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**CONSTITUTION  
OF  
UTS COLLEGE  
ACN 001 425 065**

**Company Limited by Guarantee**

***Corporations Act***

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**Corporations Act**  
**Company Limited by Guarantee**  
**CONSTITUTION**  
**OF**  
**UTS College ACN 001 425 065**

**PART 1 – INTRODUCTION**

**1. Replaceable Rules Excluded**

- 1.1 The replaceable rules contained in the *Corporations Act* do not apply to the Company.

**2. Definitions and Interpretation**

- 2.1 In this constitution:

- (1) “**Act**” means the University of Technology Sydney Act 1989 (NSW);
- (2) “**Company**” means UTS College;
- (3) “**Corporations Act**” means the *Corporations Act* 2001 (Cth);
- (4) “**Council**” means the Council of the University;
- (5) “**directors**” means the directors for the time being of the Company or the directors assembled as a board;
- (6) “**member**” means a person who is a member of the Company, as provided in rule (8) and is registered in the Register as a member;
- (7) “**Minister**” means the Minister administering the Act or, if different Ministers are administering the Act in different respects or are administering different portions of the Act, that Minister administering the Act in the relevant respect or the relevant portion of the Act;

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- (8) "**officer**" means a director, secretary or executive officer of the Company;
  - (9) "**Register**" means the register of members kept in accordance with rule (10);
  - (10) "**Registered Charity**" means an organisation or entity that is established or operated to advance or promote a charitable purpose and is registered as a charity with the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);
  - (11) "**Special Directors' Resolution**" means a resolution passed by at least 75% in number of the directors entitled to vote; and
  - (12) "**University**" means the University of Technology Sydney as represented by Council or its delegates;
  - (13) "**UTS**" means University of Technology Sydney.

2.2 Reference to:

- (1) one gender includes the others;
- (2) the singular includes the plural and the plural includes the singular; and
- (3) a person includes a body corporate.

2.3 Except so far as the contrary intention appears in this constitution:

- (1) an expression has in this constitution the same meaning as in the *Corporations Act*; and
- (2) if an expression is given different meanings for the purposes of different provisions of the *Corporations Act*, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the *Corporations Act*, the same meaning as in that provision of the *Corporations Act*.

2.4 Headings are for convenience only and do not form part of this constitution or affect its interpretation.

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### 3. Objects

- 3.1 The Company is established for the purpose of assisting, promoting and furthering the functions and purposes of the University (**Purpose**).
- 3.2 The Purpose will be furthered by means and activities including (without limitation):
- (1) providing pathway courses for entry to the University;
  - (2) making payments to the University;
  - (3) collaborating, partnering, affiliating, associating or co-operating with any other person, body corporate, association, institution, organisation or firm in the provision of educational facilities or courses of study as ratified in accordance with rule 54;
  - (4) establishing subsidiaries and investing in companies, partnerships or associations carrying on a business or businesses as ratified in accordance with rule 54;
  - (5) disseminating and increasing knowledge and promoting scholarship, through continuing higher education courses or related activity as ratified in accordance with rule 54; and
  - (6) any other activities as approved by the University.
- 3.3 Despite any provision in this constitution, including rule 3.1, to the contrary, the objects of the Company are limited to those activities that:
- (1) the Company would be authorised to undertake or be engaged in, if the Company were the University under the Act; or
  - (2) the Company would be permitted to undertake, if the Company were the University and the University is permitted by the Minister under section 16A of the Act to undertake those activities.
- 3.4 The Company must not act in any way which is inconsistent with the terms of the Act.

### 4. Powers

- 4.1 The Company has all powers given to it by the *Corporations Act* including all powers to do all such things as are necessary or conducive to the attainment of the objects of the Company, other than the power to issue shares.



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4.2 Despite any provision in this constitution, including rule 4.1, to the contrary, the powers of the Company must not be exercised for an activity unless the activity is one that:

- (1) the Company would be authorised to undertake or be engaged in, if it were the University under the Act; or
- (2) the Company would be permitted to undertake, if the Company were the University and the University is permitted by the Minister under section 16A of the Act to undertake those activities.

4.3 Any proposed changes to this constitution must be approved by the University before being tabled at a members' meeting. This constitution may only be modified or repealed by a special resolution of members, being a resolution passed by 75% of the members entitled to vote on the resolution.

## **5. Application of Income and Property**

5.1 The income and property of the Company, from wherever it is derived, must be applied solely towards the promotion of the objects of the Company set out in rule 3.

## **6. No Distribution to Members**

6.1 No portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise, to the members of the Company, other than as permitted under rules 3.2(2) and 90.2.

6.2 Rule 6.1 does not prevent:

- (1) the payment in good faith of remuneration to any officer, employee or member of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
- (2) the payment of interest, at a rate not exceeding the 90 day bank accepted bills rate published by the Reserve Bank of Australia, plus 3% per annum on money borrowed from any member of the Company; or
- (3) the payment of reasonable and proper rent for premises demised or let by any member to the Company.

