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Constitution

**CORPORATIONS ACT 2001
COMPANY LIMITED BY GUARANTEE NOT HAVING A SHARE CAPITAL**

Bushfire CRC Limited

Affiliated offices
Adelaide, Brisbane, Colombo, Dubai,
Hong Kong, Jakarta, Kuala Lumpur,
Manila, Mumbai, New Delhi, Perth,
Singapore, Sydney, Tianjin

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Constitution

CORPORATIONS ACT 2001

A COMPANY LIMITED BY GUARANTEE NOT HAVING A SHARE CAPITAL

BUSHFIRE COOPERATIVE RESEARCH CENTRE LIMITED

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Constitution:

"A" Class Member has the meaning given to it in Item 3 of Schedule 2;;

Act means the *Corporations Act 2001* and any statutory modification or substitution of the Act;

Annual Meeting means the annual general meeting of Members;

Auditor means the auditor of the Company appointed by the Governing Board or otherwise;

Business Day in relation to the doing of any action in a place, means a weekday other than a public holiday in that place;

By-Laws and **Rules** mean by-laws and rules made under this Constitution;

Centre IP has the meaning defined in the Participants Agreement;

Company means Bushfire Cooperative Research Centre Limited ACN 103 943 755;

Commencement Date means the date of adoption of this Constitution by the Company;

Commercialisation has the meaning given to that term in the Participants Agreement and **Commercialise** has a corresponding meaning;

Commonwealth Agreement means the agreement described as such between the Commonwealth of Australia and the Company dated 14 July 2010, relating to the management, operation and funding of the Company;

Constitution means this Constitution;

CRC Program means the Program referred to in Background A of the Participants Agreement;

Department of Sustainability, Environment, Water, Population and Communities.

means the Commonwealth department so named or its successor department;

Director means a director of the Company;

Eligible Member means a Member that is considered an eligible member under clause 21.2.1;

Extraordinary Meeting means a General Meeting of Members other than an Annual Meeting;

Financial Year means the financial year of the Company, being the period ending 30 June in each year;

General Meeting means any general meeting of the Company, being either an Annual Meeting or an Extraordinary Meeting;

Governing Board means the governing board of Directors of the Company ;

Independent Chairperson the chairperson of the Governing Board as described in clause 21.3;

Liability means costs, losses, liabilities and expenses;

Member means a person admitted to membership of the Company in accordance with this Constitution and includes Ordinary Members and "A" Class Members;

Month means calendar month;

Office means the registered office of the Company;

Officer has the same meaning as given in the Act;

Ordinary Member has the meaning given to it in Item 3 of Schedule 2;

Participant means a party to the Participants Agreement other than the Company;

Participants Agreement means the agreement between the Participants and the Company dated 14 July 2010;

Register means the register of Members kept in accordance with the Act;

Registered Address means the address of a Member shown in the Register;

Representative means a person appointed as such under clause 14;

Simple Majority means:

- (a) in relation to a meeting of the Governing Board, a majority that together holds more than 50% of the total voting rights of all Directors present and entitled to vote at a meeting of the Governing Board;
- (b) in relation to a General Meeting, a majority that together holds more than 50% of the total voting rights of all Members present and entitled to vote at the General Meeting.

Special Majority means:

- (a) in relation to a meeting of the Governing Board, a majority that together holds 75% or more of the total voting rights of all Directors present and entitled to vote at the meeting of the Governing Board;
- (b) in relation to a General Meeting, a majority that together holds 75% or more of the total voting rights of all Members present and entitled to vote at the General Meeting.

Secretary means any person or persons appointed by the Governing Board to perform the duties of Company secretary or public officer;

Subscription means the annual contribution to be made by a Member to the Company as described in clause 10;

Utilise has the meaning given to that term in the Participants Agreement and **Utilisation** has a corresponding meaning; and

Voting Contribution means:

- (a) for Members making a cash only contribution, a cash contribution of \$100,000;
- (b) for Members making only in-kind contributions, in-kind contributions altogether valued at \$200,000;
- (c) for Members making a combination of cash and in-kind contributions, where the cash contribution plus 50% of the total value of the in-kind contributions is equal to \$100,000,

or such other amount or contribution as may be determined by the Governing Board from time to time.

1.2 Interpretation

1.2.1 Persons

In this Constitution, a reference to a person includes a firm, partnership, joint venture, association, corporation or other corporate body.

1.2.2 Legislation

In this Constitution, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

1.2.3 This Document, Clauses and Headings

In this Constitution:

- 1.2.3.1 a reference to this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 1.2.3.2 a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Constitution;

1.2.3.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form; and

1.2.3.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution.

1.2.4 **Business Day**

If a payment or other act is required by this Constitution to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

1.2.5 **Number and Gender**

In this Constitution, a reference to:

1.2.5.1 the singular includes the plural and vice versa; and

1.2.5.2 a gender includes the other genders.

2. NAME OF THE COMPANY

The name of the Company is Bushfire Cooperative Research Centre Limited.

