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Constitution

Caval Limited
ACN 005 498 251

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Corporations Act
Public Company Limited By Guarantee
Constitution
of
CAVAL Limited

1. Interpretation

1.1 Definitions

In this constitution, the following expressions have the following meanings:

9 Victorian Universities means:

- (a) Australian Catholic University;
- (b) Deakin University;
- (c) La Trobe University;
- (d) Monash University;
- (e) RMIT University;
- (f) Swinburne University of Technology;
- (g) University of Ballarat;
- (h) University of Melbourne; and
- (i) Victoria University.

Appointed Director means a person appointed as a director for the time being in accordance with **clause** 11.5.

Associate Member means a person approved as a member of the Company and having those rights set out in clause 8.6.

Business Day means a day on which the major trading banks are open for ordinary business in Melbourne, Victoria and excludes a Saturday, Sunday or public holiday.

Chief Executive Officer means that person described in clause 14.1.

Committee Members means those persons described in clause 13.9.

Company means Caval Limited (ACN 005 498 251).

Contributing Institution means each institution, an office holder of which is a Full Member or is entitled to nominate a person as a Full Member pursuant to **clause 8** in their capacity as an officer of the relevant institution.

Elected Director means a person appointed as a director for the time being in accordance with **clause 11.6**.

Full Member means those persons described in clause 8.2.

Libraries means (except where inconsistent with the context or subject matter):

- (j) libraries of each and every kind principally controlled by Universities, Institutes of TAFE, State Libraries and other schools, colleges and educational institutions and cultural institutions not carried on for the profit of an individual; and
- (k) includes the facilities, materials, collections, resources and services of such libraries.

Member means a person entered as a member of the Company in the register of members kept by the Company in accordance with the *Corporations Act*, being both Full Members and Associate Members..

Officer has the meaning given by section 82A(1) of the *Corporations Act*.

Representative means a Representative appointed under section 250D.

Returning Officer means the person described in clause 11.9.

Seal means the common seal of the Company and includes any official seal of the Company.

Service Charges means the charges described in clause 8.5.

Vice-Chancellor means the person appointed by a Contributing Institution that is a university (including by any one of the 9 Victorian Universities) to hold such office from time to time (or an equivalent office in the event that the office of Vice-Chancellor is abolished or vacant).

1.2 Construction

In this constitution, unless the context otherwise requires:

- (1) **Australia.** A reference to Australia is a reference to the Commonwealth of Australia.
- (2) **Business Day.** If a person is required to pay money or do an act or thing on a day that is not a Business Day, then the person may pay the money or do the act or thing on the next Business Day.

- (3) **Collective references.** Reference to a thing (including an amount) is a reference to all or any part of it and a reference to a group of things or persons is a reference to any one or more of them.
- (4) **Corporations Act defined terms.** Except as far as the contrary intention appears in these clauses, where a clause deals with a matter also dealt with by a provision of the *Corporations Act 2001*, the expression has the same meaning as in that provision.
- (5) **Defined expressions.** If a word or phrase is defined, a related word or phrase has the corresponding definition.
- (6) **Director.** A reference to a director is a reference to a director of the Company. Where appropriate it includes a reference to an alternate director but does not include a reference to an associate director.
- (7) **Division 10.** Division 10 of Part 1.2 of the *Corporations Act* applies to these clauses as if they were an instrument made under the *Corporations Act* in force on the day when these clauses become binding on the Company.
- (8) **Gender.** A reference to a gender includes the other genders.
- (9) **Headings.** A heading must be ignored in construing this document.
- (10) **Inclusive terms.** If an inclusive term is used, such as “includes” or “including”, then this must be construed as “includes, without limitation” or “including, without limitation”.
- (11) **Joint liability.** An obligation on two or more parties binds each partly jointly and severally.
- (12) **Joint obligation.** An obligation incurred in favour of two or more parties may be enforced by each of those parties jointly and severally.
- (13) **Numbers.** A word in the singular form includes the plural, and vice versa.
- (14) **Person.** A reference to a person includes a corporation or body politic.
- (15) **Register.** A reference to the register means the register of Members and includes where appropriate a reference to a branch register.
- (16) **Secretary.** A reference to a secretary includes any person appointed to perform the duties of a secretary of the Company.

- (17) **Section.** A reference to a section is a reference to a section of the *Corporations Act*.
- (18) **Statutory amendment.** A reference to a statute, ordinance, code or other law includes:
- (a) a regulation and other statutory instrument under it; and
 - (b) a consolidation, amendment, re-enactment or replacement of any of them.
- (19) **Variation.** A reference to this or any other document includes the document as varied or replaced, even if the parties have changed.
- (20) **Writing.** A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes a telex, facsimile or electronic mail transmission.

2. Company name and status

2.1 Company name

The Company's name is Caval Limited.

2.2 Public company

The Company is a public company.

2.3 Company limited by guarantee

The Company is a company limited by guarantee.

2.4 Replaceable Rules do not apply

The Replaceable Rules in the *Corporations Act* do not apply to the Company.