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## **PART 2 - MEMBERSHIP**

### **7. Number of Members**

7.1 The maximum number of members which the Company may register is 20.

### **8. Membership**

8.1 The members of the Company are such persons as the University nominates and who have provided to the Company their written consent to becoming a member.

### **9. Date of Admission**

9.1 A person to whom rule 8 applies becomes a member of the Company on the date of entry of his or her name in the Register.

### **10. Register of Members**

10.1 A register of members of the Company must be kept in accordance with the *Corporations Act*.

10.2 The following must be entered in the Register in respect of each member:

- (1) the full name of the member;
- (2) the address of the member;
- (3) the email address of the member;
- (4) the date of admission to and cessation of membership; and
- (5) such other information as the directors require.

10.3 Each member must notify the secretary in writing of any change in that person's name, address or email address within 1 month after the change.

10.4 All notices given in accordance with this constitution to the address or email address last notified shall be considered fully received.

### **11. Joining Fees and Subscriptions**

11.1 Until the members otherwise resolve, with the prior written approval of the University, no joining fee, subscription or levy is payable by any member of the Company.

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## **12. Guarantee**

- 12.1 Every member of the Company undertakes to contribute such amount as may be required, not exceeding \$20, to the property of the Company if it is wound up while the member is a member of the Company, or within 1 year after the member ceases to be a member of the Company, for payment:
- (1) of the debts and liabilities of the Company (contracted before the member ceases to be a member of the Company);
  - (2) of the costs, charges and expenses of winding up; and
  - (3) for the adjustment of the rights of the contributories among themselves.

## **PART 3 - CESSATION OF MEMBERSHIP**

### **13. Resignation**

- 13.1 A member may resign from membership of the Company by giving written notice to the secretary.
- 13.2 The resignation of a member is deemed to take effect from the date of receipt of the notice of resignation or such later date as is provided in the notice.

### **14. Death of Member**

- 14.1 A member ceases to be a member on the member's death.

### **15. Termination of Membership by the University**

- 15.1 The membership of any member may be terminated for any reason whatsoever by the University at any time by notice in writing to the member and to the Company.
- 15.2 Any such notice must be given under the hand of the University Secretary or some other person authorised for that purpose by the University.
- 15.3 Any such notice may be given to the member affected by:
- (1) serving the notice at the address of the member last known to the University; or

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- (2) serving the notice at the address for service of notices in accordance with this constitution.

## **16. Effect of Cessation of Membership**

- 16.1 If any member ceases to be a member within the provisions of this constitution the member remains liable to pay to the Company any moneys whatsoever which, at the time of the member ceasing to be a member, the member owes to the Company on any account whatsoever and for any sum not exceeding \$20 for which the member is liable under rule 12.

## **PART 4 - GENERAL MEETINGS**

### **17. Convening of General Meetings**

- 17.1 Except as permitted by law a general meeting, to be called the “annual general meeting”, must be held at least once in every calendar year.
- 17.2 Any 3 directors may call a general meeting whenever they think fit, by providing written notice to the secretary signed by each of them.
- 17.3 Except as provided in sections 249D, 249E or 249F of the *Corporations Act*, no member or members may call a general meeting.
- 17.4 All general meetings are to be held at the time and place as the directors determine, subject to the provisions of this constitution and the *Corporations Act*.
- 17.5 General meetings may be held at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

### **18. Notice of General Meetings**

- 18.1 Subject to the provisions of the *Corporations Act* as to short notice, not less than 21 days’ notice of a general meeting must be given in writing to those persons who are entitled to receive notices from the Company.
- 18.2 The Company must give written notice of a general meeting of the Company:
- (1) individually to each member entitled to vote at the meeting;
  - (2) to each director; and
  - (3) to the Company's auditor.

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18.3 A notice of a general meeting must:

- (1) set out the place, date and time for the meeting;
- (2) state the general nature of the business of the meeting;
- (3) 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
- (4) contain a statement setting out the following information:
  - (a) that the member has a right to appoint a proxy; and
  - (b) that the proxy need not be a member of the Company.

18.4 The Company may give the notice of meeting to a member:

- (1) personally;
- (2) by sending it by post to the address for the member in the Register or the alternative address, if any, nominated by the member; or
- (3) by sending it to the email address, if any, nominated by the member.

18.5 A notice of a general meeting sent by post is taken to be given 2 business days after it is posted. A notice of meeting sent by email is taken to be given on the business day after it is sent.

18.6 A notice of meeting given to a member or the Company under rule 18.2 is not effective if:

- (1) in the case of service by email, the Company's or the member's (as applicable) computer reports that delivery has failed; or
- (2) in either case the addressee notifies the Company or the member (as applicable) immediately that the notice was not fully received in a legible form.

18.7 A certificate signed by a manager, secretary or other officer of the Company or the member (as applicable) that the notice was posted or given in accordance with this rule is conclusive evidence of the matter.

18.8 Subject to the *Corporations Act* and this constitution, where a specified number of days' notice or notice extending over any period is required to be given, the day of service is excluded, and the day upon which the notice expires is included.

