

Discover Sport Limited

ACN 626 386 641

A Company limited by Guarantee

Constitution

Incorporated 25 May 2018

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CORPORATIONS ACT 2001
CONSTITUTION
of
DISCOVER SPORT LIMITED

THE PARTIES COVENANT AND AGREE:

1. GENERAL

1.1 Name of Company

The name of the Company is Discover Sport Limited.

1.2 Replaceable Rules

The Replaceable Rules do not apply to the Company.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In these Rules unless it is inconsistent with the subject or context in which it is used:

'Act' means the Corporations Act 2001;

'Board' means the board of directors of the Company;

'Business Day' means a day on which banks (as that term is defined in the Banking Act 1959) are open for business in Brisbane;

'Certificate of Approval' means a certificate of approval from the Vice-Chancellor certifying that the person is approved to act as a Director of the Company;

'Charitable Non-profit Entity' means an eligible charity under Division 50 of the Income Tax Assessment Act 1997;

'Chair' includes a chair appointed under rule 5.3 and an Acting Chair appointed under rule 5.4;

'Committee' means a committee to which powers have been delegated by the Board pursuant to rule 15;

'Company' means Discover Sport Limited;

'Constitution' means the constitution of the Company, as amended from time to time;

'Core Director Skills' include:

- financial management
- strategic analysis
- sports administration
- risk management/audit
- chairmanship
- business/commercial
- legal
- marketing
- university management.

'Council' means the Council of JCU;

'Director' means a person appointed or elected from time to time to the office of director of the Company in accordance with these rules and includes any alternate director duly acting as a member of the Board;

'First Directors' means those persons named as directors in the application for registration of the Company;

'Government' means local, state, territory and/or federal government;

'Honorary Member' means a person admitted as an Honorary Member under Rule 5.4;

'JCU' means James Cook University ABN 46 253 211 955, a body corporate pursuant to the James Cook University Act 1997, whose office is situated at JCU, Townsville Campus, Douglas, 4811, in the State of Queensland;

'Life Member' means a person admitted as a Life Member under Rule 5.5;

'Member of the Board' means a person appointed or elected from time to time to the office of director of the Company in accordance with these Rules and includes any alternate director duly acting as a member of the Board;

'Member' means any person who becomes a member in accordance with the Act and this Constitution and includes Ordinary Members, Associate Members, Honorary Members and Life Members, as those terms are used in this Constitution in Rule 5;

'Members present' means Members present at a general meeting of the Company in person or, if applicable, by duly appointed corporate representative, proxy or attorney;

'Membership Fee' means the membership fee, if any, determined by the Board to be payable by members in respect to each class of membership;

'Non-profit Entity' means an exempt entity under Division 50 of the *Income Tax Assessment Act 1997* (Cth).

'Office' means the registered office from time to time of the Company;

'Register' means the register of Members of the Company established pursuant to the Act;

'Registered Address' means the address of a Member specified in the Register or any other address of which the Member notifies the Company as a place at which the Member will accept service of notices;

'Replaceable Rules' means all or any of the replaceable rules contained in the Act from time to time and includes any replaceable rule that was or may become, a provision of the Act;

'Representative' means a natural person who is a partner, director, officer or principal of a partnership, company, trustee or other entity ('body') which is itself a Member.

'Returning Officer' means the person appointed by the First Directors to conduct the election of the Directors after registration of the Company and such person appointed from time to time by the Directors to conduct Board elections;

'Rules' means the rules of this Constitution as altered or added to from time to time;

'Seal' means the common seal, if any, from time to time of the Company;

'Secretary' means a person appointed as secretary of the Company and includes any person appointed to perform the duties of secretary; and

'Securities' includes shares, rights to shares, options to acquire shares and other securities with rights of conversion to equity.

2.2 Interpretation

- (a) An expression defined in, or given a meaning for the purposes of the Act (except where defined, or given a meaning, in this Constitution) has the same definition or meaning in this Constitution where it relates to the same matters as the matters for which it is defined or given a meaning in the Act.
- (b) Words in the singular include the plural and vice versa.
- (c) Words importing a gender include each other gender.
- (d) A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation or statutory instrument issued under, that legislation or legislative provision.
- (e) The headings and sidenotes do not affect the construction of this Constitution.
- (f) A word denoting an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa.
- (g) A reference to a matter being written includes that matter being in any mode of representing or reproducing words, figures or symbols in written form.

3. OBJECTS AND POWERS

3.1 Objects of Company

The objects for which the Company is established are:

Primary Objectives – within Australia

- (a) To help, foster and encourage games and sport by –

- (i) Students of JCU;
 - (ii) Staff of JCU;
 - (iii) Alumni of JCU;
 - (iv) Members of JCU affiliated sporting clubs; and
 - (v) Members of the communities in which JCU students study (including via work integrated learning).
- (b) To provide sporting opportunities for -
- (i) Students of JCU;
 - (ii) Staff of JCU;
 - (iii) Alumni of JCU;
 - (iv) Members of JCU affiliated sporting clubs; and
 - (v) Members of the communities in which JCU students study (including via work integrated learning).