3. OBJECTS

The objects of the Company are all or any of the following:

- 3.1 to operate as a non-profit scientific cooperative research centre (**Centre**) in the field of fire and emergency services research (**Field**) which pursues, leads and coordinates world class research and training relevant to the Field;
- 3.2 to increase the skills of persons already working in the Field and to train and equip new postgraduate and other students with skills and attributes to continue being productive in the Field;
- 3.3 to maximise the benefits of the research and education by:
 - 3.3.1 promoting a managed and cooperative approach to research and education; and
 - 3.3.2 ensuring the Participants, with their differing disciplines and backgrounds will, through their participation in the Centre, complement each other so that the benefits of their collaborative research and education will be greater than that of each Participant acting independently;
- 3.4 to carry out education activities in the Field for students and for the professional development of persons working in the Field;
- 3.5 to promote the objective of delivering significant economic, environmental and social benefits to Australia by supporting end-user driven research partnerships

- between publicly funded researchers and end-users to address clearly articulated, major challenges that require medium to long-term collaborative efforts;
- 3.6 maintaining the biodiversity of Australasia through improved fire and emergency management, and knowledge relating to bushfire and sustainable resource management;
 - 3.7 as an ancillary purpose, to Utilise Centre IP in such a manner as to ensure that the maximum benefit accrues to Australia, including Australian industry, the Australian environment and the Australian economy generally;
 - 3.8 to promote the objectives of the CRC Program;
 - 3.9 to raise funds by any lawful means for the achievement of its objects including, without limitation, securing funding from Federal, State or Local Government bodies and borrowing funds from any other source; and
 - 3.10 to do all other things and exercise all powers, rights and privileges as a natural person may do or exercise, for the purpose of furthering the above objects or that are incidental or convenient to such exercise of powers, rights and privileges.

4. REPLACEABLE RULES

Each of the provisions of the Act that would apply to the Company as a replaceable rule but for this clause is expressly displaced and does not apply to the Company.

5. APPLICATION OF INCOME

- 5.1 All of the income and property of the Company must be applied solely towards the promotion of the objects of the Company as set out in this Constitution and no portion of it may be paid or transferred, directly or indirectly by way of dividend bonus or otherwise to the Members or any of them.
- 5.2 Notwithstanding clause 5.1, the Company may make payments in good faith of remuneration to any Member, Officer or employee of the Company in return for any services rendered to the Company or for goods supplied in the ordinary and usual course of business where such payments form part of the Company's approved budget. Other payments to such persons can only be made with the approval of the Governing Board.
- 5.3 The Company must not make any payment to a Director for services rendered by that Director to the Company unless the provision of those services has the prior approval of the Governing Board, the amount payable is approved by a resolution of the Governing Board and is on reasonable commercial terms.
- 5.4 The Company must not make any payment to a Director in his or her capacity as an employee of the Company, in return for any services rendered by that employee to the Company, unless the terms of his or her employment have first been approved by a resolution of the Governing Board.
- 5.5 The Company may make payment of interest on money borrowed from any Member and make payment in respect of reasonable and proper rent for premises let by a Member to the Company.

6. ESTABLISHMENT OF THE PUBLIC FUND

- 6.1 A public fund called Bushfire Research Fund (fund) shall be maintained for the specific purpose of supporting the environmental objectives of the Company. The fund is established to receive all gifts of money or property for this purpose and any money received because of such gifts must be credited to its bank account. The fund must not receive any other money or property into its account and it must comply with Subdivision 30-E of the Income Tax Assessment Act 1997.
- 6.2 The principal purpose of the fund is to support the Company's environmental purposes described in clause 3 and particularly clauses 3.5 and 3.6.

7. MAINTENANCE OF THE PUBLIC FUND

- 7.1 The Company shall comply with any rules that the Federal Treasurer and Commonwealth Minister for Environmental Protection, Heritage and the Arts may make to ensure that gifts made to the fund are used only for its principal purpose.
- 7.2 Any allocation of funds or property to other organisations, bodies or persons must be made in accordance with the established purposes of the Company. It shall be the policy of the Company that it shall not seek to act as a mere conduit for the donation of money or property to other organisations, bodies or persons.
- 7.3 The fund must be operated on a not-for-profit basis.
- 7.4 Members of the public are to be invited to make gifts of money or property to the fund for the environmental purposes of the Company.
- 7.5 The following amounts must be deposited into the fund:
- (a) gifts of money and property donated for the purposes described in clause 3; and
 - (b) money and interest on donations, income derived from donated property, and money from the realisation of such property donated for the purposes described in clause 3.
- 7.6 The fund must not receive any money or property unless that money or property is deposited in accordance with clause 7.5.
- 7.7 The Company must maintain a separate bank account for the fund.
- 7.8 Receipts are to be issued in the name of the fund and proper accounting records and procedures are to be kept and used for the fund.
- 7.9 A Fund Management Committee of no fewer than three persons will administer the fund. The Fund Management Committee will be appointed by the Company. A majority of the members of the Fund Management Committee are required to be "Responsible Persons" as defined by the Department of Environment, Water, Heritage and the Arts.
- 7.10 Any release of monies from the fund assets must be authorised by the Fund Management Committee.

- 7.11 The management of and sale of fund assets must be authorised by the Fund Management Committee.
- 7.12 The Company will inform the Department of Environment, Water, Heritage and the Arts as soon as possible if:
- a) it changes its name or the name of the Bushfire Research Fund;
 - b) there is any change to the membership of the management committee of the Bushfire Research Fund; or
 - c) there has been any departure from the model rules for public funds located in the Guidelines to the Register of Environmental Organisations.
- 7.13 In the case of the winding up of the Bushfire Research Fund, any surplus assets are to be transferred to another fund with similar objectives that is on the Register of Environmental Organisations.
- 7.14 Statistical information requested by the Department of Environment, Water, Heritage and the Arts on donations to the Bushfire Research Fund will be provided within four months of the end of the Financial Year. An audited financial statement for the Company and the Bushfire Research Fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of public fund monies and the management of public fund assets.

8. LIABILITY OF MEMBERS

The liability of Members is limited to the extent of their contributions under clause 38.