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## **19. Accidental Omission to Give Notice**

- 19.1 The accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under these rules or the accidental omission to advertise (if necessary) the meeting does not invalidate the proceedings at or any resolution passed at the meeting.

## **20. Postponement of General Meetings**

- 20.1 The directors may postpone the holding of any general meeting whenever they think fit (other than a meeting requisitioned by members pursuant to the *Corporations Act*) for not more than 21 days after the date for which it was originally called.
- 20.2 Whenever any meeting is postponed (as distinct from being adjourned under rule 23 or rule 25) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

## **PART 5 - PROCEEDINGS AT GENERAL MEETINGS**

### **21. Business of an Annual General Meeting**

- 21.1 The business of an annual general meeting must include the following, even if not referred to in the notice of meeting:
- (1) the consideration of the annual financial report, the directors' report and the auditor's report;
  - (2) the appointment of directors;
  - (3) the appointment of the auditor; and
  - (4) the fixing of the remuneration of the auditor.
- 21.2 The chairperson of the annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the Company.
- 21.3 If the auditor or the auditor's representative is at the meeting, the chairperson of an annual general meeting must allow a reasonable opportunity to ask the auditor

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or that representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

## **22. Quorum**

- 22.1 No business may be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. The quorum must be present at all times during the meeting.
- 22.2 The quorum for a general meeting of the Company is 75% of members present and entitled to vote and, of those members, the majority must have been appointed by the University.

## **23. Absence of Quorum**

- 23.1 If a quorum is not present within 15 minutes after the time appointed for the meeting:
- (1) where the meeting was convened by the members or upon the requisition of members, the meeting is dissolved; or
  - (2) in any other case, the meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things the meeting is adjourned:
    - (a) if the date is not specified, to the same day in the next week;
    - (b) if the time is not specified, to the same time; and
    - (c) if the place is not specified, to the same place.
- 23.2 If no quorum is present at the resumed meeting referred to in rule 23.1(2) within 15 minutes after the time for the meeting, the meeting is dissolved.

## **24. Chairperson**

- 24.1 If the University has nominated a director appointed under rule 36.1 as chairperson of meetings of the directors, that person presides as chairperson at every general meeting.
- 24.2 Where a general meeting is held and:
- (1) a chairperson has not been appointed as provided by rule 24.1; or

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- (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 deputy-chairperson of the Company, if any, presides or, if there is no deputy-chairperson or the deputy-chairperson is not present or is unwilling to act, the members present must appoint another director or, if no director is present or willing to act, then the members present must appoint any 1 of their number to be chairperson of the meeting.

## **25. Adjournment of Meetings**

- 25.1 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.
- 25.2 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- 25.3 Only unfinished business is to be transacted at a meeting resumed after an adjournment.
- 25.4 When a meeting is adjourned, a new notice of the resumed meeting must be given if the meeting is adjourned for 30 days or more.
- 25.5 Except as provided by rule 25.4, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## **PART 6 - VOTING AT GENERAL MEETINGS**

### **26. Voting Rights**

- 26.1 At any general meeting of members each member present has 1 vote on a show of hands and on a poll.

### **27. Method of Voting**

- 27.1 A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded.
- 27.2 On a show of hands a declaration by the chairperson is conclusive of the result.
- 27.3 Neither the chairperson nor the minutes of the meeting need to state the number or proportion of the votes recorded in favour or against.



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## **28. Conduct of a Poll**

- 28.1 A poll may be demanded on any resolution.
- 28.2 A poll may be demanded by:
- (1) at least 2 members entitled to vote on the resolution; or
  - (2) the chairperson of the meeting.
- 28.3 The poll may be demanded:
- (1) before a vote is taken;
  - (2) before the voting results on a show of hands are declared; or
  - (3) immediately after the voting results on a show of hands are declared.
- 28.4 A poll demanded on a matter other than the election of a chairperson or the question of adjournment must be taken when and in the manner the chairperson directs.
- 28.5 A poll demanded on the election of a chairperson or on the question of an adjournment must be taken immediately.
- 28.6 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.
- 28.7 A demand for a poll may be withdrawn.

## **29. Casting Vote**

- 29.1 In the case of an equality of votes, 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 has a casting vote in addition to his or her deliberative vote, if any.
- 29.2 The chairperson has a discretion both as to use of the casting vote and as to the way in which it is used.

## **30. Objections to Exercise of Voting Rights**

- 30.1 A challenge to a right to vote at a general meeting may only be made at the meeting at which the vote objected to is given or tendered.

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30.2 The challenge must be determined by the chairperson of the meeting, whose decision is final.

30.3 A vote not disallowed following the challenge is valid for all purposes.

## **PART 7 - PROXIES**

### **31. Appointment of Proxy**

31.1 A member may appoint 1 person as the proxy of the member to attend and vote for the member at the general meeting.

31.2 A proxy need not be a member.

### **32. Rights of Proxies**

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

- (1) to speak at the meeting;
- (2) to vote (but only to the extent allowed by the appointment) on a show of hands and on a poll; and
- (3) to join in a demand for a poll.