In Support of the Primary Objectives –within Australia

- (a) To promote the benefits of healthy exercise via games and sport through the use of sporting facilities on JCU campuses and elsewhere;
- (b) To promote the awareness of the importance of games and sport to physical and psychological well-being;
- (c) To advise and assist JCU in providing and improving facilities and resources for games and sport by -
 - (i) determining and prioritizing games, sport and related recreation projects;
 - (ii) providing strategic overview and direction to JCU in relation to games, sport and related recreation facilities and activities;
 - (iii) seeking and facilitating funding opportunities for games and sporting facilities, including those which support games and sport at the highest level;
 - (iv) encouraging communication between stakeholders with a view to improving the range of facilities on offer for games and sport and related recreation, including in the Cairns and Townsville communities; and
 - (v) considering and developing proposals for strategic sporting partnerships and collaborations involving JCU and/or the Company.

3.2 Separate objects

Each of the above objects constitutes a separate object of the Company, and no such object may be construed by reference to any other such object.

3.3 No power to issue shares

The Company has no power to issue or allot fully or partly paid shares to any person.

4. NON-PROFIT NATURE OF THE COMPANY

4.1 Non-profit

- (a) The income, property, profits and financial surplus of the Company, whenever derived, must be applied solely towards the promotion of the objects of the Company as set out in this Constitution.
- (b) The Company shall not distribute to its members (in that capacity) by way of dividend or otherwise any of the assets or income of the Company except in the following circumstances:
 - (i) where the members are Charitable Non-profit Entities that have purposes similar to the objects of this Company; or
 - (ii) as bonafide compensation for services rendered or expenses incurred on behalf of the Company.
- (c) For the avoidance of doubt, in the event that the Company receives grant funds for the purposes of improvement of sporting and/or recreational facilities connected with JCU and/its students, nothing prevents the application of such grant funds for such purposes.

4.2 Remuneration and reimbursement

Nothing in this Constitution prevents:

- (a) the repayment to any Member of money lent to the Company by that Member, or the payment in good faith of interest at reasonable rates on moneys lent to the Company by a Member;
- (b) the payment of remuneration to any officers, agents, employees or other servants of the Company, in return for services rendered to the Company by that person;
- (c) the payment of remuneration to any Member or to any person in return for services rendered to the Company by that Member or other person;
- (d) the reimbursement or repayment to any Member of out-of-pocket expenses, reasonable and proper charges for plant, equipment or other goods hired by the Company from a Member, payment for goods supplied by a Member in the ordinary and usual course of business, or reasonable and proper rent for premises leased to the Company by a Member.

4.3 Winding Up

- (a) The Company shall not distribute to its Members or former Members any of the assets or income of the Company except in the following circumstances:

- (i) where the Members or former Members are Non-profit Entities and have purposes similar to the Objects of Company in Rule 3.1; or
 - (ii) as bonafide compensation for services rendered or expenses incurred on behalf of the Company.
- (b) For the avoidance of doubt, the assets and income of the Company shall be applied solely for the furtherance of the objects of the Company in Rule 3.1 and no portion shall be distributed directly or indirectly to the Members of Company, except as permitted by Rule 4.3 (a).
- (c) In the event of the Company being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be dealt with in the following manner:
 - (i) some or all of the amount can be distributed to Members or former Members, but only if the Members are Non-profit Entities and have purposes similar to the objects of Company;
 - (ii) if any amount is not distributed to Members or former Members, it must be transferred to another organisation, with similar objects to those of Company set out in Rule 3.1, and which is not carried on for the profit or gain of its individual Members.

4.4 Limited liability on winding up

Each Member of the Company undertakes to contribute to the assets of the Company in the event of its being wound up while the person is a Member or within one year after the person ceases to be a Member. This undertaking to contribute is for the payment of the debts and liabilities of the Company contracted before the person ceases to be a Member and for the costs charges and expenses of winding up and for adjustment of the rights of the contributors among themselves. This liability is for such amount as may be required, not exceeding \$10.00.

5. MEMBERSHIP

5.1 Types of Membership

- (a) Until otherwise determined by the Members in general meeting there shall be the following classes of Members:
 - (i) Ordinary Members;
 - (ii) Associate Members;
 - (iii) Honorary Members; and
 - (iv) Life Members.