9. ADMISSION AS A MEMBER

- 9.1 The number of Members with which the Company may be registered is unlimited.
- 9.2 The Members of the Company will be:
- 9.2.1 the persons, corporations or organisations who were Members at the Commencement Date; and
 - 9.2.2 any other persons, corporations or organisations whom or which the Directors admit to membership in accordance with this Constitution.
- 9.3 Applications for membership of the Company must:
- 9.3.1 be in writing;
 - 9.3.2 state the annual Subscription (cash and in-kind) that the applicant for membership agrees to contribute;
 - 9.3.3 be signed by the applicant; and
 - 9.3.4 be in a form approved by the Directors in their absolute discretion.
- 9.4 The Governing Board will consider each application for membership. Except as provided in clause 9.6, the Governing Board will decide:
- 9.4.1 whether to admit or reject the applicant; or

- 9.4.2 to ask the applicant to supply any evidence of eligibility that they consider reasonably necessary.
- 9.5 Any resolution to admit an applicant under clause 9.4 must be made by a Special Majority of all Directors present at the relevant Governing Board meeting.
- 9.6 The Directors must admit as a Member any applicant that is a Participant without the requirement for a Governing Board meeting.
- 9.7 If the Governing Board:
- 9.7.1 requires the further evidence under clause 9.4, a decision about the application will be deferred until this evidence has been supplied; and
- 9.7.2 rejects an application for membership, it will not be required to give reasons for the rejection.
- 9.8 Where an applicant is to be admitted as a Member, the class of that membership will be determined in accordance with Item 3 of Schedule 2.
- 9.9 As soon as practicable following acceptance of an application for membership, the Secretary will send the applicant written notice of the acceptance and request payment of the cash component of the applicant's first annual Subscription.
- 9.10 An applicant will become a Member of the Company on payment of the amount due under clause 9.9.
- 9.11 If an amount due under clause 9.9 is not paid within 30 days after the date the applicant is notified of acceptance, the Directors may cancel their acceptance of the applicant for membership of the Company.
- 9.12 The rights and privileges of every Member will be personal to each Member and will not be transferable by the Member or by operation of law.
- 9.13 "A" Class Members and Ordinary Members will have the rights and be subject to the restrictions set out for that class of Members in Item 2 of Schedule 2.
- 9.14 Where any membership of the Company is jointly held, each of the persons holding that membership will be a Member of the Company. For the purposes of the payment of Subscriptions, quorums and voting, the relevant persons will be taken to constitute one Member (for example, they will be entitled to one vote between them, not one vote each). Whilst they may each receive notice of and attend General Meetings, they may only exercise any other rights under or in connection with this Constitution and in connection with their membership through a representative appointed to act on their behalf, as notified from time to time to the Secretary in writing and signed by each of the Members. The Company will be entitled to rely on any action of any such representative as having been taken on behalf of the relevant Member notwithstanding the termination of his or her appointment by the relevant individuals, unless a statement in writing of the termination of the appointment has been received by the Secretary before the action is taken.

10. SUBSCRIPTIONS

- 10.1 Subscriptions of each Member, in the form of cash and in-kind contributions, are:
 - 10.1.1 where the Member is a Participant, as set out in Schedule 5 of the Participants Agreement; or
 - 10.1.2 where the Member is not a Participant, as agreed in writing by the Company and the Member.
- 10.2 The Governing Board may amend the annual Subscription of any Member only with the prior written consent of that Member.
- 10.3 The annual Subscription period will start on 1 July of each year and end on 30 June of the following year.
- 10.4 The annual Subscription of each Member will be due to the Company:
 - 10.4.1 where the Member is a Participant, at the due date(s) provided in the Participants Agreement; or
 - 10.4.2 where the Member is not a Participant, on the due date(s) agreed in writing by the Member and the Company; or
 - 10.4.3 where no specific due date can be ascertained from the Participants Agreement or any other agreement in writing between the Member and the Company in relation to any component of a Member's annual Subscription, then that component of the annual Subscription will be due by the end of the relevant Subscription period.
- 10.5 If a Member does not pay the cash component of its Subscription within 30 days after it becomes due the Governing Board:
 - 10.5.1 will give the Member notice of the fact; and
 - 10.5.2 if the Subscription remains unpaid 21 days from the date of the notice, may declare that Member's membership is forfeited by passing a Special Majority resolution at a meeting of the Governing Board.
- 10.6 If a Member has not contributed the in-kind component of its Subscription within 30 days after it becomes due the Governing Board:
 - 10.6.1 will give the Member notice of the fact; and
 - 10.6.2 in the case of staff in-kind contributions, may declare that Member's membership is forfeited by passing a Special Majority resolution at a meeting of the Governing Board; and
 - 10.6.3 in the case of non-staff in-kind contributions, if the non-staff in-kind contribution is not contributed within 21 days from the date of the notice, may declare that Member's membership to be forfeited by passing a Special Majority resolution at a meeting of the Governing Board.
- 10.7 In the event that a Member resigns, is expelled, suffers forfeiture of membership, or otherwise ceases to be a Member of the Company:

10.7.1 any amount of the annual Subscription already paid by that Member may be retained by the Company as its absolute property; and

10.7.2 the Company will not be required to repay any proportion of the value of in-kind contributions,

unless resolved otherwise by the Governing Board.

11. MEMBERS REGISTER

The Secretary must send to the successful applicant for membership written notice of the acceptance of the Member's application, and must promptly enter the new Member's name in the Register.

12. CESSATION OF MEMBERSHIP

12.1 A Member's membership of the Company ceases if that Member retires from the Company, is expelled or suffers forfeiture of membership under the Participants Agreement or in accordance with this Constitution.

12.2 The Secretary must, upon any Member ceasing to be a Member, immediately remove that Member's name from the Register.

12.3 Any Member who ceases to be a Member still remains liable to pay to the Company any monies owing by that Member at the time Membership ceases.

13. GENERAL MEETING

13.1 The Company must hold its first Annual Meeting following the Commencement Date, within 18 months of the Commencement Date. Afterwards an Annual Meeting will be held at least once in every year and within a period of five months after the end of each Financial Year.

