of cessation of Directorship**

A person ceases to be Managing Director if they cease to be a Director.

### **19.3 Powers**

The Directors may confer on a Managing Director any of the powers that the Directors can exercise.

### **19.4 Revocation or variation of appointment or powers**

The Directors may revoke or vary:

- (a) an appointment; or
- (b) any of the powers conferred on the Managing Director.

*(This substitutes for section 203F of the Act which is a Replaceable Rule.)*

## **20 SECRETARY**

### **20.1 Requirement for Secretary**

The Company must have at least 1 Secretary.

*(This reflects section 204A(2) of the Act.)*

### **20.2 Appointment of Secretary**

A Secretary must be appointed by the Directors.

*(This reflects section 204D of the Act.)*

### **20.3 Natural person not a minor as Secretary**

A Secretary must be a natural person who has attained the age of 18 years.

*(This reflects section 204B(1) of the Act.)*

## 20.4 Australian resident as Secretary

The Secretary, or 1 of the Secretaries if there are more than 1, must be a person who ordinarily resides in Australia.

*(This reflects section 204A(2) of the Act.)*

## 20.5 Acting Secretary

- (a) If there is no Secretary, or no Secretary is capable of acting, any act or thing required or authorised to be done by or in relation to the Secretary may be done by or in relation to any assistant or deputy Secretary.
- (b) If there is no assistant or deputy Secretary, or no assistant or deputy Secretary is capable of acting, by or in relation to any act or thing required or authorised to be done by, or in relation to, the Secretary, an officer authorised by the Directors to act as Secretary may do so, either generally or in relation to the doing of that act or thing.

## 20.6 Terms and conditions of office of Secretary

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) that the Directors determine.

*(This substitutes for section 204(F) of the Act which is a Replaceable Rule.)*

- (b) The Board may terminate or suspend any appointment of a person as a Secretary.

## 21 MINUTES

### 21.1 Company must keep minute books

The Company must keep minute books in which it records within 1 month:

- (a) proceedings and resolutions of meetings of the Members;
- (b) proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors);
- (c) resolutions passed by Members without a meeting; and
- (d) resolutions passed by Directors without a meeting.

### 21.2 Minutes to be signed

The Company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by either:

- (a) the chair of the meeting; or
- (b) the chair of the next meeting.

### 21.3 Resolution without meeting

The Company must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

### 21.4 Location of minute books

The Company must keep the minute books of the Company at:

- (a) the Office;
- (b) the Company's principal place of business in Australia; or
- (c) another place approved by the ASIC.

*(This reflects section 251A of the Act.)*

### 21.5 Inspection by Members

The Company must ensure that the minute books for the meetings of its Members and for resolutions of Members passed without meetings are open for inspection by Members free of charge.

*(This reflects section 251B(1) of the Act.)*

### 21.6 Requests by Members

- (a) A Member may ask the Company in writing for a copy of:
  - (i) any minutes of a meeting of the Members or an extract of the minutes; or
  - (ii) any minutes of a resolution passed by Members without a meeting.
- (b) If the Company does not require the Member to pay for the copy, the Company must send it:
  - (i) within 14 days after the Member asks for it; or
  - (ii) any longer period that ASIC approves.
- (c) If the Company requires payment for the copy, the Company must send it:
  - (i) within 14 days after the Company receives the payment; or
  - (ii) within any longer period that ASIC approves.

*(This reflects section 251B of the Act.)*

## 22 INSPECTION OF BOOKS AND ACCOUNTS

- (a) Members or their authorised representative may, at their own expense, inspect the books and accounts of the Company any time during which the

registered office of the Company is open for business, provided at least 14 days' prior written notice is given to the Company Secretary of the Member's intention to inspect the books and accounts of the Company.

- (b) A Member's inspection of the books and accounts must not unreasonably interfere with the business or operation of the Company.

*(This substitutes for section 247D of the Act which is a Replaceable Rule.)*

## **23 NOTICES**

### **23.1 When notice is given**

Where a specified period (including a particular number of days) must elapse or expire from or after the giving of a notice before an action may be taken, neither the day on which the notice is given or the day on which the action is to be taken may be counted in calculating the period.

### **23.2 Notice by Members and the Company**

- (a) Each Member must notify the Company in writing of an address in Australia for service of notices. Subject to this Constitution and the Act, if the Member fails to do so, the Member is not entitled to any notice.
- (b) The Company must notify each Member in writing within 21 days following the occurrence of any of the following events:
  - (i) the Company becomes aware of any legal proceedings proposed or commenced against, for, or on behalf of, the Company; or
  - (ii) the Company becomes aware of a material breach of the Act.

### **23.3 How notices are given**

Subject to the Act and this Constitution, the Company may give notice and a person may give notice to the Company:

- (a) personally;
- (b) by post, to the last known address of the recipient;
- (c) by facsimile number, email address or other electronic address (if any) nominated by the recipient; or
- (d) by any other means consented to by the sender and the recipient.

### **23.4 When notices are taken to be given**

- (a) A notice sent by post is taken to be given 3 days after it is posted.
- (b) A notice by facsimile is taken to be given on the day on which the sender obtains machine acknowledgment of successful transmission.