5.2 Types of Membership – Attributes and Related Matters

- (a) Ordinary Membership is open to any person or body who makes application to the Board for ordinary membership in accordance with the Rules undertaking to support the objectives of the Company;
- (b) Associate Membership is open to any person or body who makes application to the Board for associate membership in accordance with the Rules undertaking to support the objectives of the Company;
- (c) Honorary Membership may be conferred upon such persons who, by reason of their special qualifications or skills are, in the opinion of the Board, entitled to such privilege;
- (d) Life Membership may be conferred on any Member or the Representative of any Member who, in the opinion of the Board, have given outstanding and meritorious service to the Company.
- (e) It is at the discretion of the Board as to whether or not an application for membership is approved. Any such decision of the Board shall be final and shall not be subject to review. The Board may attach conditions to acceptance of applications for membership;
- (f) The names and addresses of Members and the category of membership will be placed on a register called the “Membership Register”, and the category to which each Member belongs will be stated on the Membership Register;
- (g) Subject to the Act, every applicant for membership must complete, sign and date an application form as supplied by the Company and pay any Membership Fee. The contents and format of the form will be determined by the Board from time to time;
- (h) Without limiting Rule 5.2(e), Board may, in its absolute discretion, admit or reject any applicant for membership without the necessity of assigning any reason. If an applicant is not admitted to membership, all monies paid by the applicant to the Company must be returned immediately in full to the applicant;
- (i) Members who are entitled to vote must receive notice of every general meeting of the Company and are entitled to attend, speak and vote at general meetings, provided that they are current financial members of the Company;

5.3 Ordinary Membership

Ordinary Members are entitled to receive notice of, attend and speak at general meetings, and are:

- (a) entitled to vote at a general meeting of Members;
- (b) entitled to nominate or vote for Directors; and
- (c) eligible to become a member of the Board upon appointment in accordance with the Rules.

5.4 Associate Members

Associate Members are entitled to receive notice of, attend and speak at general meetings, but are not entitled to:

- (a) vote at a general meeting of Members;
- (b) nominate or vote for directors; or
- (c) become a Member of the Board.

5.5 Honorary Members

- (a) The currency of an honorary membership may not exceed 1 year, unless renewed by the Board. The Board may in its absolute discretion revoke any honorary membership at any time.
- (b) There cannot be more than 10 Honorary Members at any one time.
- (c) Honorary Members are entitled to attend and speak at general meetings, but are not eligible to hold office in the Company and are not entitled to vote at a general meeting of Members.

5.6 Life Members

A Life Member is entitled for life, to all the rights and privileges of an Ordinary Member without the payment of any further Membership Fees.

6. PAYMENT OF FEES

- (a) Membership Fees will be determined by the Board from time to time and may be zero. The Board may not deal with any application for membership unless all Membership Fees payable in respect of the application have been received by the Company;
- (b) Membership Fees may be different for different classes of membership;
- (c) Membership Fees are due at such time as the Board from time to time determines.

7. FINANCIAL RECORDS

7.1 Keeping of financial records

- (a) The financial year of the Company commences in each year on the first day of January and ends on the 31st day of December in that year.
- (b) Proper books and financial records must be kept and maintained showing correctly the financial affairs of the Company. The Company must ensure the relevant accounting and auditing requirements of the Act are duly complied with.
- (c) The Board must make available to all Members at the end of each financial year, copies of the financial report including a copy of the auditor's report and any other documentation required under the Act.

- (d) Subject to the Act, the Board must cause to be made out and laid before each annual general meeting, a Statement of Financial Position, a Statement of Profit or Loss and Other Income and a Cash Flow Statement made up to a date not more than 6 months before the date of the meeting.

7.2 Banking of monies

Unless otherwise resolved by the Board, all the monies of the Company shall be banked in the name of the Company in a bank account at such bank as the Board may from time to time direct.

7.3 Appointment of Auditor

The Company must appoint and retain a properly qualified auditor whose duties are determined in accordance with the Act. No Member may act as auditor of the Company.

7.4 Inspection of records of the Company

- (a) Subject to the Act, the Board may at its sole discretion determine whether and to what extent, and at what time and place and under what conditions, the financial records and other documents of the Company or any of them will be open to inspection by Members other than the Board.
- (b) No Member other than the members of the Board has the right to inspect any document of the Company except as provided by the Act or as authorised by the Board.

8. GENERAL MEETINGS

8.1 General Meetings

Subject to the Act, general meetings of the Company may be called and held at the times and places and in the manner determined by the Board. Except as permitted by the Act, the Members may not convene a meeting of the Company. By resolution of the Board any general meeting (other than a general meeting which has been requisitioned or called by Members in accordance with the Act) may be cancelled or postponed prior to the date on which it is to be held.

8.2 Notice of General Meeting

- (a) Not less than 21 days' notice of a general meeting must be given by the Board in the form and in the manner the Board thinks fit including notice of any general meeting at which the Board proposes, or these Rules require, that an election of the Board be held. Notice of meetings shall be given to the Members and to such persons as are entitled under these Rules or the Act to receive notice. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that meeting.
- (b) If the meeting is to be held at 2 or more places, the notice is to set out details of the technology that will be used to facilitate such a meeting and any other matters required to be stated by the Act in relation to the use of such technology.

- (c) In the event of the calling of an extraordinary general meeting where the Members agree in accordance with the Act to the abatement of time for notice of the meeting, the Secretary shall give all members not less than one day's notice of the meeting and any resolutions to be decided at that meeting.