13.2 The Company may hold an Extraordinary Meeting for the purpose of transacting any business not required, pursuant to the Act, to be transacted at the Annual Meeting.

14. REPRESENTATIVES

14.1 Any corporation or organisation which is a Member may by written notice to the Secretary:

14.1.1 appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Act; and

14.1.2 remove a Representative.

14.2 A Representative is entitled to:

14.2.1 exercise at a General Meeting all the powers which the corporation or organisation which appointed him or her could exercise if it were a natural person; and

- 14.2.2 be counted towards a quorum on the basis that the Member corporation or organisation is to be considered personally present at a General Meeting by its Representative.
- 14.3 A certificate executed in accordance with section 127 of the Act is conclusive evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.
- 14.4 The chairperson of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by and to the satisfaction of the chairperson of the General Meeting.
- 14.5 A Representative's appointment may set out restrictions on the Representative's powers.

15. CALLING A GENERAL MEETING

- 15.1 Any Director may, at any time, call a General Meeting.
- 15.2 A Member may:
 - 15.2.1 only request the Directors to call a General Meeting in accordance with section 249D of the Act; and
 - 15.2.2 not request or call and arrange to hold a General Meeting except under section 249E or 249F of the Act.

16. NOTICE OF GENERAL MEETING

- 16.1 The Secretary must give not less than 21 days notice of any General Meeting.
- 16.2 The notice referred to in the preceding clause must detail the following information:
 - 16.2.1 the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - 16.2.2 the general nature of the meeting's business; and
 - 16.2.3 details of any special resolutions to be proposed at the meeting.
- 16.3 With the consent of all the Members entitled to receive notice of any particular meeting, the meeting may be convened by shorter notice and in any manner those Members think fit provided that such action complies with the Act.

17. PROCEDURAL IRREGULARITIES

The non-receipt of a notice of any General Meeting by any of the Members entitled to vote will not invalidate any resolution passed at that meeting, provided that the notice has been sent to that Member's last known address.

18. PROCEEDINGS AT MEETINGS

18.1 Business of Annual Meeting

The business of an Annual Meeting must include:

- 18.1.1 the adoption and confirmation of the minutes of the previous Annual Meeting;
- 18.1.2 the receipt and consideration of the audited balance sheet, the income and expenditure account for the Financial Year ending immediately prior to the Annual Meeting;
- 18.1.3 the reports of the Governing Board and the Auditor;
- 18.1.4 the election of an Auditor and the approval of the remuneration of the Auditor;
- 18.1.5 the election of any Directors who are due to retire at that Annual Meeting;
- 18.1.6 the Members providing comments to, and asking questions of, the Governing Board in relation to the management and strategic direction of the Company;
- 18.1.7 the dissemination of information to the Members regarding the Programs and related discussion;
- 18.1.8 any other business which, under the Act or this Constitution, ought to be transacted at any Annual Meeting; and
- 18.1.9 any business which is brought under consideration by any reports of the Governing Board issued with the notice convening the meeting.

All other business transacted at an Annual Meeting will be deemed special.

18.2 Quorum

The quorum for a General Meeting is at least half of the number of Members eligible to vote, present in person. No business will be transacted at any meeting except the election of the chair and the adjournment of the meeting, unless the quorum is present.

18.3 Chair

- 18.3.1 The chair of the Governing Board will be entitled to take the chair at every General Meeting.
- 18.3.2 If there is no chair of the Governing Board or if at any meeting the chair is not present at the time appointed for holding the meeting, or if the chair is present but is unwilling to act as chair of the meeting, then the vice-chair will be entitled to take the chair.
- 18.3.3 If there is no vice-chair, or if at any meeting the vice-chair is not present at the time for holding the meeting, or if present is unwilling to act as

chair of the meeting, then the persons present and entitled to vote may choose another Director as chair.

- 18.3.4 If no Director is present, or if all Directors present decline to take the chair, then those persons present will choose one of their number to be chair of that meeting.

18.4 No Quorum

If a quorum is not present within 15 minutes from the scheduled time appointed for a meeting, the meeting will be adjourned to the following week. If, at that adjourned meeting, a quorum is not present within 15 minutes from the time appointed for holding the meeting, the meeting will be dissolved.

18.5 Adjourn

The chair of a General Meeting may, with the consent of the Members, adjourn the meeting to another time or place (or both) but no business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

18.6 Show of Hands

Every item of business submitted to a General Meeting will be decided in the first instance by a show of hands of the Members personally present and entitled to vote. If there is an equality of votes, the chair will have a casting vote in addition to any deliberative vote.

18.7 Evidence of Resolution

A declaration by the chair that a resolution has been passed or lost (having regard to the majority required) and an entry to that effect in the books of the Company, signed by the chair of that or the next succeeding meeting, will be conclusive evidence that the resolution has been passed or lost without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18.8 Poll

- 18.8.1 The chair or any Member present personally and entitled to vote may demand a poll before or on the declaration of the result of a show of hands.
- 18.8.2 The poll will be taken in the manner and at the time and place as the chair of the meeting directs, and either at once or after an interval or adjournment or otherwise.
- 18.8.3 The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 18.8.4 The demand for a poll may be withdrawn.
- 18.8.5 If there is a dispute as to the admission or rejection of a vote, the chair will finally determine that dispute.
- 18.8.6 At a poll, the chair shall, in the case of an equality of votes, have a casting vote in addition to any deliberative vote.

18.9 Demand for Poll

The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll may not be demanded on the election of a chair of a meeting. A poll demanded on any question of adjournment will be taken at the meeting and without adjournment.

18.10 Casting vote of Chairperson

The chairperson has a casting vote in addition to the chairperson's votes as a Member or Representative.