3. Objects of the company

3.1 The Company's objects

The Company's objects are:

- (1) to initiate, encourage, promote, develop, facilitate and administer all forms of collaboration and coordination in the establishment, conduct, use, improvement and development of Libraries, and thereby provide educational and other benefits to users of Libraries and the community generally;

- (2) to design, create, develop, introduce, promote, encourage, maintain and administer methods, equipment, systems, programmes and other means for:
 - (a) the recording, identification, location and retrieval of information material and resources in Libraries;
 - (b) the use and exploitation of Libraries; and
 - (c) access to and the availability of Libraries;
- (3) to undertake, carry out and conduct all such things as may or seem to be necessary, convenient, incidental to or advisable (whether directly or indirectly) for or in respect of or ancillary to the support, presentation, creation, promotion, advancement, assistance, improvement and development of Libraries and their objectives or purposes;
- (4) to undertake, carry on and conduct activities and functions of each and every kind that are educational in the widest sense of that expression or are supportive of, ancillary or related to education and whether or not concerned with Libraries;
- (5) to undertake, carry on and conduct activities and functions of each and every kind for cultural organisations which provide benefits to the community;
- (6) to carry on and conduct lectures, seminars, courses and other forms of instruction and discussion on any aspect of the business and objects of the Company;
- (7) to establish, promote, co-operate with, become a member of, act as or appoint trustees, agents or delegates, or control, manage, superintend, afford financial assistance to, or otherwise reach agreements with or assist, associations and institutions and other bodies (whether incorporated or not) whose objects are altogether or in part similar to any of those objects of the Company;
- (8) to appoint, employ, remove or suspend such employees, consultants, contractors and other persons as may be necessary or convenient for the furtherance of the objects of the Company;
- (9) to take any gift of property, whether subject to any special trust or not, for any one or more of the objects of the Company;
- (10) to take such steps by personal or written appeals, public meetings or otherwise as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Company in the form of donations, annual subscriptions or otherwise;

- (11) to apply to the Government (whether State or Federal) public bodies, local, municipal or other bodies, corporations, companies or persons for, and to accept, grants and subsidies of money, land and any other property, donations, gifts, subscriptions and other assistance with a view to promoting the objects of the Company;
- (12) to make donations to such non-profit, statutory and other corporations, companies, bodies and organisations (whether charitable or not) as the Company may decide in general meeting of such amounts and at such times as the Company may determine;
- (13) to acquire and dispose of assets from time-to-time in furtherance of the other objects of the Company; and
- (14) to do all things that are necessary, convenient or incidental to carry out, or are otherwise in furtherance of the objects of the Company.

3.2 Construction of objects clause

The objects and powers of the Company specified in each sub-clause and paragraph in **clause 3.1**:

- (1) are to be regarded as independent objects and powers;
- (2) except where otherwise expressed in such sub-clause or paragraph, must be in no way limited or restricted by reference to or inference from the terms of any other paragraph or sub-clause; and
- (3) may be carried out and exercised in as full and ample manner and must be construed in as wide a sense as if each of such paragraphs and sub-clauses defined the objects of a separate, distinct and independent company.

4. Application of company's property

4.1 Promotion of objects

The Company's income and assets:

- (1) must be applied solely towards the promotion of the Company's objects set out in **clause 3.1**; and
- (2) subject to **clause 4.2**, must not be distributed, directly or indirectly, to a Member.

4.2 Other payments

Clause 4.1 does not prevent the payment of:

- (1) reasonable and proper remuneration to a Member or director in return for goods or services supplied or provided to the Company by that Member or director, including reimbursement for expenses reasonably incurred by that Member or director in providing those goods or services;
- (2) interest, at a rate not exceeding a normal commercial rate, on any money lent to the Company by a Member or director; or
- (3) a repayment to a departing Member of all or part of his or her financial contribution to the Company whilst that person was a Member.

5. Liability of members

Each Member's liability is limited to an amount not exceeding \$10.

6. Winding up

6.1 Contribution of Members upon winding up

Each Member undertakes to contribute an amount not exceeding \$10 to the Company's property if the Company is wound up:

- (1) while that person is a Member, or
 - (2) within one year after the person ceased to be a Member,
- for payment:
- (a) of the Company's charges, debts and liabilities contracted before the person ceased to be a Member;
 - (b) of the costs and expenses of the winding up; and
 - (c) for the adjustment of the rights of contributors among themselves.

6.2 Restrictions on distribution of surplus

If the Company is wound up or dissolved and, after satisfaction of all its debts and liabilities and the repayment to the Members of the amount of their contribution to the Company according to **clause 4.2(3)**, there is any property remaining, this property must only be paid or distributed to another entity:

- (1) which has similar objects to those contained in **clause 3.1**; or
- (2) whose income is exempt from income tax,

so long as in either case the entity is prohibited from paying or transferring any income or property to its own Members other than in a manner contemplated by **clause 4** and this **clause 6.2**.

6.3 Determination of relevant entity

The identity of the relevant entity to which property is to be distributed under **clause 6.2** is to be determined:

- (1) by the ordinary resolution of Members at or before the time of the winding up or dissolution of the Company; or
- (2) in default of the making of such a resolution under **clause 6.3((1))**, by such Judge of the Supreme Court of Victoria as may have or acquire jurisdiction in the matter.