9. PROCEEDINGS OF MEETINGS

9.1 Business of General Meetings

- (a) The business of an annual general meeting is to receive and consider the financial and other reports required by the Act to be laid before each annual general meeting, to declare the results of the election by postal vote for members of the Board in the place of those retiring under these Rules, when relevant to appoint an auditor, and to transact any other business which, under these Rules, is required to be transacted at any annual general meeting. All other business transacted at an annual general meeting and all business transacted at other general meetings is deemed to be special. Except with the approval of the Board, with the permission of the Chair or pursuant to the Act, no person may move at any meeting either:
 - (i) in regard to any special business of which notice has been given under Rule 8.2, any resolution or any amendment of a resolution; or
 - (ii) any other resolution which does not constitute part of special business of which notice has been given under Rule 8.2.
- (b) The auditors and their representative are entitled to attend and be heard on any part of the business of a meeting which concerns the auditors. The auditors or their representative, if present at the meeting, may be questioned by the Members, as a whole, about the audit.

10. QUORUM FOR GENERAL MEETINGS

10.1 Quorum

A quorum for a meeting is that number of members present and eligible to vote that is one half than the number of the members of the Board plus one at the date of the meeting.

10.2 Adjournment in Absence of Quorum

If within 15 minutes after the time specified for a general meeting a quorum is not present, the meeting, if convened upon a requisition or called by Members, is to be dissolved, and in any other case it is to be adjourned to the same day in the next week (or, where that day is not a business day, the business day next following that day) at the same time and place. No business may be transacted at any meeting except the election of a chairman and the adjournment of the meeting and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time specified for holding the meeting, the meeting is to be dissolved.

10.3 Chair

- (a) The Chair of the Board shall be the Chair of general meetings.
- (b) If at any general meeting:

- (i) the Chair of the Board is not present at the specified time for holding the meeting; or
- (ii) the Chair of the Board is present but is unwilling to act as Chair of the meeting,

the Deputy-Chair of the Board is entitled to take the chair at the meeting.

(c) If at any general meeting:

- (i) there is no Chair of the Board or Deputy-Chair of the Board;
- (ii) the Chair of the Board and Deputy Chair of the Board are not present at the specified time for holding the meeting; or
- (iii) the Chair of the Board and the Deputy-Chair of the Board are present but each is unwilling to act as Chair of the meeting,

the members of the Board present may choose another member of the Board as Chair of the meeting, and if no member of the Board is present, or if each of the members of the Board present are unwilling to act as Chair of the meeting, a Member chosen by the Members present is entitled to take the chair at the meeting.

10.4 Acting Chair

If during any general meeting the Chair acting pursuant to Rule 10.3 is unwilling to act as Chair for any part of the proceedings, the Chair may withdraw as chair during the relevant part of the proceedings and may nominate any person who immediately before the general meeting was a member of the Board or who has been nominated for election as a member of the Board at the meeting to be Acting Chair of the meeting during the relevant part of the proceedings. Upon the conclusion of the relevant part of the proceedings, the Acting Chair is to withdraw and the Chair is to resume acting as chair of the meeting.

10.5 General Conduct of Meeting

Except as provided by the Act, the general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined by the Chair. The Chair may at any time he or she considers it necessary or desirable for the proper and orderly conduct of the meeting demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members present. The Chair may require the adoption of any procedure which is in the Chair's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.

10.6 Adjournment

The Chair may at any time during the course of the meeting adjourn from time to time and place to place the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question, resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting. If the Chair exercises a right of adjournment of a meeting pursuant to this Rule, the Chair has the sole discretion

to decide whether to seek the approval of the Members present to the adjournment and, unless the Chair exercises that discretion, no vote may be taken by the Members present in respect of the adjournment. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

10.7 Voting

- (a) Each question submitted to a general meeting is to be decided by a show of hands of the Members present and entitled to vote unless a poll is demanded. Subject to paragraph (b) of this Rule, in the case of an equality of votes, the Chair has, both on a show of hands and on a poll, a casting vote in addition to the vote or votes to which the Chair may be entitled as a Member or as a proxy, attorney or, if applicable, a duly appointed Representative of a Member.
- (b) On a show of hands, where the Chair has 2 or more appointments (as proxy, attorney or Representative) that specify different ways to vote on a resolution, the Chair cannot vote, but has a casting vote in the case of an equality of votes cast by Members entitled to vote at the meeting.

10.8 Declaration of Vote on a Show of Hands - When Poll Demanded

- (a) At any meeting, unless a poll is demanded, 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 book to be kept of the proceedings of the Company signed by the Chair of that or the next succeeding meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution. A poll may be demanded:
 - (i) before a vote is taken; or
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (b) A poll may be demanded by:
 - (i) the Chair; or
 - (ii) at least 2 Members present and entitled to vote on the resolution.
- (c) No poll may be demanded on the election of a Chair of a meeting.

10.9 Taking a Poll

If a poll is demanded as provided in Rule 10.7, it is to be taken in the manner and at the time and place as the Chair directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the Chair's determination in respect of the dispute made in good faith is final.

10.10 Continuation of Business

A 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. A poll

demanded on any question of adjournment is to be taken at the meeting immediately and without adjournment.

10.11 Special Meetings

All the provisions of these Rules as to general meetings apply to any special meeting of any class of Members which may be held pursuant to the operation of these Rules or the Act.

