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# CONSTITUTION

## JCU CPB PTY LTD ACN 153 630 445



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# CORPORATIONS ACT 2001

## CONSTITUTION

of

**JCU CPB Pty Ltd**

**ACN 153 630 445**

Company Limited by Shares

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Constitution:

1.2 "**Act**" means the Corporations Act 2001 (Cth);

1.3 "**Board**" means the board of directors of the Company;

1.4 "**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;

1.5 "**Company**" means JCU CPB Pty Ltd ACN 153 630 445;

1.6 "**Council**" means the Council of JCU;

1.7 "**CPB Trust**" means the trust of that name, settled by Trevor Cowling and established by trust deed, of which the Company is the trustee;

1.8 "**Discovery Rise Project**" means the mixed-use development, under that name, being undertaken by JCU of its land at Townsville for the benefit of JCU;

1.9 "**Entity Rules**" means:

1.10 (i) the "Policy for the Establishment and Management of the University's Part-Ownership or Significant Interest in a Non-Controlled Entity" and "Policy for the Establishment and Oversight of University-Controlled Entities" as amended from time to time; and

1.11 (ii) any other written policy, procedure or guidelines of JCU in place from time to time, insofar as they relate to the management, governance or activities of any class of entity of which the Company is one;

1.12 "**General Meeting**" includes, where applicable, an annual general meeting;

1.13 "**JCU**" means the 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;

1.14 "**Seal**" means the common seal (if any) of the Company and includes any official seal of the Company;

- 1.15** "Secretary" means any person appointed to perform the duties of a secretary of the Company; and
- 1.16** "Vice-Chancellor" means the person appointed as Vice-Chancellor of JCU from time to time.
- 1.17** Unless the contrary intention appears, an expression used in this Constitution that deals with a matter dealt with by a particular provision of the Act has the same meaning as in that provision of the Act.
- 1.18** Words importing the singular number include the plural number and vice versa.
- 1.19** Words importing a particular gender include any other gender.
- 1.20** A reference to a person includes any other legal entity and vice versa.
- 1.21** A reference to a statute includes all regulations, subordinate legislation and amendments relating to that statute.
- 1.22** The replaceable rules under the Act shall not apply to this Company.

## **2. OBJECTS**

**2.1** The objects for which this Company are established are:

- (a) to act as trustee of the CPB Trust;
- (b) to develop, construct, operate and manage for the ultimate benefit of JCU a Clinical Practice Building to be located on land owned by JCU;
- (c) to provide a return of funds and / or capital to JCU from the development, construction, operation and / or sale of the Clinical Practice Building;
- (d) to act as trustee of any other trusts for the benefit of JCU;
- (e) to provide facilities consistent with the objectives of the Discovery Rise Project;
- (f) to provide facilities for study, research and education at tertiary level;
- (g) to make donations from time to time to JCU in such amounts and at such times as the Board may determine;
- (h) to subscribe and make payments to any fund for charitable or benevolent objects of any description;
- (i) to exploit commercially any facility or resource of the Company or the CPB Trust; and
- (j) any other object or purpose not inconsistent with the objects specified in this Constitution, which is consistent with the provisions of the *James Cook University Act 1997* (as amended) and which the directors of the Company in consultation with the Council consider appropriate.

### **3. PROPRIETARY COMPANY**

**3.1** The Company is a proprietary company and therefore:-

- (a) is limited by shares;
- (b) restricts the right to transfer its shares as provided in this Constitution;
- (c) limits to not more than fifty the number of its members (counting joint holders of shares as one person and not counting a person who is employed by the Company);
- (d) must not engage in any fundraising activity that is prohibited under the Act.

### **4. SHARE CAPITAL AND VARIATION OF RIGHTS**

**4.1** The initial share capital of the Company is ten dollars (\$10.00) divided into ten (10) ordinary shares (with all rights) of one dollar (\$1.00) each.

**4.2** Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Act, the directors may issue shares in the Company, in different classes, with such preferred, deferred or other special rights or such restrictions, with regard to dividend, voting, return of capital or otherwise, as the directors, subject to any resolution, determine.

**4.3** Subject to the Act, any preference shares may, by resolution, be issued on the terms that they are, or at the option of the Company are liable to be, redeemed.

**4.4** If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue) may, whether or not the Company is being wound up, be varied with:-

- (a) the consent in writing of the holders of three-quarters of the issued shares of that class; or
- (b) the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.

**4.5** The provisions of this Constitution relating to general meetings apply so far as they are capable of application to a meeting of shareholders except that:-

- (a) a quorum is constituted by one person if there is only one shareholder otherwise two persons who, between them, hold or represent by proxy one third of the issued shares of the class; and
- (b) any holder of shares of the class, present in person or by proxy, may demand a poll.

**4.6** The rights of the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue, be deemed to be varied by the creation or issue of further shares ranking equally with the first mentioned shares.