7. Profit or gain

The activities of the Company must not be carried on the purposes of profit or gain to its Members and the Company must not at any time make any distribution whether in money, property or otherwise to its Members or relatives, associates or entities related to its Members other than as permitted by **clauses 3.1, 4.2, and 6** of this constitution.

8. Membership

8.1 Register of Members

The Members of the company are those persons who are listed in the register of members. The directors may from time to time register an increase in Members in accordance with this constitution.

8.2 Composition of Full Members

The Full Members of the Company comprise:

- (1) the Vice-Chancellor of each of the 9 Victorian Universities (or any person nominated by the relevant Vice-Chancellor in his or her place); and
- (2) other members as approved under Clause 8.3.

8.3 Change in composition of Full Members

The composition of the Full Members of the Company may be changed by:

- (1) the directors approving a person or body as suitable to be a Full Member of the Company and receiving the written consent of that person or body to become a Full Member;

- (2) a cessation of the membership of a Member pursuant to **clause 8.4**; or
- (3) a cessation of membership is effected, temporary or otherwise, in accordance with **clause 8.5**.

8.4 Cessation of membership

A person will cease to be a Member of the Company upon that person:

- (1) ceasing to hold the office by virtue of which that person became a Member;
- (2) being nominated to membership and the nomination is revoked by the person entitled to make the nomination;
- (3) resigning their membership by signed notice in writing to that effect to the Secretary of the Company;
- (4) having their name removed from the register of Members pursuant to the provisions of this **clause 8** (including without limitation **clause 8.5(2)**);
- (5) becoming bankrupt or making any arrangement or composition with their creditors generally; or
- (6) becoming of unsound mind or their person or estate is liable to be dealt with in any way under the law relating to mental health.

8.5 Service Charges

- (1) Each Contributing Institution must pay or cause to be paid service charges to the Company of such amount and at such intervals as that Contributing Institution and the Company may agree from time to time ("**Service Charges**").
- (2) Subject to **clause 8.5(3)**, if the Service Charges or any part thereof payable by the Contributing Institution remains unpaid for a period of 90 days or more after the date upon which it became due and payable, the office holder of that Contributing Institution (or any person nominated by that office holder) may, without prejudice to any other rights and remedies which the Company may have against that Contributing Institution and after notice of default has been sent to the person and that Contributing Institution, be debarred by the directors from all privileges of membership and have their name removed by the directors from the register of Members.
- (3) The directors may reinstate a Full Member debarred under **clause 8.5(2)** and restore that Full Member's name to the register of

Members on payment of all arrears of the Service Charges if the directors think fit so to do.

8.6 Associate Members

- (1) An Associate Member may be an individual, department or library affiliated with a single institution, including but not limited to the following: local government agency, college, university, school, corporation.
- (2) The rules governing approval of Associate Members, their rights and obligations, and the cessation of Associate Membership are as follows:
 - (a) The directors may approve a person or body as suitable to be an Associate Member of the Company upon receiving the written consent of that person or body to become an Associate Member;
 - (b) An Associate Member is not able to seek election, to nominate a candidate for election, nor to vote in any election of directors to the Board of Directors;
 - (c) An Associate Member may attend any duly convened meeting of Members as an observer, but is not entitled to cast a vote on any motion;
 - (d) The cessation of membership arrangements are those applying in 8.4; and
 - (e) Membership fees for Associate Members are determined annually by the Board of Directors of the Company.

9. General meetings

9.1 Power to convene

- (1) A general meeting may be convened by 3 or more directors.
- (2) In accordance with section 249D of the Corporations Act, a general meeting must be convened by the directors on the request of a proportion of Full Members with 5% or more of the votes that may be cast at the general meeting or by at least 100 Full Members who are entitled to vote at the general meeting.

9.2 Annual general meetings

The Company must hold an annual general meeting at least once in each calendar year and within 5 months after the end of its financial year.

9.3 Notice

- (1) A notice of a general meeting must specify the place, the day and the hour of meeting and must state the general nature of the business to be transacted at the meeting, the terms of any special resolution and information regarding the right to appoint a proxy.
- (2) If an annual general meeting is convened, it is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes:
 - (a) consideration of accounts and the reports of the directors and auditors;
 - (b) election of directors in the place of those retiring; and
 - (c) appointment and fixing of the remuneration of the auditors.

9.4 Notice period and content

- (1) Except when the *Corporations Act* permits shorter notice to be given, 21 clear days notice must be given to all persons entitled to receive those notices from the Company, specifically including all the directors of the Company.
- (2) Any notice must specify the place and day and hour of meeting, and, for special business, the general nature of that business, the terms of any special resolution and information regarding the right to appoint a proxy.
- (3) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

9.5 Nature of business

All business that is transacted at a general meeting is special, except for:

- (1) consideration of the accounts, balance sheets, and the report of the directors and auditors; and
- (2) election of the directors and of the auditors (if any).

9.6 Circular resolution

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.

10. Proceedings at general meetings

10.1 Quorum

Business may not be transacted at any general meeting unless a simple majority of members is present at the time when the meeting proceeds to business.

10.2 Proxy holders and Representatives as part of quorum

For the purpose of determining whether a quorum is present, a person attending as a proxy, attorney or Representative or if otherwise representing a body corporate that is a Full Member is deemed to be a Full Member.