32.2 The authority of a proxy to speak and vote for a member at a general meeting is suspended while the member is present at the meeting.

### **33. Appointing a Proxy**

33.1 An appointment of a proxy is valid if it is:

- (1) signed by the member making the appointment;
- (2) is either:
  - (a) in the form determined by the directors; or
  - (b) contains the following information:
    - (i) the member's name and address;
    - (ii) the name of the Company;

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(iii) the name of the proxy or the name of the office held by the proxy; and

(iv) the meetings at which the appointment may be used.

33.2 An appointment of a proxy may be a standing appointment.

33.3 An undated appointment is taken to have been dated on the day it is given to the Company.

33.4 An appointment may specify the way the proxy is to vote on a particular resolution.

33.5 A later appointment of a proxy revokes an earlier one.

#### **34. Proxy Documents**

34.1 For an appointment of a proxy for a general meeting to be effective, the following documents must be received by the Company at least 48 hours before the meeting:

(1) the proxy's appointment; and

(2) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.

34.2 If a general meeting 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.

34.3 The Company receives an appointment when it is received at any of the following:

(1) at the registered office of the Company; or

(2) a place or email address specified for the purpose in the notice of meeting.

#### **35. Validity of Proxy Vote**

35.1 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 the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

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35.2 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:

- (1) the appointing member dies;
- (2) the member is mentally incapacitated;
- (3) the member revokes the proxy's appointment; or
- (4) the member revokes the authority under which the proxy was appointed by a third party.

## **PART 8 - BOARD OF DIRECTORS**

### **36. Constitution of the Board**

36.1 Until such time as it is determined otherwise by the directors and confirmed by a special resolution of the Company in general meeting, the board consists of 5 persons appointed by the University in accordance with rule 37.

36.2 Each director appointed under rule 37.1(2) may, to the extent permitted by law, act in good faith in the best interests of the University, and if the director does so, the director shall be taken to act in good faith in the best interests of the Company.

36.3 All board appointments must be notified in writing to the secretary and accompanied by written consent of the appointee to act as a director.

### **37. Appointments by the University**

37.1 The persons to be appointed by the University in accordance with rule 36.1 must be:

- (1) 2 persons who are independent from the University; and
- (2) 3 persons who are nominated representatives of the University.

37.2 The University may nominate one of the persons under rule 36.1 to be the Chairperson of the directors' meetings.

### **38. Role of the Chief Executive Officer in board meetings**

38.1 Unless the Chairperson or the board determines otherwise, the Chief Executive Officer will be a standing invitee to board meetings for information purposes only.

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For avoidance of doubt, the Chief Executive Officer will not have any voting rights and the Chief Executive Officer is not required to be a director of the Company.

### **39. Tenure of Appointment**

- 39.1 All board appointments may be revoked in writing by the University with immediate effect unless the notice specifies otherwise.
- 39.2 Each board member will be elected for 4 years and may be reappointed for a second term of 4 years.
- 39.3 No person may be a member of the board for more than 8 years in the aggregate, provided that the University may extend that period for any person at its discretion.
- 39.4 Each appointed member of the board referred to in rules 36 and 371.1 holds office until:
- (1) his or her appointment has been revoked in writing by the University; or
  - (2) he or she otherwise ceases to be a director in accordance with this constitution.
- 39.5 Notwithstanding any other provision of this Constitution, the current directors in office at the date of adoption of this constitution shall only be entitled to serve a maximum of 8 years in office (inclusive of any time served in office prior to the date of adoption). This transitional clause shall cease to have effect upon the expiration of the term of office of the last of the current directors.

## **PART 9 - CHIEF EXECUTIVE OFFICER**

### **40. Power to Appoint**

- 40.1 The directors may from time to time appoint any person to be the Chief Executive Officer of the Company either for a fixed term (but not for life) or without fixing any term and otherwise subject to such conditions, limitations and restrictions as the directors may determine.

### **41. Qualifications**

- 41.1 A Chief Executive Officer is subject to the provisions of any contract between him or her and the Company and to this constitution.

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## **42. Temporary Appointments**

42.1 If the Chief Executive Officer becomes at any time in any way incapable of acting as such the directors may appoint:

- (1) any one of their number to act as Acting Chief Executive Officer during his or her term as Acting Chief Executive Officer; or
- (2) any other person to act as Acting Chief Executive Officer .

## **43. Removal or Dismissal**

43.1 Subject to any contract between him or her and the Company the directors at any time may remove or dismiss the Chief Executive Officer from his or her office and appoint another in his or her place.

## **44. Powers**

44.1 The directors may from time to time entrust to and confer upon the Chief Executive Officer for the time being such of the powers exercisable under this constitution as they think expedient and they may from time to time revoke, suspend withdraw, alter or vary all or any of such powers. The Chief Executive Officer is subject to the control of the directors.

## **45. Remuneration**

45.1 Subject to the provisions of any contract between the Company and the Chief Executive Officer, the remuneration of the Chief Executive Officer is from time to time fixed by the board and may be by way of fixed salary, flexible packaging or any other form determined by the board. However, the remuneration must not be by way of commission on or percentage of operating revenue of the Company or its profits and unless otherwise determined by the Company in general meeting may be in addition to the remuneration, if any, which he or she may receive as a director of the Company.