18.11 Special Majority Issues

18.11.1 Other than as expressly set out in this Constitution, the Participants Agreement or as required by the Act, all decisions of the Members at a General Meeting must be made by a Simple Majority vote.

18.11.2 All decisions in respect of the following matters must be made by a Special Majority vote at a General Meeting of Members:

18.11.2.1 (**establishment of Utilisation company**) – establishing or acquiring a controlling interest in an entity to Commercialise Centre IP;

18.11.2.2 (**expulsion of a Member**) – expelling of a Member other than in accordance with the Participants Agreement;

18.11.2.3 (**winding up**) – taking a step to dissolve or wind up the Company;

18.11.2.4 (**change in nature of Business**) – carrying on activities that are inconsistent with the Company's objects set out in clause 3 of this Constitution;

18.11.2.5 (**overseas presence**) – registering or receiving recognition as a body corporate in any place outside Australia; and

18.11.2.6 (**company type**) – changing the type of the Company.

18.12 Notice of Adjournment

If any General Meeting is adjourned for more than 21 days, a notice of that adjournment will be given to all the Members in the same manner as notice was or ought to have been given of the original meeting.

18.13 Entitlement to Vote

18.13.1 A Member is not entitled to vote at a general meeting if that Member's annual subscription is more than one month in arrears at the date of the meeting.

18.13.2 A Member entitled to vote has one vote.

18.14 Objections

- 18.14.1 An objection to the qualification of a voter may only be raised at the meeting or adjourned meeting at which the voter tendered its vote.
- 18.14.2 An objection must be referred to the chairperson of the meeting, whose decision is final.
- 18.14.3 A vote that the chairperson does not disallow because of an objection is valid for all purposes.

18.15 Auditor

The Auditor is entitled:

- 18.15.1 to attend any General Meeting of the Company;
- 18.15.2 to receive all notices of and other communications relating to any General Meeting which a Member is entitled to receive; and
- 18.15.3 to be heard at any General Meeting which the Auditor attends on any part of the business of the meeting which concerns the Auditor in that capacity, and is entitled to be heard despite the fact that the Auditor retires at that meeting or a resolution to remove the Auditor or the agent from office is passed at that meeting.

19. VOTES OF MEMBERS

- 19.1 On a show of hands, every Member present in person and entitled to vote will have one vote.
- 19.2 On a poll, every Member voting in person and entitled to vote will have one vote.

20. ATTORNEYS

The Directors may, by power of attorney, appoint any company, firm or persons or any fluctuating body of persons whether nominated directly or indirectly by the Directors to be an attorney or attorneys of the Company for any purposes and with powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for periods and subject to any conditions as they think fit and any power of attorney may contain provisions for the protection and convenience of persons dealing with any attorney as the Directors think fit and may also authorise any attorney to sub-delegate all or any of the powers, authorities and discretions vested in them.

21. DIRECTORS AND THE GOVERNING BOARD

21.1 Directors

The Company will have at least seven Directors and not more than ten Directors.

21.2 Elections

- 21.2.1 Any Ordinary Member that, in any year, makes a contribution to the Company that equals or exceeds the Voting Contribution will, during that Financial Year, be considered an Eligible Member.

- 21.2.2 An Eligible Member has the right to:
- 21.2.2.1 nominate a person for election as a member of the Governing Board when a vacancy arises; and
 - 21.2.2.2 cast a vote as part of the election of members of the Governing Board.
- 21.2.3 As soon as practicable after the Commencement Date or the occurrence of any vacancy on the Governing Board, the Secretary will, if instructed by the Governing Board, give written notice to all Eligible Members indicating the number of positions available on the Governing Board and inviting nominations for those positions.
- 21.2.4 Nominations must be signed by the nominee and received by the Secretary within 14 days of the date of issue of the notice.
- 21.2.5 In the event that not more than the number of persons required are nominated for election to the Governing Board, those persons shall be declared by the Independent Chairperson to be duly elected.
- 21.2.6 In the event that more than the number of persons required are nominated for election to the Governing Board, there shall be a ballot held for such election of members. Unless the Governing Board otherwise determines, the ballot shall be a secret ballot.
- 21.2.7 Where a ballot is required the Secretary must, after the expiry of the 14 day period described in clause 21.2.4, notify all Eligible Members of the nominees for the Governing Board and invite votes for such nominees on a ballot form which must be returned to the Secretary within 7 days of the date it was sent or within the time set out in the notice.
- 21.2.8 The Secretary will tally all votes received and report to the Governing Board.
- 21.2.9 The candidates receiving the greatest number of votes cast in their favour in respect of the ballot will be deemed to be elected or re-elected as the case may be.
- 21.2.10 In the event of a tie, the Independent Chairperson will decide which nominee will be offered a position of the Governing Board.
- 21.2.11 The Secretary will notify all Members of the results of the election of members of the Governing Board.
- 21.2.12 In the event that an Eligible Member ceases to be a Member, all members of the Governing Board nominated by that Eligible Member must, with effect from the date of such cessation, resign from the Governing Board and resign as a Director.