11. PURCHASE OR SALE OF ASSETS OR BUSINESS, AND BORROWING

11.1 Where the Company is a Controlled Entity of JCU, then the Company must not:

- (a) purchase or contract to purchase the whole or substantially the whole of the assets or undertaking of another business; or
- (b) sell or transfer or contract to sell or transfer-
 - (i) substantially the whole of the assets of the Company, or
 - (ii) the business or undertaking of the Company,

without obtaining the prior approval of Council.

11.2 Where the Company is a Controlled Entity of JCU, then the Company must not, except in regard to financial leases, borrow money and/or grant security over the assets or undertakings of the Company without the approval of the Executive Director, Division of Finance and Resource Planning of JCU.

12. APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS

12.1 Upon registration of the Company the first Directors of the Company shall be the persons specified in the application to register the Company who have consented to act as Directors, and who hold a Certificate of Approval.

12.2 The number of the Directors shall not be less than two or more than ten, to include the following:

- (a) JCU Representatives
 - (i) One nominee of the Deputy Vice Chancellor of the Division of Services and Resources;
 - (ii) Two nominees of the Deputy Vice Chancellor of the Division of Tropical Health and Medicine;
 - (iii) One Nominee of the Pro Vice Chancellor Australian Indigenous Education.
 - (iv) For the purpose of this Rule 12.2 (a), in the event that titles/positions of persons employed by JCU cease to exist or change, then the nominees shall be persons nominated for the purpose by the Vice Chancellor of JCU.
- (b) JCU Student Association Representatives

One Director who is the Sports and Recreation Manager.

(c) Community Representatives

(i) One director who is a member of the Cairns community and connected with the administration of sporting activities;

and

(ii) One director who is a member of the Townsville community and connected with the administration of sporting activities.

(d) Additional Directors

Up to two directors nominated by the Board in consultation with JCU;

(e) Student Representative

One directors who is a student at JCU with an active understanding of local professional or semi-professional sport, nominated by the board and in consultation with JCU.

12.3 No person shall be a Director of the Company unless that person holds a Certificate of Approval.

12.4 A Certificate of Approval may be in such form as the Vice Chancellor of JCU determines and may specify a point in time at which it shall expire.

12.5 A Certificate of Approval may be withdrawn at any time.

12.6 There shall be no share qualification for a Director.

12.7 The Directors shall endeavour to ensure that persons who serve as Directors have a cross-section of gender and expertise relating to Core Director Skills appropriate for the Company.

12.8 The Directors shall endeavour to ensure where necessary that some of the persons who serve as Directors:

(a) have particular expertise; and/or

(b) are able to effectively represent particular sectors;

relating to the specific objects of the Company.

12.9 The Directors shall endeavour to ensure that some of the persons who serve as Directors are neither members of staff, officers or students of JCU.

12.10 In addition to the circumstances in which the office of a Director becomes vacant under the Act, the office of a Director becomes vacant if the Director -

(a) no longer holds a Certificate of Approval;

(b) is removed by ordinary resolution of the Company in general meeting;

(c) resigns their office by notice in writing to the Company;

- (d) 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;
 - (e) is absent without the consent of the Directors from meetings of the Directors for six consecutive months;
 - (f) without the consent of the Company in general meeting holds any other office of profit under the Company except that of Secretary; or
 - (g) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of their interest as required by the Act.
- 12.11 Where the Company is a Controlled Entity of JCU, then the Vice Chancellor may appoint one of the Directors to act as Chair of the Board and may determine the period for which the chair is to hold office, otherwise the Directors shall do so.
- 12.12 Where the Company is a Controlled Entity of JCU, then the Directors have the power to appoint any person, who holds a Certificate of Approval to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, and must consult with the Vice-Chancellor in relation to all such appointments, but the total number shall not at any time exceed the number fixed in this Constitution, and subject always to Rule 12.2.
- 12.13 Where the Company is a Controlled Entity of JCU, then the Company may by ordinary resolution remove any Director before the expiration of their period of office and appoint another person who holds a Certificate of Approval in their place.
- 12.14 The remuneration of the Directors shall be determined by the Company in consultation with JCU. Where the Company is a Controlled Entity of JCU, then, no fees shall be paid to any Director by way of Directors' fees without prior written approval by JCU.
- 12.15 That remuneration shall be deemed to accrue from day to day.
- 12.16 The Directors may be paid all travelling and other expenses properly incurred by them in carrying on the business of the Company including attending meetings of the Directors or any committee of the Directors and General Meetings.
- 12.17 A Director may be appointed as Secretary of the Company at a salary and on terms determined by the Directors.
- 12.18 Where the Company is a Controlled Entity of JCU, then the Senior Manager must not be a Director.