## **PART 10 - HOLDING OF OFFICE**

### **46. Casual Vacancy in Appointed Board Members**

46.1 The University is entitled under rule 36.1 to appoint a member to the board has power at any time and from time to time to appoint a person pursuant to rule 36.1 to fill a casual vacancy occurring in respect of the appointment.

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## **47. Vacation of Office**

47.1 The office of any member of the board becomes vacant if the member:

- (1) ceases to be a member of the board by virtue of the *Corporations Act*;
- (2) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (3) becomes prohibited from being a director of a Company by reason of any order made under the *Corporations Act*;
- (4) becomes mentally incapacitated or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (5) resigns his or her office by notice in writing to the Company;
- (6) dies;
- (7) if a director is absent from 4 consecutive meetings, without the prior leave of the board, or, where no such leave is granted, the board is not satisfied that such absence was justified in all the circumstances;  
or
- (8) reaches the stage of having served as director for aggregate terms of 8 years, subject to the University's power of extension under rule 39.3.

## **PART 11 - REMUNERATION OF DIRECTORS**

### **48. Remuneration of Directors**

- 48.1 Directors appointed in accordance with clause 37.1(2) shall not be remunerated or receive a director's fee for their services.
- 48.2 The directors are paid out of the funds of the Company as fees for their ordinary services as directors such sum, if any, as may from time to time be determined by a special resolution of the members in general meeting.
- 48.3 Such fees must be a fixed sum, a flexible package or any other form but not by a commission on or percentage of the operating revenue of the Company or of any other company in which the Company is interested or its profits.

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48.4 The sum so fixed must be determined in respect of each director or must be an aggregate sum to be divided amongst the directors in such proportion and manner as they shall from time to time agree or, in default of agreement, equally.

48.5 The fees of each director for his or her ordinary services are deemed to accrue from day to day and must be apportionable accordingly.

**49. Increases in Remuneration**

49.1 In the event of a proposal to increase the fees of the directors for their ordinary services the notice calling the general meeting at which such increase is to be proposed must state the amount of the proposed increase and the maximum sum that may be paid.

**50. Cancellation, Suspension, Reduction or Postponement**

50.1 A resolution of directors cancelling, suspending, reducing or postponing payment of such remuneration or any part thereof shall bind all the directors for the time being.

**51. Payment of Expenses**

51.1 All directors are entitled to be paid their travelling and other expenses incurred in connection with their attendance at board meetings and otherwise in the execution of their duties as directors.

**52. Payment for Extra Services**

52.1 Any director who being willing is called upon to perform extra services or to make any special exertions or to undertake any executive or other work for the Company beyond his or her ordinary duties for any of the purposes of the Company shall be remunerated either by a fixed sum, a salary or as otherwise may be determined by the directors and such remuneration may be either in addition to or in substitution for his or her share in the remuneration, if any, above provided.



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## **PART 12 - POWERS AND DUTIES OF DIRECTORS**

### **53. General Business Management**

- 53.1 Subject to the *Corporations Act* and to any other provision of this constitution, the business of the Company is to be managed by or under the direction of the directors.
- 53.2 The directors may exercise all the powers of the Company except any powers that the *Corporations Act* or this constitution requires the Company to exercise in general meeting.
- 53.3 No rule made or resolution passed by the Company in general meeting can invalidate any prior act of the directors which would have been valid if that rule or resolution had not been made or passed.
- 53.4 Notwithstanding any provision to the contrary in this Constitution, no resolution or other decision of the directors to do any of the following is valid and binding on the Company until the resolution or decision has been ratified by the University:
- (1) undertaking any of the activities specified in rules 3.2(3), 3.2(4) or 3.2(5);
  - (2) ceasing, or materially altering the, the Company's activities and operations, or commencing any material new activities or operations;
  - (3) the borrowing of funds other than from the University;
  - (4) the making of loans, or otherwise providing financial accommodation, to or for the benefit of any director;
  - (5) the provision of any benefit to a director, as a director, other than remuneration in accordance with rule 48; or
  - (6) the winding up of the Company.

### **54. Special Directors' Resolutions**

- 54.1 Notwithstanding any other provision of this constitution, each of the matters listed below requires a Special Directors' Resolution:
- (1) approvals in accordance with rules 3.2(1), 3.2(3), 3.2(4) and 3.2(5) of this constitution;

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- (2) fundamental changes in the nature or scale of the business of the Company; and
  - (3) the Company entering into any significant new business ventures.

## **55. Conferment of Powers**

- 55.1 The directors may from time to time confer upon any director for the time being or such other person as they may select such of the powers exercisable under these rules by the directors as they may think fit for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they think expedient.
- 55.2 The directors may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the directors in that behalf, and may from time to time revoke, withdraw, alter or vary all or any of such powers.
- 55.3 Nothing in this rule permits a director upon whom powers are conferred thereby from conferring such powers on any other person.