10.3 Effect of no quorum

If a quorum is not present within 30 minutes from the time appointed for the meeting:

- (1) where the meeting was convened on the requisition of Members - the meeting must be dissolved; or
- (2) in any other case:
 - (a) the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
 - (b) if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting:
 - (i) if at least 4 Full Members are present, the Members present constitute a quorum; and
 - (ii) where 4 Full Members are not present - the meeting must be dissolved.

10.4 Directors' right to attend general meetings

- (1) Every director shall be sent notice of and is entitled to be invited to and attend all general meetings.
- (2) A director attending any general meeting will not be entitled to vote at any general meeting by reason only of this **clause 10.4** and may only vote at such meetings if that director is otherwise entitled under this constitution to do so (including without limitation, under **clause 10.18**).

10.5 Chairperson of directors

If the directors have elected one of their number as chairperson of their meetings, that person presides as chairperson at every general meeting.

10.6 Vacancy in chairperson

Where a general meeting is held and:

- (1) a chairperson has not been elected as provided by **clause 10.5**; or
- (2) the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the Full Members present must elect one of their number to be chairperson of the meeting.

10.7 Adjournment

The chairperson may, with the consent of any meeting at which a quorum is present, and must, if so directed by the meeting, adjourn the meeting from time to time and from place to place. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

10.8 Notice where a meeting is adjourned for 30 days

When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

10.9 Form of notice for adjourned meeting

Except as provided by **clause 10.8**, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

10.10 Voting on show of hands

- (1) At any general meeting a resolution put to the vote of the meeting is decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded according to **clause 10.11**:
- (2) On a show of hands, every Full Member present in person or by proxy, attorney or Representative shall have one vote.
- (3) Unless a poll is duly demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, must be made in the minutes of the meeting.
- (4) An entry recording the chairperson's declaration of voting in the book containing the minutes of the proceedings of the Company is

conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

10.11 Poll

- (1) A poll may be demanded:
 - (a) by the chairperson;
 - (b) by at least 3 Full Members present in person, by proxy or Representative; or
 - (c) by a Full Member or Full Members present in person or by proxy or Representative and representing not less than one-tenth of the total voting rights of all the Full Members having the right to vote at the meeting.
- (2) A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.
- (3) A poll demanded on any other subject is taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (4) Any demand for a poll can be withdrawn.

10.12 Voting entitlements on a poll

- (1) On a poll, every Full Member present in person or by proxy, attorney or Representative will have one vote for each whole multiple of \$1,000.00 of current Service Charges payable in respect of each 12 months period by the Contributing Institution of which that Full Member is an office holder (or a nominee of such office holder) and is a Full Member by reason thereof.
- (2) In the case of any current Service Charges not being a whole multiple of \$1,000.00, the voting entitlement will be rounded up to the nearest whole multiple of \$1,000.00.
- (3) In the case of any current Service Charges being less than \$1,000.00, the voting entitlement will be one vote.

10.13 Casting vote of chairperson

If the votes are equal, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a second or casting vote.

10.14 Proxy holders' and Representatives' voting rights

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

- (1) at meetings of Members each Full Member entitled to vote may vote in person or by proxy, attorney or Representative; and
- (2) on a show of hands every person present who is a Full Member or a Representative of a Full Member has one vote, and on a poll every such person present has the voting entitlements as specified in **clause 10.12**.

10.15 Elected Directors' voting rights

Where a Full Member is absent from any meeting of Members, an Elected Director nominated under **clause 11.6** by that Member can exercise any rights of that Full Member in relation to those meetings of Members from which the Full Member is absent as if that Elected Director were the Full Member:

- (1) subject to any rights or restrictions for the time being attached to any rights of membership; and
- (2) until such time as the Full Member notifies the Company in writing that the Elected Director is not entitled to exercise such rights.

10.16 Disentitlement to vote

A Full Member is not entitled to vote at a general meeting unless all of the current Service Charges and other sums presently payable by the Contributing Institution of which that Full Member is an office holder (or a nominee of such office holder) and is a Full Member by reason thereof, have been paid.

10.17 Objection to voter

- (1) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (2) Any objection is referred to the chairperson of the meeting, whose decision is final.
- (3) A vote that is not disallowed after an objection is valid for all purposes.

10.18 Appointment of proxy

- (1) An instrument appointing a proxy must be in writing signed by the appointor or an attorney duly authorised in writing or, if the appointor is a body corporate, signed by a duly authorised officer

or attorney (whether such signature is in writing or by way of digital signature).

- (2) An instrument appointing a proxy can be sent to the Company by post, facsimile or electronic mail.
- (3) An instrument appointing a proxy can be a standing authority to vote and can specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- (4) An instrument appointing a proxy is deemed to confer authority to demand or join in demanding a poll.
- (5) An instrument appointing a proxy can be in any form, including without limitation, in the following form or in a form that is similar to the following form:

To: Caval Limited ("Company")

I/we, [*Name of Member/s*], of [*Address of Member/s*], being a Member/Members of the Company, appoint [*Name of proxy 1*], of [*Address of proxy 1*], or, in that person's absence, appoint [*Name of proxy 2*], of [*Address of proxy 2*] as my/our proxy to vote for me/us on my/our behalf at all general meetings*/ and** all annual general meetings until otherwise notified*/the annual general*/general meeting* of the Company to be held on [*Date of meeting*] and at any adjournment of that meeting.