- (c) A notice sent by email is taken to be given when the email is sent, unless the sender has been notified, by a system or person involved in the delivery of the email to the addressee, that the email has not been successfully delivered.

## **24 LIABILITY OF MEMBERS**

The liability of the Members is limited to the amounts specified in clause 25.1.

## **25 WINDING UP**

### **25.1 Contribution by member on winding up**

If the Company is wound up during the time of a Member's membership or within 1 year afterwards, each Member undertakes to contribute to the assets of the Company for payment of:

- (a) debts and liabilities of the Company contracted before the Member's membership ceases;
- (b) costs, charges and expenses of the winding up of the Company; and
- (c) adjustment of the rights of the contributories amongst themselves,

such amount as may be required but not exceeding \$10.00.

### **25.2 Surplus property on winding up or dissolution of Company**

- (a) If upon 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 not be paid or distributed among the Members of the Company.
- (b) All remaining property of the Company under clause 25.2(a) must be paid and applied by the Company to any entity or organisation with similar objectives to the Company which has rules prohibiting the distribution of its assets and income to its members.

### **25.3 Determination of recipient**

- (a) The Directors must before or at the time of dissolution or winding up of the Company select the entity or organisation to which property will be transferred under clause 25.2(b).
- (b) If after the dissolution or winding up of the Company the Directors have not made a selection under clause 25.3(a), the selection will be determined by the Chief Judge of the Equity Division of the Supreme Court of New South Wales or such other judge of that court as may handle or acquire jurisdiction in the matter.

- (c) If effect cannot be given to clauses 25.3(a) to 25.3(b), the property under clause 25.2 must be given to a charitable purpose.

## **26 INDEMNITY**

### **26.1 Indemnity against proceedings**

Every person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of the Company against any liabilities for costs and expenses incurred by that person:

- (a) in defending any proceedings relating to that person's position with the Company, whether civil or criminal, in which judgment is given in that person's favour or in which that person is acquitted or which are withdrawn before judgment; or
- (b) in connection with any application in relation to any proceedings relating to that person's position with the Company, whether civil or criminal, in which relief is granted to that person under the Act by the court.

*(See section 199A(3) of the Act.)*

### **26.2 Indemnity against liabilities**

Every person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of the Company against any liability incurred by the person as such a Director, Secretary or executive officer to another person (other than the Company or its related bodies corporate) unless the liability arises out of conduct involving a lack of good faith.

*(See sections 199A(1) and (2) of the Act.)*

### **26.3 Insuring officers of the Company**

The Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate against:

- (a) any liability incurred by that person as such a Director, Secretary or executive officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of section 182 or 183 of the Act; and
- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal and whatever the outcome provided the costs and expenses are not incurred for the reasons set out in section 199A(3) of the Act.

*(See section 199A and B of the Act.)*



## 26.4 **Company may make separate contracts and bring separate actions**

- (a) The Company may confirm the indemnities in clauses 26.1 and 26.2 by separate contract with, or on behalf of, 1 or more of the persons indemnified.
- (b) The indemnities given by the Company in clauses 26.1 and 26.2 do not affect the right of the Company to bring any demand or action against any Director, Secretary or executive officer of the Company or its related bodies corporate, including any demand or action arising out of the negligence of that person.

## 26.5 **Interpretation**

Nothing in clauses 26.1 to 26.4 is to be taken to limit the power of the Company, as permitted by the Act, to indemnify or pay a premium for a contract insuring a person who is, or has been, an officer of the Company or its related bodies corporate.

## 26.6 **Payments not remuneration**

Any payment made by the Company under clauses 26.1 to 26.3 does not constitute remuneration for the purposes of this Constitution.

## 27 **BRANCH REGISTERS**

### 27.1 **Company may keep branch registers**

The Company may establish and cause to be kept outside the state (including outside of Australia) where its Register is kept a branch register of Members in accordance with the provisions of the Act.

### 27.2 **Directors to determine manner in which branch registers are kept**

Subject to the provisions of the Act and of the provisions of this Constitution, any branch register must be established and kept in the manner the Directors determine.

### 27.3 **Delegation**

The Directors may empower any officer of the Company or any other person to establish and keep any branch register in a manner that the Directors determine.

## 28 **AMENDING THIS CONSTITUTION**

### 28.1 **Special notice**

An amendment to this Constitution may be proposed by a Member by notice in writing to the Secretary. The Company must provide copies of the text of the proposed amendment to all Directors and Members at least 90 days before the Special Resolution referred to in clause 28.2 is moved.

**28.2 Resolution to amend the Constitution**

Subject to the Act, the Company may modify or repeal this Constitution or a provision of this Constitution by Special Resolution of the Members (subject to the maximum voting entitlements and voting adjustments set out in clause 13).

*(This reflects section 136(2) of the Act.)*

**28.3 Date effective**

A Special Resolution modifying or repealing this Constitution takes effect:

- (a) if no later date is specified in the resolution, the date on which the resolution is passed; or
- (b) on a later date specified in or determined in accordance with the resolution.

*(This reflects section 137 of the Act.)*