## **56. Borrowing Powers**

- 56.1 Without limiting the generality of rules 53.1 and 55, but subject to rule 53.3, the directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

## **57. Negotiable Instruments**

- 57.1 Any 2 directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 57.2 The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

## **58. Appointment of Attorney**

- 58.1 The directors may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors), for the period and subject to the conditions they think fit.

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- 58.2 Any power of attorney may contain those provisions for the protection and convenience of persons dealing with the attorney that the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

## **PART 13 - PROCEEDINGS OF DIRECTORS**

### **59. Meetings of Directors**

- 59.1 The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- 59.2 The minutes of any meeting of the directors must state the method of meeting and the persons present.

### **60. Convening of Meeting**

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

### **61. Notice of Meeting**

- 61.1 Notice of every directors' meeting must be given to each director except that it is not necessary to give notice of a meeting of directors to any director who:
- (1) has been given special leave of absence; or
  - (2) is absent from Australia and has not left an email address at which he or she may be given notice.
- 61.2 Any notice of a meeting of directors may be given in writing or orally, and whether by telephone, email or any other means of communication.

### **62. Quorum**

- 62.1 At a meeting of directors, the number of directors whose presence is necessary to constitute a quorum is 3 directors who are entitled to vote on each of the resolutions put to the meeting including:
- (1) 2 directors appointed by the University under rule 37.1(2); and
  - (2) 1 independent director appointed by the University under rule 37.1(1).

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### **63. Chairperson at Directors' Meetings**

63.1 The director nominated by the University under rule 37.2 will act as chairperson of meetings of the directors.

63.2 At a meeting of directors if

- (1) the chairperson has not been nominated as provided by rule 37.2; or
- (2) 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 appoint 1 of their number to be chairperson of the meeting.

63.3 The chairperson may appoint a deputy chairperson who in the absence of the chairperson at a meeting of the directors may exercise all the powers and authorities of the chairperson.

### **64. Voting**

64.1 Subject to this constitution, questions arising at a meeting of directors are decided by a majority of votes of directors present and voting and any such decision is for all purposes taken to be a decision of the directors.

64.2 In case of an equality of votes, the chairperson of the meeting, in addition to his or her deliberative vote (if any), has a casting vote. The chairperson has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.

### **65. Use of Technology**

65.1 A meeting of the board may be called or held using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw his or her consent within a reasonable period before the meeting.

### **66. Teleconference Meeting of Directors**

66.1 Without limiting rule 65, for the purpose of this constitution the contemporaneous linking together in oral communication by telephone, audio-visual or other instantaneous means ("telecommunication meeting") of a number of the directors being not less than a quorum is deemed to constitute a meeting of the directors. All the provisions of this constitution relating to a meeting of the directors apply to a telecommunication meeting in so far as they are not inconsistent with the

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provisions of this rule. The following provisions apply to a telecommunication meeting:

- (1) all the directors for the time being entitled to receive notice of a meeting of the directors are entitled to notice of a telecommunication meeting;
- (2) all the directors participating in the meeting must be linked by telephone, audio-visual or other instantaneous means for the purpose of the meeting;
- (3) notice of the meeting may be given by telephone or email;
- (4) each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part at the commencement of the meeting and each director so taking part is deemed for the purposes of these rules to be present at the meeting; and
- (5) at the commencement of the meeting each director must announce his or her presence to all the other directors taking part in the meeting.

66.2 If the secretary is not present at a telecommunication meeting one of the directors present must take minutes of the meeting.

66.3 A director may not leave a telecommunication meeting by disconnecting his or her telephone, audio-visual or other communication equipment unless that director has previously notified the chairperson of the meeting.

66.4 A director is conclusively presumed to have been present and to have formed part of a quorum at all times during a telecommunication meeting unless that director has previously obtained the express consent of the chairperson to leave the meeting.

66.5 A minute of the proceedings of a telecommunication meeting is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified to be a correct minute by the chairperson of the meeting.

## **67. Circulated Resolutions**

67.1 If all the directors at that time present in Australia and any director absent from Australia who has left an email address at which he or she may be given notice have signed a document containing a statement that they are in favour of a resolution of the directors in terms set out in the document, a resolution in those

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terms is taken to have been passed at a meeting of the directors held on the day on which the document was signed and at the time at which the document was last signed by a director or, if the directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a director.

- 67.2 For the purposes of this rule, 2 or more separate documents containing statements in identical terms each of which is signed by 1 or more directors are taken together to constitute 1 document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.
- 67.3 A reference in this rule to all the directors does not include a reference to a director who, at a meeting of directors, would not be entitled to vote on the resolution.
- 67.4 Every resolution passed under this rule must as soon as practicable be entered in the minutes of the directors' meetings.
- 67.5 An email or similar means of communication addressed to or received by the Company and purporting to be signed by or, in the case of an email is stated to be sent by, a director for the purpose of these rules is taken to be a document in writing signed by that director.