This form is to be used in favour of/against the resolution **

Signed [*date*]

* Strike out whichever is not desired.

** Optional

- (6) A proxy does not need to be a Member.

10.19 Lodgment of proxy

An instrument appointing a proxy is only valid if the instrument and any power of attorney or other authority under which the instrument is signed or a notarially certified copy of that power or authority, is or are deposited or otherwise received:

- (1) at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or

- (2) for a poll, at least 24 hours before the time appointed for the taking of the poll; and
- (3) at the registered office of the Company or other place in Australia specified for that purpose in the notice convening the meeting by any means including by post, facsimile or electronic mail.

10.20 Effect of proxy vote

A vote given according to an instrument of proxy, power of attorney or of an appointment of Representative is valid if no notice in writing of the death, unsoundness of mind, revocation of the instrument or authority has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

11. Directors and board

11.1 Minimum and maximum number of directors

Subject to **clauses** 11.2 and 11.6~~((1))~~:

- (1) the minimum number of directors is 5; and
- (2) the maximum number of directors is 9.

11.2 Change to minimum and maximum numbers of directors

The Company may by resolution:

- (1) increase or decrease the minimum and maximum number of directors; and
- (2) determine the number of Appointed Directors and Elected Directors of the Company from time to time.

11.3 Board

The Board will comprise all the directors of the Company appointed in accordance with **clauses** 11.5 and 11.6 from time to time and that have not been removed or have vacated office. A maximum of four (4) directors of the Board may be Appointed Directors.

11.4 Period of office

- (1) A director shall hold office for 3 calendar years, or until such other time that the director vacates office or is removed under this constitution.

- (2) A director that has held office for 3 calendar years shall thereupon retire from office and be eligible for re-election or re-appointment.

11.5 Appointment and removal of Appointed Directors

Subject to **clause** 11.1, a person may be appointed as an Appointed Director by a simple majority of the Elected Directors who may remove and appoint any such Appointed Director at any time.

11.6 Appointment of Elected Directors

- (1) Subject to **clause** 11.1, a person may be appointed as an Elected Director in accordance with **clause** 11.6 in the following circumstances:
 - (a) at least 3 months prior to the date on which one or more of the Elected Directors is to retire;
 - (b) where the number of Elected Directors is less than 9 and the Board determines to increase the number of Elected Directors; or
 - (c) where the Elected Directors unanimously determine to call an election in respect of the office of all those Elected Directors, at which time, they may also determine to increase the number of directors.
- (2) Upon the occurrence of any of the circumstances in **clause** 11.6(a), the secretary will send a notice to Full Members calling for nominations for persons to be appointed as an Elected Director which states:
 - (a) the number of positions available;
 - (b) that the Full Member has a right to nominate one person as an Elected Director;
 - (c) the additional material required to be submitted with the nomination; and
 - (d) the date by which the nomination and accompanying material must be returned to the Company, being a date at least one month after the dispatch of such notice.

11.7 Nominations for Elected Directors

- (1) Each nomination to appoint a person as an Elected Director in accordance with **clause** 11.6 will be required to be accompanied by:
 - (a) a consent to such nomination from the nominee;

- (b) a biographical statement of less than 100 words setting out the nominee's qualifications, experience and other relevant details; and
- (c) such other information as the Board may from time to time require.

In the event that there are more than or the same number of vacancies on the Board as there are nominations of those vacancies, those persons who have been nominated will be deemed to be elected with effect from the date of those vacancies, and the remaining vacancies (if any) may be filled by the Board as it sees fit.

- (2) In the event that there are more nominations than there are vacancies, then an election will be held by postal ballot according to a weighted preferential system in accordance with **clause 11.9**, in which each Full Member will:
 - (a) be entitled to cast the number of votes which that Full Member is ordinarily entitled to cast at a poll pursuant to **clause 10.12**;
 - (b) indicate that Full Member's order of preference on the ballot paper provided for at least 5 of the nominees, or in the event that there are fewer than 5 nominees, for each of them.

11.8 General conditions and powers relating to nominations

Any power of nomination conferred under this constitution (including without limitation, under this **clause 11**):

- (1) includes the power to revoke and exercise any such nomination at any time and from time to time; and
- (2) must be exercised by notice in writing, signed by the nominator (including by way of digital signature) and must be sent to the Company by post, facsimile or electronic mail.

11.9 Ballot for nominated Elected Directors

- (1) The secretary, or a person nominated by the secretary must act as returning officer ("**Returning Officer**") for any ballot held under this **clause 11.9** and shall subject to this constitution, be responsible for the conduct of the ballot.
- (2) In the event that a ballot is required, the secretary must prepare a ballot paper on which must appear:
 - (a) the name of the nominees in alphabetical order;

- (b) a statement to the effect that the Full Member must indicate their order of preference for the nominees;
 - (c) the date on which the ballot paper must be returned to the Company; and
 - (d) a statement that the Full Member must duly complete the ballot paper with their name and signature in the places indicated.
- (3) The ballot paper must be forwarded to Full Members as soon as practicable after its preparation and must be returned to the Company by the date specified in the ballot paper, which must be a date no less than 2 weeks after the date of forwarding such ballot papers to Full Members.
 - (4) Following the date set for return of ballot papers, the Returning Officer must collect all ballot papers received on or prior to that date and shall forthwith determine the result of the ballot in accordance with this constitution and notify the result of such ballot to the Full Members.