- 4.7** Except as required by law, the Company will not recognise a person as holding a share upon any trust.
- 4.8** Subject to the law and this Constitution, the Company is not compelled to recognise (whether or not it has notice of the interest concerned) any equitable, contingent, future or partial interest in any share except the right of ownership of the registered holder.
- 4.9** In accordance with the Act, a person whose name is entered as a member in the register of members is entitled without payment to receive a certificate (under the seal of the Company, if the Company has a seal) in respect of the share, however the Company is not bound to issue more than one certificate for shares held jointly.
- 4.10** Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.
- 4.11** The Company may exercise the power to make payments by way of brokerage or commission conferred by the Act in the manner provided by the Act.
- 4.12** Payments by way of brokerage or commission may be satisfied by the payment of cash, by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

## **5. LIEN**

- 5.1** The Company has a first and paramount lien on every share (unless fully paid) for all money (whether presently payable or not) called or payable at a fixed time in respect of the share.
- 5.2** The Company also has a first and paramount lien on every share (unless fully paid) registered in the name of a holder for all money presently payable by them or their estate to the Company.
- 5.3** The directors may at any time exempt a share wholly or in part from this clause.
- 5.4** Any lien of the Company on a share extends to all dividends payable in respect of the share.
- 5.5** Subject to clause 5.6, the Company may sell, in such manner as the directors think fit, any share on which the Company has a lien.
- 5.6** A share on which the Company has a lien must not be sold unless:-
- (a) a sum in respect of which the lien exists is presently payable; and
  - (b) the Company has, not less than 14 days before the date of the sale, given to the registered holder of the share or the person entitled to the share by reason of the death, bankruptcy or mental incapacity of the registered holder, a notice in writing setting out and demanding payment of the amount referred to in paragraph 5.6(a).

- 5.7 For a sale under clause 5.5, the directors may authorise a person to transfer the share sold to the purchaser of the share.
- 5.8 The Company will register the purchaser as the holder of the shares transferred and the purchaser is not bound to see to the application of the purchase money.
- 5.9 The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.
- 5.10 The proceeds of a sale under clause 5.5 shall be applied by the Company in payment of that amount for which the lien exists as is presently payable, and the residue (if any) shall (subject to any similar lien for sums not presently payable that existed on the shares before the sale) be paid to the person entitled to the share at the date of but immediately before the sale.

## 6. CALLS ON SHARES

- 6.1 The directors may make calls upon the members for any money unpaid on the share of the members which is not payable at fixed times, however no call shall:-
- (a) exceed one-quarter of the nominal value of the share; or
  - (b) be payable within one month of the date fixed for the payment of any previous call.
- 6.2 Each member must, upon receiving at least 14 days' notice specifying the time and place of payment, pay to the Company the amount called on their share as specified in the notice.
- 6.3 The directors may revoke or postpone a call.
- 6.4 A call is deemed to have been made at the time when the resolution of the directors authorising the call was passed. A call may be required to be paid by instalments.
- 6.5 The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.
- 6.6 If a sum called in respect of a share is not paid before or on the day appointed for payment, the person from whom the sum is due must pay interest on that sum from that day to the time of actual payment at the prescribed rate, but the directors may waive payment of all or part of that interest.
- 6.7 Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date will under this Constitution be regarded as a call made and payable on the date that the sum is payable, and, in case of non-payment, this Constitution will apply as if the sum had become payable under a call properly made and notified.
- 6.8 The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.



- 6.9** The directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.
- 6.10** The directors may authorise payment by the Company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the prescribed rate, as is agreed upon between the directors and the member paying the sum.
- 6.11** For the purposes of clauses 6.6 and 6.10, the prescribed rate of interest is:-
- (a) the rate fixed by the directors but not exceeding 10% per annum; or
  - (b) if no rate is fixed by the directors - 10% per annum.

## **7. FORFEITURE OF SHARES**

- 7.1** If a member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the directors may, at any time while any part of the call or instalment remains unpaid, serve a notice on them requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued.
- 7.2** The notice must name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that, in the event of non-payment by that date, the shares for which the call was made will be liable to be forfeited.
- 7.3** If the requirements of a notice served under clause 7.1 are not complied with, any share for which the notice has been given may at any time until the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.
- 7.4** Such a forfeiture will include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.
- 7.5** A forfeited share may be sold or disposed of on the terms and in the manner the directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the directors think fit.
- 7.6** A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but remains liable to pay to the Company all money that, at the date of forfeiture, was payable by them to the Company in respect of the shares (including interest at the rate of 10% per annum from the date of forfeiture on the money unpaid if the directors enforce payment of the interest), but this liability ceases if and when the Company receives payment in full of all the money (including interest) payable in respect of the shares.
- 7.7** A statement in writing declaring that the person making the statement is a director or a secretary of the Company, and that a share in the Company has been forfeited on a date stated in the statement, is evidence of the facts in the statement as against all persons claiming to be entitled to the share.