## **68. Validation of Acts of Directors**

- 68.1 All acts done at any meeting of directors or of a committee of directors or by any person acting as a director are, although it is afterwards discovered that there was some defect in the appointment or continuance in office of any of the persons concerned or that any of them were disqualified or were not entitled to vote, as valid as if each of them had been duly appointed and had duly continued in office and was qualified to be a director and was entitled to vote.

## **PART 14 - COMMITTEES**

### **69. Appointment of Committees**

- 69.1 The board may appoint committees for any purpose whatever which from time to time it may think desirable and to delegate to any such committee such powers as it may think fit not being duties imposed on the board as the directors of the Company by the *Corporations Act* or the general law.

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## **70. Membership and Powers of Committees**

- 70.1 Each committee must have at least 1 member of the board as a member of that committee.
- 70.2 The chairperson is an ex-officio member of all committees.
- 70.3 Any committee so formed must in the exercise of the powers so delegated conform to any rules and regulations that may be imposed on it by the board from time to time.

## **71. Co-option of Advisers**

- 71.1 The board and any committee may also co-opt advisers but such advisers do not have a vote.

## **72. Chairperson of Committee**

- 72.1 The chairperson of a meeting of a committee is the person nominated as chairperson by the board or if not so nominated, the member of the board who is a member of the committee pursuant to rule 70.1 (or if more than 1, one of their number as determined by them) but if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting, the chairperson of the Company, if present, is the chairperson and if not present the members present may choose one of their number to be chairperson of the meeting.

## **73. Meetings of Committees**

- 73.1 The meetings and proceedings of any committee are governed by the provisions of this constitution for regulating the meetings and proceedings of the board so far as the same are applicable thereto and are not superseded by any rule or regulation made by the board.
- 73.2 A committee may meet and adjourn as it thinks proper.
- 73.3 Questions arising at any meeting will be determined by a majority of votes of the members of the committee entitled to vote at the meetings of the committee who are present.
- 73.4 In the case of any equality of votes, the chairperson in addition to his or her deliberative vote, if any, has a casting vote.

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73.5 Unless otherwise specified in the minute of the board meeting appointing the committee the quorum of all committees consists of a majority of the members of such committee.

## **PART 15 - DIRECTORS' INTERESTS**

### **74. Prohibition on Being Present or Voting**

74.1 Except to the extent permitted by the *Corporations Act* a director who has a material personal interest in a matter that is being considered at a meeting of directors:

- (1) must not be counted in a quorum;
- (2) must not vote on the matter; and
- (3) must not be present while the matter is being considered at the meeting.

74.2 If a director who has a material personal interest in a matter that is being considered at a meeting of the directors is not prohibited by the *Corporations Act* from being present at the meeting and voting, the director may be present, be counted in the quorum and may be heard but may not vote on the matter.

### **75. Existence of Interest**

75.1 A director may to the extent permitted by the *Corporations Act*:

- (1) enter into contracts or arrangements or have dealings with the Company either as vendor, purchaser, mortgagee or otherwise; or
- (2) be interested in any contract, operation, undertaking or business entered into undertaken or assisted by the Company or in which the Company is or may be interested.

75.2 The director is not because of entering into any relationship or transaction referred to in this rule:

- (1) disqualified from the office of director; or
- (2) liable to account to the Company for any profit arising from the relationship or transaction by reason of being a director of the Company or of the fiduciary relationship between the director and the Company.



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- 75.3 For the purpose of this rule “Company” includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

## **76. Disclosure of Interest**

- 76.1 The nature of the director's interest as referred to in rule 74.1 must be disclosed by the director before or at the meeting of directors at which the question of entering into the contract or arrangement is first taken into consideration if the interest then exists or in any other case at the first meeting of the directors after the director becomes so interested.
- 76.2 It is the duty of a director of the Company who is in any way whether directly or indirectly interested in a contract or proposed contract with the Company to declare the nature of his or her interest in accordance with the provisions of the *Corporations Act*.
- 76.3 It is the duty of a director of the Company who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as director to declare the fact and the nature, character and extent of the conflict in accordance with the provisions of the *Corporations Act*.

## **PART 16 - INADVERTENT OMISSIONS**

### **77. Formalities Omitted**

- 77.1 If some formality required by these rules is inadvertently omitted or is not carried out the omission does not invalidate any resolution, act, matter or thing which but for the omission would have been valid unless it is proved to the satisfaction of the directors that the omission has directly prejudiced any member financially. The decision of the directors is final and binding on all members.

## **PART 17 - SECRETARY**

### **78. Terms of Office of Secretary**

- 78.1 A secretary of the Company holds office on the terms and conditions including, as to remuneration, that the directors determine.

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## **PART 18 - MINUTES**

### **79. Minutes to be Kept**

79.1 The directors must carry out the obligations imposed on the Company by the *Corporations Act* to cause:

- (1) minutes of all proceedings of general meetings and of meetings of its directors to be entered, within 1 month after the relevant meeting is held, in books kept for that purpose; and
- (2) those minutes to be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

79.2 Without limiting this rule the directors must cause minutes to be made of:

- (1) all appointments of officers and executive employees;
- (2) the names of the directors present at all meetings of directors and the Company; and
- (3) the method by which a meeting of directors was held.