11.10 Casual vacancy

Upon the occurrence of a casual vacancy of an Elected Director, the Full Member nominating that Elected Director has the power at any time to appoint any person to replace that Elected Director to fill a casual vacancy. Casual appointments only last until the next annual election. The “permanent” replacement elected at the next annual election is appointed only for the remainder of the term of the original director (or for a full 3 years if the original director’s term would have been required to retire by that election). The Full Member appointing an Elected Director under this **clause** 11.10 must not make an appointment so that the total number of directors at any time exceeds the maximum number fixed according to **clause** 11.1.

11.11 Limitations to remuneration

No director is entitled to be remunerated for their services:

- (1) when that director is a Member of the Company; or
- (2) by way of a commission on or percentage of profits or turnover.

11.12 Permissible remuneration

Subject to **clause** 11.11, a director may only be remunerated for their services where:

- (1) the amount paid to:

- (a) an individual director, as determined by the directors, has been approved by the Company in general meeting; and
- (b) all the directors in aggregate as remuneration does not exceed any amount determined by the Company in general meeting,

providing that such remuneration relates to or is connected with any travelling, hotel and other expenses properly incurred by a director in attending meetings of directors or any committee of directors or general meetings of the Company or otherwise in connection with the business of the Company; and

such additional amounts determined by the directors as special remuneration for any director that performs services which in the opinion of the directors is outside the scope of the ordinary duties of that director,

All remuneration of directors under this **clause** 11.12 is deemed to accrue from day to day.

11.13 No membership qualification

A director need not be a member of the Company.

11.14 Vacation of office

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:

- (1) is an Appointed Director and retires from office in accordance with **clause** 11.4, or is removed pursuant to **clause** 11.5 or;
- (2) is an Elected Director and that Elected Director retires from office in accordance with **clauses** 11.4;
- (3) has been a director of the Company for the full extent of the period for which that director was appointed or elected;
- (4) becomes bankrupt or makes any arrangement or composition with that director's creditors generally;
- (5) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (6) resigns from office by notice in writing to the Company; or

- (7) is absent without the consent of the directors from 2 consecutive meetings of the directors without having been granted leave by a majority of the other directors.

12. Powers and duties of directors

12.1 General power of management

- (1) Subject to the *Corporations Act* and to this constitution, the business of the Company is managed by the directors. The directors may pay all expenses incurred in promoting and managing the Company, and may exercise all such powers of the Company as are not, by the *Corporations Act* or by this constitution, required to be exercised by the Company in general meeting.
- (2) Any sale or disposal by the directors of the Company's main undertaking and any significant change in the strategic direction of the Company will be subject to ratification by the Company in general meeting.

12.2 Other offices of directors

A director may hold any other office or offices under the Company (except that of auditor) together with the office of director and on the conditions of remuneration and otherwise as the directors may arrange.

12.3 Power to appoint attorneys

- (1) The directors may, by power of attorney, appoint any person to be the attorney of the Company. An attorney may be appointed for such purposes, with the power, authority or discretion (being power, authority or discretion vested in or exercisable by the directors), for such period and subject to such conditions as the directors determine.
- (2) Any power of attorney may contain any provision for the protection and convenience of persons dealing with the attorney as the directors think fit. The power of attorney may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

12.4 Minutes of general meetings and directors meetings

- (1) The directors will cause minutes to be kept of:
 - (a) the names of the directors and other persons present at each meeting of the directors and of any committee of directors; and

- (b) all resolutions and proceedings of general meetings, meetings of directors and meetings of committees of directors.
- (2) Minutes of the meetings referred to in this **clause** 12.4 shall be signed by the chairperson of the next succeeding meeting.
- (3) Subject to any limitations imposed by law, a summary of resolutions made at each meeting of directors will be communicated to all Members.

12.5 Cheques

A cheque, promissory note, bankers draft, bill of exchange or other negotiable instrument, or receipt for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the directors determine.

13. Proceedings of directors

13.1 Regulation and convening of meetings

- (1) The directors shall meet at least 4 times in each calendar year not more than 4 months after the date of the last preceding meeting and may otherwise meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (2) The chairperson may at any time, and a secretary must on the requisition of any 3 directors, convene a meeting of the directors.

13.2 Written resolutions

- (1) A resolution in writing signed or assented to by telegram, cablegram, radiogram, facsimile, telex or other form of visible communication (including by the authorised use of electronic mail) by all the directors for the time being in Australia (and not being less than a quorum for a meeting of directors) is as valid and effective as if it had been passed at a meeting of directors duly convened and held. A reference in this **clause** 13.2 to all the directors for the time being in Australia does not include a reference to a director who at a meeting of directors would not be entitled to vote on the resolution.
- (2) Any resolution may consist of several documents in like form each signed by one or more of the directors.
- (3) If the directors signed the document on different days, the resolution is taken to have been passed at the time at which the document was last signed by a director.