13. POWERS AND DUTIES OF DIRECTORS

- 13.1 Subject to the Act and to this Constitution, the business of the Company shall be managed by the Directors.
- 13.2 The Directors may authorise the payment by the Company of all expenses incurred in promoting and forming the Company.
- 13.3 Subject always to the provisions of clauses 11.1 and 11.2 of this Constitution, the Directors may exercise all powers of the Company that are not by the Act or by this Constitution required to be exercised by the Company in General Meeting.
- 13.4 The Directors may, by power of attorney, appoint a person or persons provided such person holds a Certificate of Approval to be the attorney or attorneys of the Company with the powers, authorities and discretions vested in or exercisable by the Directors, for the period and subject to the conditions they think fit.
- 13.5 Any power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney.
- 13.6 All negotiable instruments and receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or executed -
- (a) if the Company has only one (1) Director, that Director;
 - (b) if the Company has two (2) or more Directors, by any two (2) Directors or by one (1) Director and the Secretary; or
 - (c) in any manner the Directors determine.

14. PROCEEDINGS OF DIRECTORS

- 14.1 The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- 14.2 A Director may, and a Secretary will on the requisition of a Director, convene a meeting of the Directors.
- 14.3 A quorum at a meeting of Directors will be -
- (a) if the Company has only one (1) Director, that Director; or
 - (b) if the Company has two (2) or more Directors, one half of the Directors or the number previously determined by the Directors.
- 14.4 If there is a vacancy in the office of a Director, the remaining Directors may act but, if there is not a sufficient number for a quorum at a meeting of Directors, they may act only for the purpose of -
- (a) increasing the number of Directors to that sufficient for a quorum; or
 - (b) convening a General Meeting.

This clause takes effect subject to clause 14.3.

- 14.5 The Chair of the Board nominated under clause 14.11 shall chair the meetings of Directors.
- 14.6 Where a meeting of Directors is held and -
- (a) a Chair of the Board has not been nominated under clause 14.11; or
 - (b) the Chair of the Board is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act,
- the Directors present must elect one of them to chair the meeting.
- 14.7 In this Constitution, the contemporaneous linking together by telephone, radio, closed circuit television or other electronic means of audio or audio-visual communication of a quorum of Directors together with the secretary, whether or not any of them is out of the Commonwealth of Australia, will be deemed to constitute a meeting of the Directors and all the provisions in this Constitution as to meetings of the Directors will apply to the meetings if the following conditions are met -
- (a) all the Directors entitled to receive notice of a meeting of the Directors (including any alternate Director) shall be given notice of a meeting to be held by telephone or other means of communication and be entitled to be linked by telephone or other means for the purposes of such meeting;
 - (b) each of the Directors taking part in the meeting by telephone or other means of communication and the secretary must be able to hear each of the other Directors taking part as from the commencement of the meeting;
 - (c) at the commencement of the meeting each Director must acknowledge their presence to all the other Directors taking part.
- 14.8 A Director taking part in a meeting under clause 14.7 shall not leave the meeting, and shall be conclusively presumed to have been present and part of the quorum at all times during the meeting, unless they have before or during the meeting obtained the consent of the chair of the meeting to leave the meeting.
- 14.9 The minutes of any meeting under clause 14.7 shall be sufficient evidence of the proceedings and of the observance of all necessary formalities.
- 14.10 Subject to this Constitution, questions arising at a meeting of Directors shall be decided by a majority of votes of Directors present and voting and any such decision shall for all purposes be deemed a decision of the Directors.
- 14.11 If there is an equality of votes, the chair of the meeting, in addition to their deliberative vote (if any) has a casting vote.
- 14.12 If all Directors who are entitled to vote and are Available to sign a document stating they are in favour of a resolution of the Directors as set out in the document, that resolution shall be considered to have been passed at a meeting of the Directors held on the day and at the time the document was last signed by a Director.
- 14.13 For the purposes of clause 14.12, a Director is not Available if:
- (a) they have given notice to the Directors or to the Secretary that they are not available for a period of time; or

- (b) the chair of the Board is aware of the condition or location of the Director and has certified that for the purpose of this clause the Director is not available.
- 14.14 For the purposes of clause 14.12, two or more separate documents containing statements in identical terms which are signed by one or more Directors shall together be considered to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.
- 14.15 A reference in clause 14.12 to the Directors does not include a Director who, at a meeting of Directors, would not have the right to vote on the resolution.
- 14.16 A reference in clause 14.12 to a signed document shall include a document which is electronically scanned and emailed and a document which is transmitted by facsimile, in either case received by the Company and apparently signed by a Director.
- 14.17 All acts done by a meeting of the Directors or of a committee of Directors or by any person acting as a Director are valid even if it is afterwards discovered that -
 - (a) there was a defect in the appointment of a person to be or act as a Director, or as a member of the committee; or
 - (b) a person was disqualified.

15. COMMITTEE OF DIRECTORS

- 15.1 The Directors may delegate any of their powers to a committee of two or more Directors.
- 15.2 A committee to which powers are delegated must exercise those powers under the directions of the Directors and the powers will be considered to have been exercised by the Directors.
- 15.3 The members of such a committee may elect one of them as chair of their meetings.
- 15.4 Where such a meeting of the committee is held and -
 - (a) a chair has not been elected under Rule 15.3; or
 - (b) the chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;
 - (c) the members of the committee present may elect one of them to be chair of the meeting.
- 15.5 A committee may meet and adjourn as it thinks proper.
- 15.6 Questions arising at a meeting of a committee shall be determined by a majority of votes of the members of the committee present and voting.
- 15.7 In the case of an equality of votes, the chair, in addition to their deliberative vote (if any), has a casting vote.