## **PART 19 - EXECUTION OF INSTRUMENT**

### **80. Execution of Documents**

80.1 The Company may execute an agreement if the agreement is signed by

- (1) 2 directors of the Company; or
- (2) a director and a company secretary of the Company.

The same person may not sign in the dual capacities of director and secretary.

80.2 This rule does not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Company.

80.3 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with the process for executing agreements.

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## **PART 20 - ACCOUNTS, AUDIT AND RECORDS**

### **81. Accounts**

- 81.1 The directors must cause proper accounting and other records to be kept in accordance with the *Corporations Act*.
- 81.2 The directors must distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) as required by the *Corporations Act*.

### **82. Audit**

- 82.1 A registered company auditor must be appointed.
- 82.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the *Corporations Act*.

### **83. Rights of Inspection**

- 83.1 Subject to the *Corporations Act* the directors determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them are open to the inspection of members other than directors, and a member other than a director does not have the right to inspect any document of the Company except as provided by the *Corporations Act* or authorised by the directors or by the Company in general meeting.

## **PART 21 - NOTICES**

### **84. Service of Notices**

- 84.1 A notice may be given by the Company to any member and nominated representative of any corporate member either by serving it on the member or nominated representative personally or by sending it by post or email to the member or nominated representative at the address shown in the Register or the address or email address supplied by the member or nominated representative to the Company for the giving of notices.

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## **85. Method of Service**

- 85.1 If a notice is sent by post, service of the notice is taken to be effected by properly addressing, prepaying and posting a letter containing the notice, and to be effected, subject to rule 18.5, on the next business day after the date of its posting.
- 85.2 If a notice is sent by email, service of the notice is taken to be effected by properly addressing the email and transmitting it to the email address supplied to the Company for that purpose and to be effected on the next business day after the date of its transmission.
- 85.3 For the purpose of this rule and rule 18.5 “business day” means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where the Company has its registered office.

## **86. Persons Entitled to Notice of General Meeting**

- 86.1 Notice of every general meeting must be given in the manner authorised by rule 85 to:
- (1) every director;
  - (2) every member;
  - (3) every nominated representative of a corporate member; and
  - (4) the auditor for the time being of the Company.
- 86.2 No other person is entitled to receive notice of general meetings.

## **PART 22 - INDEMNITY AND INSURANCE**

### **87. Indemnity**

- 87.1 To the extent permitted by the *Corporations Act*, the Company indemnifies:
- (1) every person who is or has been an officer of the Company; and
  - (2) where the board of directors considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Company;

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against any liability incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be):

- (3) to any other person (other than the Company or a related body corporate) unless the liability arises out of conduct involving a lack of good faith; and
- (4) for costs and expenses:
  - (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; and
  - (b) in connection with an application in relation to those proceedings, in which the Court grants relief to the person under the *Corporations Act*.

## **88. Insurance**

88.1 The Company may, where the board of directors considers it appropriate to do so, pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company against any of the following liabilities incurred by the person as such an officer, namely:

- (1) any liability which does not arise out of conduct involving:
  - (a) a wilful breach of duty in relation to the Company; or
  - (b) without limiting this rule, a contravention of section 232(5) or section 232(6) of the *Corporations Act*; and
- (2) any liability for costs and expenses incurred by the person in defending proceedings, whether civil or criminal, whatever their outcome, and without the qualifications set out in this rule.

88.2 In the case of a director, any premium paid pursuant to this rule is paid in addition to remuneration paid to that director by the Company pursuant to these rules.

## **89. Director Voting on Contract of Insurance**

89.1 Despite anything in these rules, a director is not precluded from voting in respect of any contract or proposed contract of insurance merely because the contract

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insures or would insure the director against a liability incurred by the director as an officer of the Company or of a related body corporate.

## **PART 23 - WINDING UP**

### **90. Winding Up**

90.1 The Company must be wound up if:

- (1) the member(s) resolve that the Company should be wound up; or
- (2) the Company is required to be wound up at law.

90.2 If the Company is wound up, any surplus assets must not be distributed to a member or a former member of the Company, unless that member or former member is a Registered Charity that meets the requirements of clause 90.3.

90.3 Subject to the Corporations Act, any other applicable Act and any court order, any surplus assets that remain following the winding up of the Company must be given or transferred to one or more Registered Charities which are:

- (1) required to pursue charitable purpose(s) that are similar to, or inclusive of, the Purpose;
- (2) required to apply its profits (if any) or other income in promoting its charitable purpose(s); and
- (3) prohibited from making any distribution of surplus assets to its members to at least the same extent as the Company:
  - (a) such organisation(s) to be the University (provided that the University is a Registered Charity); or
  - (b) otherwise, to be determined by a special resolution of members at or before the time of winding up and in default, by application to the Supreme Court of New South Wales for determination.

### **91. Relationship with the University**

91.1 The Company may enter into agreements with the University from time to time for purposes consistent with achieving the objects of the Company.