13.3 Telephone and other meetings

Without limiting the power of the directors to regulate their meetings as they think fit, a meeting of directors or committee of directors may be held where one or more of the directors is not physically present at the meeting, provided that:

- (1) all persons participating in the meeting are able to communicate with each other effectively simultaneously and instantaneously whether by telephone or other form of communication;
- (2) notice of the meeting is given to all the directors entitled to notice according to the usual procedures agreed on or laid down from time to time by the directors of the Company and such notice does not specify that directors are required to be present in person;
- (3) if a failure in communications prevents condition ((1)) from being satisfied by that number of directors which constitutes a quorum, then the meeting is suspended until condition ((1)) is satisfied again. If condition ((1)) is not satisfied within 15 minutes from the time the meeting was interrupted, the meeting is deemed to have terminated; and
- (4) any meeting held where one or more of the directors is not physically present is deemed to be held at the place specified in the notice of meeting if a director is present there. If no director is present at the place specified, the meeting is deemed to be held at the place where the chairperson of the meeting is located.

13.4 Decisions of the board

Subject to this constitution, questions arising at any meeting of directors are decided by a majority of votes. A determination of a majority of directors is for all purposes deemed to be a determination of the directors. If the votes are equal, the chairperson of the meeting has a second or casting vote.

13.5 Alternate directors

- (1) Subject to the *Corporations Act*, a director may appoint a person (whether a Member of the Company or not) to be an alternate director in the director's place for such period as the appointor thinks fit.
- (2) An alternate director is entitled to notice of meetings of the directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in the appointor's stead.
- (3) An alternate director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate

director will be deemed to be the exercise of the power by the appointor.

- (4) If the alternate director is a director in their own right that alternate director will have a separate vote on behalf of the director they are representing in addition to that alternate director's own vote.
- (5) Every alternate director will be deemed to be an officer of the Company and will not be deemed to be the agent of the director appointing him.
- (6) An alternate director will vacate office if the appointor ceases to be a director or if the appointor removes the appointee from office by notice in writing to the Company.
- (7) An alternate director is not required to have any membership qualification.
- (8) The appointment of an alternate director may be terminated at any time by the appointor despite the period of the appointment of the alternate director not having expired, and terminates in any event if the appointor vacates office as a director.
- (9) An appointment, or the termination of an appointment, of an alternate director will be effected by a notice in writing signed by the director who makes or made the appointment and served on the Company.

13.6 Quorum

At a meeting of directors, the number of directors whose presence is necessary to constitute a quorum is 4.

13.7 Authority to act where vacancy

If there is a vacancy in the office of a director, the remaining directors may act. If the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, the directors may act only for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or for the purpose of convening a general meeting of the Company.

13.8 Chairperson

- (1) The directors must elect one of their number as chairperson of their meetings and may determine the period of office of the chairperson which, unless the directors agree otherwise, will be a period of not more than 12 months.

- (2) A chairperson will be eligible for re-election at the end of that chairperson's term of office providing that they are still a director.
- (3) Where a meeting of the directors is held and:
 - (a) a chairperson has not been elected as provided; or
 - (b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the directors present may elect one of their number to be a chairperson of the meeting.

13.9 Committee of directors

- (1) The directors may delegate any of their powers to a committee or committees consisting of as many of their number as they think fit, a single director (who shall for the purposes of this **clause** 13.9 be considered a committee of directors) and subject to the *Corporations Act*, such other person or persons as they think fit.
- (2) A committee to which any powers have been so delegated must exercise the powers delegated according to any by-laws and regulations of the Company and to any directions of the directors. A power so exercised is deemed to have been exercised by the directors.
- (3) The members of a committee of directors ("**Committee Members**") may, if relevant, elect one of their number as chairperson of their meetings.
- (4) Where such a meeting is held and:
 - (a) a chairperson has not been elected as provided by **clause** 13.9(**(3)**); or
 - (b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the Committee Members present must elect one of their number to be chairperson of the meeting.

13.10 Regulation of committee of directors

The meetings, proceedings and voting entitlements of a committee of directors of more than one person will be governed by the provisions contained in this constitution for regulating the meetings and proceedings of the directors so far as the same are applicable and are not inconsistent

with any by-laws or regulations of the Company or any directions imposed by the directors under this constitution.

13.11 Non-effect of defects in appointments

- (1) All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director are deemed to be valid as if all persons had been duly appointed and were qualified to be a director or to be a Committee Member.
- (2) This is the case even if it is afterwards discovered there was some defect in the appointment or continuance in office of a person to be a director or a Committee Member, or to act as, a director or Committee Member, or that a person so appointed was disqualified, had vacated office or were not entitled to vote.