21.3 Governing Board

- 21.3.1 The Governing Board must elect an Independent Chairperson who must not:
- 21.3.1.1 be an employee of any Participant; or

- 21.3.1.2 have any business or other relationship that could materially interfere, or could reasonably be perceived to materially interfere with, the exercise of their unfettered and independent judgement; or
- 21.3.1.3 be the Chief Executive Officer of the Company.
- 21.3.2 The Independent Chairperson at the Commencement Date will be Len Foster AO.
- 21.3.3 The majority of members of the Governing Board must be independent of the Research Participants (as defined in the Participants Agreement).
- 21.3.4 As at the Commencement Date, and until unanimously agreed otherwise by the Members, the Governing Board will include the following persons:
 - 21.3.4.1 an Independent Chairperson;
 - 21.3.4.2 the person presently holding the position of Chief Executive Officer of the Australasian Fire and Emergency Service Authorities Council.
- 21.3.5 In the event of a vacancy on the Governing Board or where an additional Director is desired, an Eligible Member may nominate a person for election as a member of the Governing Board provided that the election of an additional Director would not result in the total number of Directors exceeding the number set out in this Constitution.
- 21.3.6 The Governing Board may make an offer to, and subsequently appoint, any person to a vacant position on the Governing Board, such appointment to end at the earlier of the next Annual Meeting at which an election will be conducted in accordance with clause 21, or other earlier election under 21, provided that the total number of Directors does not at any time exceed the number set out in this Constitution.
- 21.3.7 Subject to clause 21.2.12, each Director will hold office for a term of three years when the Eligible Members will vote:
 - 21.3.7.1 to confirm the appointment of that Director;
 - 21.3.7.2 to appoint another person to replace that Director; or
 - 21.3.7.3 to leave the position vacated by that Director empty for the time being.
- 21.3.8 All Directors will be members of the Governing Board whilst they hold the office of Director and the Governing Board will not include any person who is not a Director. Each Director will have one vote at meetings of the Governing Board.
- 21.3.9 Where this Constitution confers a power or discretion on the Directors, the exercise of such power or discretion must be decided at a meeting of the Governing Board.

- 21.3.10 The Governing Board will meet monthly from the Commencement Date or otherwise as decided by the Governing Board.
- 21.3.11 The Governing Board's functions include:
- 21.3.11.1 determining Company policy in relation to matters including research, training, intellectual property and commercialisation;
 - 21.3.11.2 strategic planning for the Company;
 - 21.3.11.3 overall direction, control and management of the Company ;
 - 21.3.11.4 making such appointments as are provided for specifically in this Constitution, such appointments as are required to be made by the Directors under the Act and such appointments as are required by the Commonwealth Agreement or Participants Agreement, including:
 - 21.3.11.4.1 the appointment of an Independent Chairperson under clause 21.3.1;
 - 21.3.11.4.2 an appointment by power of attorney under clause 20;
 - 21.3.11.4.3 the appointment of a Director under clause 21.3.6;
 - 21.3.11.4.4 the appointment of a Secretary in accordance with the Act; and
 - 21.3.11.4.5 the appointment of a qualified accountant for the purposes of complying with clause 12.7(e) of the Commonwealth Agreement;
 - 21.3.11.5 authorising expenditures;
 - 21.3.11.6 receiving and considering reports and accounts;
 - 21.3.11.7 monitoring of compliance with the Commonwealth Agreement;
 - 21.3.11.8 communicating the results of the Activities to the Members and the public;
 - 21.3.11.9 subject to clause 3, determining the goals and objectives of the Company;
 - 21.3.11.10 ensuring that research outputs are delivered in accordance with the Commonwealth Agreement;
 - 21.3.11.11 final approval of the Annual Programs following recommendation from the Research Director or as otherwise determined;

- 21.3.11.12 considering fundraising initiatives and the review of financial results;
 - 21.3.11.13 reviewing and recommending to the CRC Committee (as defined in the Commonwealth Agreement) any necessary changes to the Activities or Milestones specified in Schedule 2 of the Commonwealth Agreement;
 - 21.3.11.14 facilitating and approving the Commercialisation of Centre IP (as defined in the Participants Agreement) and, in particular, approving the terms and conditions of Commercialisation; and
- 21.3.12 The Governing Board is to implement the strategic direction of the Company once it is approved by the Members.
- 21.3.13 Other than as expressly set out in this Constitution, the Participants Agreement or as required by the Act, all decisions of the Governing Board must be made by a Simple Majority vote.
- 21.3.14 All decisions in respect of the following matters, except where they have been included in an Annual Budget and approved by the Governing Board, must be made by a Special Majority vote by the Governing Board:
- 21.3.14.1 (**Commercialisation**) – any Commercialisation of intellectual property by the Company;
 - 21.3.14.2 (**capital expenditure**) – incurring any capital expenditure or liability of \$100,000 or more, for an individual transaction or for a series of transactions in aggregate in any Financial Year;
 - 21.3.14.3 (**land**) – acquiring or disposing of any freehold land;
 - 21.3.14.4 (**lease**) – entering into leases of real property with rental payments of more than \$150,000 for each Financial Year;
 - 21.3.14.5 (**disposals**) – disposing of any assets with a book value or market value of \$100,000 or more for each Financial Year;
 - 21.3.14.6 (**major contract**) – execution of any contract or entry into any commitment with a value of \$150,000 or more for each Financial Year, excluding contracts or commitments entered into for the conduct of research work by a Participant or Participants, where funds have been provided to the Company specifically for the conduct of that research work;
 - 21.3.14.7 (**guarantee**) – provision of guarantees by the Company to any third party other than as agreed in the Annual Budget;
 - 21.3.14.8 (**borrowings**) – obtaining new or increasing existing external borrowings where the total of all external borrowings exceeds the limits agreed in the Annual Budget;

- 21.3.14.9 **(non-arms length transaction)** – entering into an arrangement or incurring a liability which is not on arm's lengths terms;
- 21.3.14.10 **(liquidation)** – liquidating or proposing a winding up of the Company or appointing a liquidator, administrator, receiver or other similar person to the Company or any of its assets;

22. REMOVAL OF DIRECTORS

- 22.1 Subject to the Act and clause 21.3.4 the Company may, in a General Meeting, remove any Director before the expiration of the Director's period of office, and may by resolution appoint another person in the Director's place.
- 22.2 The continuing members of the Governing Board may act despite any vacancy in their body, but if and for so long as their number is reduced below seven, the continuing members of the Governing Board may only act for the purpose of increasing the number of Directors to that number or for summoning a meeting of the Company, but for no other purpose.