16. DIRECTORS CONFLICT OF INTEREST

- 16.1 If a Director has an interest, whether as vendor, purchaser or otherwise in any contract or arrangement to be entered into by or for the Company -
- (a) the nature of their interest must be disclosed by them at a meeting of the Directors and the Secretary shall record the declaration in the minutes of the meeting;
 - (b) the declaration shall be made at the meeting of the Directors at which the contract or arrangement is being considered if their interest then exists or otherwise at the first meeting of the Directors after the acquisition of their interest;
 - (c) a general notice that a Director is a member of a specified company and is to be regarded as interested in any contract or arrangement which may after the date of the notice be made with that company shall be deemed to be a sufficient declaration.
- 16.2 Where a Director makes a disclosure or declaration under Rule 16.1, the Director may with the prior consent of the other Directors (but not otherwise and, where consent is given, only to the extent of that consent) in relation to the matter in respect of which the Director has a conflict of interest -
- (a) receive information about the matter;
 - (b) be present at the meeting during the discussion of that matter;
 - (c) participate in the discussion of that matter; and
 - (d) vote in relation to that matter.
- 16.3 A Director is not disqualified from participation in meetings just because the Director is an employee or officer or student of JCU.
- 16.4 As provided for in section 187 of the Act, in the circumstances where the Company is a wholly-owned subsidiary of JCU, a Director is taken to act in good faith in the best interests of the Company if:
- (a) the Director acts in good faith in the best interests of JCU; and
 - (b) the Company is not insolvent at the time the Director acts and does not become insolvent because of the Director's act;
- and to that intent, a Director may act in the best interests of JCU.

17. INSPECTION OF RECORDS AND PROVISION OF INFORMATION

- 17.1 Subject to Rules 17.2 to 17.5, the Directors will determine whether and under what conditions the accounting records and other documents of the Company will be open for inspection by Members.
- 17.2 A Member other than a Director does not have the right to inspect any accounting records or other documents of the Company except as provided by law or authorised

by the Directors or by the Company in General Meeting or by virtue of clauses 17.3 to 17.5.

17.3 Where the Company is a Controlled Entity of JCU, then JCU has the right at any time, upon request, to:

- (a) inspect any accounting records or other documents of the Company; and
- (b) obtain any information relating to the affairs of the Company.

In such cases, the Company shall provide to JCU, within a reasonable period, all such information and records as have been requested.

17.4 Where the Company is a Controlled Entity of JCU, then the Company must provide reports to JCU in relation to its affairs as requested by JCU from time to time.

17.5 Where the Company is a Controlled Entity of JCU, then the Company must also provide to JCU on a periodic basis:

- (a) minutes of all Board meetings,
- (b) periodic management reports and end of year audited accounts, and
- (c) other key documents, including annual business plans on a three-year rolling basis, relating to the affairs of the Company.

18. COMPANY SECRETARY

The Secretary holds office on such terms and conditions as to remuneration (if any) and otherwise as the Board determines.

19. OTHER SALARIED OFFICERS

The Board may appoint such officers and employees at such salaries for such periods and on such terms as it thinks fit and may subject to conditions of the employment of such officers and employees dispense with their services and re-appoint or appoint other officers and employees as it thinks fit.

20. THE SEAL

20.1 Company Seal is optional

The Company may have a Seal, and the Board shall so determine from time to time.

20.2 Affixing the Seal

If the Company has a Seal, the Board is to provide for its safe custody and it should only be used by the authority of the Board. Every instrument to which the Seal is affixed is to be signed by a member of the Board and countersigned by the Secretary or by a second member of the Board or by another person appointed by the Board for the purpose. The Board may determine either generally, or in any particular case, that a signature may be affixed by a mechanical means specified in the determination.

20.3 Execution of documents without a Seal

The Company may execute a document, including a deed, by having the document signed by:

- (a) 2 Directors;
- (b) a Director and the Secretary; and

if the Company executes a deed, the document is to be expressed to be executed as a deed and be executed in accordance with the appropriate procedures set out in this Rule.

20.4 Other ways of executing documents

Notwithstanding the provisions of Rules 20.2 and 20.3, any document including a deed, may also be executed by the Company in any other manner permitted by law.

21. MINUTES

The Board must ensure that minutes are duly recorded in any manner it thinks fit. The minutes must include a note:

- (a) of the names of the members present at each meeting of the Company, the Board and of any Committees; and
- (b) of all resolutions and proceedings of general meetings of the Company and of meetings of the Board and any Committees,

The minutes of any meeting of the Board or of any Committee, or of the Company, if purporting to be signed by the Chairman of the meeting or by the Chair of the next succeeding meeting, are prima facie evidence of the matters stated in the minutes.