13.12 Director's personal interests

- (1) Each director and Committee Member must disclose to the Company according to the *Corporations Act* his or her interests in any contract or arrangement and the secretary must record all declarations in the minutes of the relevant directors' meeting or meeting of a committee of directors as the case may be.
- (2) A director who has previously declared a personal interest to a meeting of directors of the Company (or to a committee of directors as the case may be), shall absent themselves from the meeting while the matter is under consideration and may not vote on, or be counted in the quorum of directors (or Committee Members), in respect of:
 - (a) any contract or arrangement by the Company with any other person or corporation in which the director or Committee Member may be interested; or
 - (b) the director's or Committee Member's appointment to any office or place of profit under the Company.
- (3) A director's or Committee Member's failure to make disclosure under this **clause** 13.12 renders voidable by the Company a contract or arrangement in which the director or Committee Member has a direct or indirect interest.
- (4) A director or Committee Member is deemed to be not interested in any contract or arrangement where the only personal interest of the director or the Committee Member arises:
 - (a) Because the director or Committee Member is also a director of a corporation which is deemed to be related to the Company by the *Corporations Act*; or

- (b) if the director is an Elected Director and their personal interest arises only because the Member that nominated that Elected Director under **clause** 11.6 is personally interested in the same relevant contract or arrangement.
- (5) A reference in this **clause** 13.12 to a director includes an alternate director appointed under this constitution from time to time.

14. Chief Executive Officer and Secretaries

14.1 Appointment of Chief Executive Officer

The directors can appoint a person to the office of chief executive officer of the Company ("**Chief Executive Officer**") for such period and on such terms and give that person such other title as the directors think fit.

14.2 Remuneration of Chief Executive Officer

A Chief Executive Officer is entitled to receive, subject to any agreement entered into in a particular case, such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors determine.

14.3 Powers of Chief Executive Officer

- (1) The directors may confer on a Chief Executive Officer any of the powers exercisable by the directors on terms as determined by the directors.
- (2) Any powers of the directors conferred on a Chief Executive Officer may be concurrent with or to the exclusion of the powers of the directors.
- (3) The directors may at any time withdraw or vary any of the powers so conferred on a Chief Executive Officer.

14.4 Secretaries of the Company

- (1) The directors must appoint, in accordance with the *Corporations Act*, one or more secretaries of the Company who will hold office for such term and on the conditions as to remuneration and otherwise as the directors determine.
- (2) Any secretary appointed by the directors may be removed by them at any time providing that the Company has one or more secretaries at all times following such removal.

15. Seal

15.1 Safe custody of Seal

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

15.2 Authority to use Seal

- (1) The Seal may only be used with the authority of the directors, or of a committee of the directors authorised by the directors to authorise the use of the Seal.
- (2) Every document to which the Seal is affixed must be signed by a director and be countersigned by another director, a secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

15.3 Use of Seal optional

Subject to the *Corporations Act* or any other lawful obligation and unless the directors resolve otherwise, the use of the Seal by the Company is optional (including without limitation, when executing deeds).

16. Accounts

16.1 Preparation and inspection of accounts

The directors must:

- (1) cause proper accounting and other records to be kept and distribute copies of all such records as required by the *Corporations Act*; and
- (2) at all times during the normal business hours make available to each Member upon request, all the accounting and other records and books of the Company for that Member's perusal and copying.

16.2 Audit

At least once in every year, the accounts of the Company must be examined by a properly qualified auditor appointed in accordance with the *Corporations Act*. The appointed auditor must prepare an audit report in relation to each year's accounts as required by the *Corporations Act*.

17. Interest

The maximum rate of interest that may be charged on moneys lent to the Company by a Member must not exceed the maximum rate chargeable to the Company by its bankers on current overdraft.

18. Notices

18.1 Method

A notice may be given by the Company to any Member by:

- (1) serving it on the Member personally; or
- (2) sending it by post, facsimile or electronic mail to the Members at their addresses or contact details as shown in the register of Members or the address or the contact details supplied by the Member to the Company for the giving of notices to the Member.

18.2 Deemed receipt

- (1) Where a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (2) Where a notice is sent by facsimile or electronic mail, the notice is deemed to be effected upon the receipt by the party giving the notice of a transmission confirmation report showing an error-free transmission. However, if within one Business Day of receipt, the recipient Member informs the party giving the notice that the transmission was incomplete or garbled, or if the transmission is completed after 4:30pm local time in the place of receipt or is received on a day that is not a Business Day, the notice is taken to be served on the next Business Day.

18.3 Persons entitled to notice

- (1) Notice of every general meeting must be given in the manner authorised by **clauses** 18.1 and 18.3 to:
 - (a) every Member;
 - (b) every director; and
 - (c) the auditor of the Company.
- (2) No other person is entitled to receive a notice of general meeting.

- (3) The signature to any notice to be given by the Company may be written, printed (including electronically) or stamped.

19. Indemnity

An Officer (including an alternate director) must be indemnified out of the property of the Company against:

- (1) a liability to another person incurred by the Officer in that capacity (other than a liability incurred to the Company or a related body corporate) unless the liability arises out of conduct involving a lack of good faith; and
- (2) a liability for costs and expenses incurred by the Officer in that person's capacity as an Officer:
 - (a) in defending civil or criminal proceedings in which judgment is given in favour of the Officer or in which the Officer is acquitted; or
 - (b) in connection with an application in relation to civil or criminal proceedings, in which the Court grants relief under the *Corporations Act*.

This is the constitution tabled before the Company at its special general meeting on 21 May, 2009 and signed by Craig Anderson as Chairperson.