23. LOSS OF DIRECTORS OFFICE

The office of Director will become vacant in any of the following circumstances:

- 23.1 if the Director ceases to be a Director by virtue of the Act;
- 23.2 if the Director becomes bankrupt or makes any arrangement or composition with the Director's creditors generally;
- 23.3 if the Director 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;
- 23.4 if the Director resigns from office by notice in writing to the Company delivered to the Office;
- 23.5 if the Director ceases to hold, or is removed from, office under clause 22;
- 23.6 if the Director is absent from three consecutive meetings of the Governing Board without a valid excuse which is acceptable to the chair;
- 23.7 if the Director is disqualified from acting as a director of companies by the Australian Securities and Investments Commission or by a court; or
- 23.8 if the Director dies or becomes is physically or mentally incapacitated to such an extent as to be unable to carry out his duties as required.

24. SECRETARY

The Secretary will be responsible for carrying out the duties and responsibilities set out in this Constitution and as determined by the Governing Board.

25. MANAGEMENT OF THE COMPANY

Subject to the Act, the Company will be managed in accordance with the provisions of the Participants Agreement and Commonwealth Agreement and additional management officers will be appointed for this purpose as set out in the Participants Agreement.

26. PROCEEDINGS OF THE GOVERNING BOARD

- 26.1 The business of the Company shall be managed by the Governing Board, which may, subject to the Act, exercise all powers of the Company that are not required to be exercised or done by the Company in General Meeting.
- 26.2 The Governing Board may at any time and the Secretary will, on the request of a Director, convene a meeting of the Governing Board.
- 26.3 The non-receipt of a notice of meeting by a Director will not invalidate proceedings at a Governing Board meeting.
- 26.4 Directors must attend Governing Board meetings personally, whether through personal attendance at the meeting or personal attendance via electronic means, and may not delegate such attendance without the prior approval of the Governing Board.
- 26.5 The Governing Board may meet together by electronic means or otherwise to dispatch business, adjourn and otherwise regulate its meetings as it thinks fit.
- 26.6 If there is a failure of the electronic means used in conducting a Governing Board meeting, the meeting shall be adjourned until the failure can be rectified. If that is not possible within one hour of the initial failure, the Directors who are able to communicate with each other must adjourn the meeting to a time, date and place determined by those Directors.
- 26.7 Until otherwise decided by a resolution of the Governing Board, the quorum for all meetings of the Governing Board will be five Directors that make up the Governing Board. No business may be transacted at any meeting unless the requisite quorum is present and if, within 15 minutes of the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the following week. If, at that adjourned meeting, a quorum is not present within 15 minutes from the time appointed for holding the meeting, the meeting will be dissolved.
- 26.8 The Independent Chair will be entitled to preside at every meeting of the Governing Board at which the Independent Chair is present and willing to act. If the Independent Chair is not present within fifteen minutes after the time appointed for holding that meeting (or being present is unwilling to act) the vice-chair shall preside at the meeting, or, if the vice-chair is not present (or being present is unwilling to act) then the Directors present will choose one of their number to be chair of the meeting.
- 26.9 Every question submitted to a meeting of the Governing Board will be decided by a Simple Majority of votes (unless expressly set out to the contrary in this Constitution) and each Director present will be entitled to one vote. If there is an equality of votes the chair of the meeting will have a second or casting vote.

27. DIRECTORS' EXTERNAL INTERESTS

- 27.1 A Director will not be disqualified from office by contracting or entering into any arrangement with the Company.
- 27.2 No contract or arrangement with the Company in which any Director is in any way interested will be avoided due to that interest.
- 27.3 No Director so contracting or being so interested will be liable to account to the Company for any profit realised by any contract or arrangement, by reason of that Director holding that office or of the fiduciary relation established.
- 27.4 Regardless of the above, every Director will observe the provisions of the Act relating to the declaration of the interests of Directors in contracts or proposed contracts with the Company or of any office or property held by the Directors which might create duties or interests in conflict with their duties or interests as Directors.
- 27.5 Directors may not vote in respect of any contract or arrangement in which they are interested and, if a Director does so vote, the Director's vote will not be counted.

28. MINUTES OF MEETING

The Secretary must cause proper minutes to be made of:

- 28.1 the names of Directors present at all meetings of the Company and of the Governing Board and of committees of the Governing Board; and
- 28.2 the resolutions passed at all meetings of the Company and of the Governing Board and of committees of the Governing Board.

The minutes will be entered in books kept for that purpose and will be signed by the chair of the meeting at which the proceedings took place or by the chair of the next succeeding meetings.

29. DELEGATION OF POWERS

- 29.1 The Governing Board may delegate any of its powers to committees consisting of any person or persons as it thinks fit. Any committee so formed will in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Governing Board.
- 29.2 Notwithstanding clause 27.1, the power of the Governing Board to make decisions that are expressly contemplated in this Constitution cannot be delegated to any committee, although a committee may advise the Governing Board on any decision.

30. DEFECTS IN APPOINTMENT

All acts done by any meeting of the Governing Board or of a committee of the Governing Board or by any person acting as a Director will, despite that it is afterwards discovered that there was some defect in the appointment or tenure of any Director or person acting on a committee, or that they or any of them were disqualified, be as valid as if every person had been duly appointed and continued as a Director and was qualified to be a Director or to act in that manner.