22. NOTICES

22.1 Service of Notices

A notice may be given by the Company to a Member, or in the case of joint holders to the Member whose name stands first in the Register, personally, by leaving it at the Member's registered address or by sending it by prepaid post or facsimile transmission addressed to the Member's registered address or by sending it to the electronic address (if any) nominated by the Member. All notices sent by prepaid post to persons whose registered address is not in Australia may be sent by airmail or some other way that ensures that it will be received quickly.

22.2 When Notice Deemed to be Served

Any notice sent by post is deemed to have been served at the expiration of 48 hours after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a Member personally or left at the Member's registered address is deemed to have been served when delivered. Any notice served on a Member by facsimile transmission is deemed to have been served when the transmission is sent. A facsimile is deemed to be duly sent when the Company's facsimile system generates a message confirming successful transmission to the correct facsimile number of the total

number of pages of the notice to the addressee. Any notice served on a Member by electronic means is deemed to have been served when the electronic message is sent to the correct address.

22.3 Member Not Known at Registered Address

Where a Member does not have a registered address or where the Company has bona fide reason to believe that a Member is not known at the Member's registered address, all future notices are deemed to be given to the Member if the notice is exhibited in the Office for a period of 48 hours (and is deemed to be duly served at the commencement of that period) unless and until the Member informs the Company of their registered place of address.

22.4 Signature to Notice

The signature to any notice to be given by the Company may be written, printed or affixed electronically.

22.5 Reckoning of Period of Notice

Where a given number of days' notice or notice extending over any other period is required to be given, the day of service is not to be reckoned in the number of days or other period.

22.6 Service on Deceased Members

A notice delivered or sent by post to the registered address of a Member pursuant to these Rules is (notwithstanding that the Member is then dead and whether or not the Company has notice of the Member's death) deemed to have been duly served and the service is for all purposes deemed to be sufficient service of the notice or document on the Member's heirs, executors or administrators.

22.7 Persons Entitled to Notice of General Meeting

- (a) Notice of every general meeting is to be given to:
 - (i) each Member whose address is known to the Company; and
 - (ii) the auditor for the time being of the Company.
- (b) No other person is entitled to receive notices of general meetings, other than those referred to in Rule 22.7(a).

22.8 Notification of Change of Address

Every Member must notify the Company of any change of their address and any such new address must be entered in the register of Members as required to be kept by the Act, and upon being so entered, becomes the Member's registered address.

23. INDEMNITY AND INSURANCE

23.1 Indemnity

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company must indemnify each officer, Director and

Secretary of the Company (**Officer**) in respect of any liability, loss, damage, cost or expense incurred or suffered or to be incurred or suffered by the Officer in or arising out of the conduct of any activity of the Company or the proper performance of any duty of that Officer.

- (b) The indemnity in clause 23.1(a);
 - (i) is enforceable without the Officer first having to make a payment or incur an expense;
 - (ii) is enforceable by the Officer notwithstanding that the Officer has ceased to be an officer of the Company; and
 - (iii) applies to any liability, loss, damage, cost or expense incurred or suffered or to be incurred or suffered by the Officer, whether incurred before or after the date of this Constitution.

23.2 Documenting indemnity

The Company may enter into an agreement containing an indemnity in favour of any Officer. The Company will determine the terms of the indemnity contained in the agreement.

23.3 Insurance

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may pay any premium in respect of a contract of insurance between an insurer and an Officer or any person who has been an Officer in respect of the liability suffered or incurred in or arising out of conduct of any activity of the Company and the proper performance by the Officer of any duty.
- (b) If the Company determines, the Company may execute a document containing Rules under which the Company agrees to pay any premium in relation to such a contract of insurance.

24. GOVERNANCE AND POLICY

24.1 Policies

Where the Company is a Controlled Entity of JCU, then the Company must adopt such policies as are necessary for the operations of the Company and as may be nominated by JCU following consultation with the Board, including those set out below:

- (a) risk management; and
- (b) work health and safety.

24.2 Board Charter (Statement of Governance Principles)

Where the Company is a Controlled Entity of JCU, then the Board must adopt, and not less than once each year evaluate, a written statement of its own governance principles.

24.3 Recommendations from the Vice Chancellor

The Vice Chancellor may give written notice to the Board of recommendations or requirements for the good governance of the Company. In such cases, Directors shall, as far as is practicable, act in accordance with such recommendations or requirements.

25. OTHER MATTERS

25.1 *Confidentiality* - Subject to the provisions of clauses 16.4 and 17.1 to 17.5, Directors must maintain confidentiality in relation to all affairs of the Company.

25.2 *Financial Year* - Where the Company is a Controlled Entity of JCU, then the financial year for the Company shall be the financial year for JCU.

25.3 *Constitution* - Where the Company is a Controlled Entity of JCU, then this constitution or any amendments shall not have effect until approved by Council.

25.4 *Audit* - Where the Company is a Controlled Entity of JCU, then the accounts of the Company shall be audited as advised by JCU in accordance with the laws of Queensland. Until notified otherwise by JCU, the accounts shall be audited by the Queensland Audit Office.

25.5 *Patron* – The Company may in a general meeting appoint a Patron.