31. CIRCULAR RESOLUTION

- 31.1 If all the Directors 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 terms shall be deemed to have been passed at the meeting of the Governing Board 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.
- 31.2 For the purposes of clause 31.1, two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement on those terms signed by those Directors on the respective days on which they signed the separate documents.
- 31.3 A reference in clause 31.1 to all the Directors does not include a reference to a Director who, at a Governing Board meeting, would not be entitled to vote on the resolution.

32. ACCOUNTS

- 32.1 The Governing Board will cause to be kept proper books of account in which will be kept true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.
- 32.2 The books of account will be kept at the Office or place or places as the Governing Board think fit and will be open to the inspection of Directors during usual business hours.

33. AUDIT

- 33.1 The Company will observe the provisions of the Act in relation to the appointment of an auditor or auditors.

34. NOTICES

- 34.1 A notice may be given by the Company to any Member either personally or by sending it by post or facsimile or email to the Member at the Member's registered address, or (if the Member has no registered address within Australia) to the address, if any, within Australia supplied by the Member to the Company for the giving of notices.
- 34.2 Where a notice is sent by post, service of the notice will be 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.
- 34.3 Where a notice is sent by facsimile, it is deemed to have been received on proper written confirmation of its transmission being obtained by the Company.
- 34.4 Where a notice is sent by email it is deemed to have been received:

- 34.4.1 subject to clause 34.4.2, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient;
- 34.4.2 if received after 6.00pm in the place of receipt or on a day which is not a business day, at 9.00am on the next business day.

35. INDEMNITY

- 35.1 Subject to the Act, every person who is or has been an Officer is indemnified out of the assets of the Company against:
- 35.1.1 any Liability incurred by that Officer or former Officer in the person's capacity as an Officer of the Company by reason of any act or thing done or omitted to be done by that person in that capacity or in any way in the discharge of that person's duties or by reason of or relating to the person's status as an Officer of the Company, but excluding any Liability from or against which the Company is not permitted by the Act to exempt or indemnify the Officer or which arose out of a lack of good faith by that Officer or former Officer; and
- 35.1.2 without limiting clause 35.1.1, any Liability incurred by that Officer or former Officer in defending proceedings, whether civil or criminal, in respect of any act or thing done by the Officer in that person's capacity as such Officer but excluding any Liability from or against which the Company is not permitted by the Act to exempt or indemnify the Officer or which arose out of a lack of good faith by that Officer or former Officer.
- 35.2 The Company may, with the exception of any wilful breach of duty, effect insurance in relation to any person who is or has been an Officer against any liability incurred by that person in their capacity as Officer, including liability for costs and expenses incurred in defending any proceedings whatever their outcome.

36. CHEQUES, BILLS ETC.

All cheques, bills of exchange, promissory notes and other negotiable instruments shall be signed by at least two persons authorised by the Governing Board for this purpose.

37. AMENDMENT OR VARIATION

- 37.1 Any amendment or variation of this Constitution which would be inconsistent with the Participants Agreement requires the prior written agreement of all parties to the Participants Agreement.
- 37.2 Subject to the Act and clause 37.1, this Constitution may only be amended or varied by a Special Majority resolution passed by Members present at a General Meeting and entitled to vote.

38. CONTRIBUTION ON WINDING-UP

- 38.1 Every Member undertakes to contribute to the property of the Company if it is wound up:
- 38.1.1 while that person is a Member; or

38.1.2 within one year after that person ceases to be a Member;

in respect of the debts and liabilities of the Company contracted before that person ceases to be a Member, in respect of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves.

38.2 The amount to be contributed by any Member pursuant to clause 38.1 will not exceed \$10.00.

39. DISTRIBUTION OF PROPERTY ON WINDING UP

39.1 If on the winding-up or dissolution of the Company after the satisfaction of all its debts and liabilities there remains any property, the property must not be paid to or distributed among the Members.

39.2 Instead the property must be given or transferred to some other institution or institutions which:

39.2.1 has objects similar to the objects of the Company; and

39.2.2 has a constitution which prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under clause 5 of this Constitution.

40. PUBLIC LIABILITY INSURANCE

The Governing Board will ensure that the company takes out and maintains insurance against public liability, for an amount of at least \$10 million.

Schedule 1

Initial Members

We, the undersigned, are Members of the Company and agree to the terms of this Constitution:

Name	Address	Signature

Schedule 2

Membership Classes

1. CLASSES OF MEMBERSHIP

Subject to this Constitution, the Directors may issue Memberships of the following classes:

- 1.1 Ordinary Membership; and
- 1.2 "A" class Membership.

2. RIGHTS AND RESTRICTIONS APPLICABLE TO MEMBERSHIPS OF DIFFERENT CLASSES

2.1 Ordinary Membership - Holders of Ordinary Memberships will possess the following rights and be subject to the following restrictions:

- 2.1.1 a right to receive notice of any general meeting of the Company and attend any general meeting of the Company;
- 2.1.2 a right to receive reports from the Company detailing its activities and progress in research and development; and
- 2.1.3 voting rights as specified in clause 19.

2.2 "A" Class Membership - Holders of "A" class Memberships will possess the following rights and be subject to the following restrictions:

- 2.2.1 a right to receive notice of any general meeting of the Company and attend any general meeting of the Company;
- 2.2.2 a right to receive reports from the Company detailing its activities and progress in research and development; and
- 2.2.3 no voting rights.

3. ELIGIBILITY FOR EACH CLASS OF MEMBERSHIP

3.1 A Member who contributes:

- 3.1.1 at least \$100,000 in cash; or
- 3.1.2 at least \$200,000 in in-kind contributions; or
- 3.1.3 a combination of cash and in-kind contributions where the cash contribution plus 50% of the total value of in-kind contributions is equal to at least \$100,000,

per annum to the Company, will be an Ordinary Member.

3.2 A Member which is not an Ordinary Member will be an "A" Class Member.