- 7.8 The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- 7.9 Upon the execution of the transfer, the transferee will be registered as a holder of the share and is not bound to see to the application of any money paid as consideration.
- 7.10 The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.
- 7.11 The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if that sum had been payable by virtue of a call duly made and notified.

## **8. TRANSFER OF SHARES**

- 8.1 Subject to this Constitution, a member may transfer all or any of their shares by an instrument of transfer which is:-
- (a) in writing;
  - (b) in the usual form or the form approved by the directors; and
  - (c) executed by or on behalf of both the transferor and the transferee.
- 8.2 A transferor of shares remains the holder of the shares until the transfer is registered and the name of the transferee is entered in the register of members in respect of the shares.
- 8.3 Subject to this Constitution the Company shall register the transferee as shareholder upon receipt at the registered office of the Company of:-
- (a) the instrument of transfer under clause 8.1;
  - (b) any fee not exceeding \$10.00 as the directors require;
  - (c) any certificate for the shares; and
  - (d) any other information as the directors properly require to show the right of the transferor to make the transfer.
- 8.4 The directors may in their absolute discretion refuse to register a transfer of shares without giving any reason.
- 8.5 Shares must not be transferred to a person who is not a member if:-
- (a) a member; or
  - (b) a person selected by the directors as being desirable in the interests of the Company to be a member ("selected person"),

is willing to purchase those shares.

- 8.6** If the transferor wishes to transfer all or any of their shares:-
- (a) the transferor shall give notice in writing to the Company that they wish to transfer all or any of the shares (called "the transfer notice");
  - (b) the transfer notice shall state the price nominated by the transferor for the shares to be transferred and, if it includes several shares, the transfer notice will operate as a separate notice for each;
  - (c) the transfer notice will constitute the Company as agent for the sale;
  - (d) the transfer notice will not be revocable except with the consent of the directors.
- 8.7** All shares must be offered to members in proportion to the shares held by them unless the directors in their absolute discretion give any member, class of members or selected person a preferential right to purchase the shares.
- 8.8** If within one month after the Company is served with the transfer notice a member or selected person gives notice to the transferor that they are willing to purchase the shares ("the Transferee") the transferor is bound upon payment of the price to transfer the shares to the Transferee.
- 8.9** If the transferor fails to transfer the shares under clause 8.8:
- (a) the Company will after receiving the purchase money enter the name of the Transferee in the register as the holder of the shares;
  - (b) the Company will hold the purchase money in trust for the transferor;
  - (c) a receipt issued by the Company for the purchase money will be a good discharge to the Transferee; and
  - (d) after the name of the Transferee has been entered in the register the validity of the transfer shall not be questioned by any person.
- 8.10** If the Company shall not within one month after being served with the transfer notice find a member or selected person who is willing to purchase the shares, the transferor may within three calendar months, but subject to clause 8.4, sell and transfer the shares (or those not sold) to any person at a price not less than the price placed on the shares in the transfer notice.
- 8.11** The registration of transfers may be suspended at such times and for such periods as the directors from time to time determine not exceeding in the whole 30 days in any year.
- 8.12** So long as JCU is a member of the Company there shall be no issue of shares, change of share rights or transfer of shares without the prior written approval of JCU.

## **9. TRANSMISSION OF SHARES**

- 9.1** Where a member dies who was a sole holder of a share, the legal personal representative shall be the only person recognised by the Company as being entitled to the share.
- 9.2** Where a member dies who was a joint holder of a share, the surviving joint holder shall be the only person recognised by the Company as being entitled to the share, however the estate of the deceased joint holder shall not be released from any liability in respect of the share.
- 9.3** Subject to the Bankruptcy Act 1966, a person becoming entitled to a share in consequence of the death, bankruptcy or mental incapacity of a member has the right to have themselves or some other person nominated by them registered as the transferee of the share subject to:-
- (a) evidence of the death, bankruptcy or mental incapacity of the member;
  - (b) evidence of that person's right to become holder of the interest in place of the member;
  - (c) any other information which is reasonably required by the directors;
  - (d) if the person becoming entitled elects to be registered themselves, a notice in writing signed by them stating that they so elect;
  - (e) if they elect to have another person registered, a transfer of the share to that other person.
- 9.4** Upon receiving all information required under clause 9.3 the Company shall register the nominated person as the holder of the share.
- 9.5** All the limitations, restrictions and provisions of this Constitution relating to the right to transfer, and the registration or transfer of, shares are applicable to any such notice or transfer as if the death or bankruptcy or mental incapacity of the member had not occurred and the notice or transfer were a transfer signed by that member.
- 9.6** Where a member dies, becomes bankrupt or mentally incapacitated their personal representative or the trustee of their estate (as the case may be) is, upon the production of such information as is properly required by the directors, entitled to the same dividends and other advantages, and to the same rights, and subject to the same obligations and liabilities as the member would have been entitled or subject to if they had not died or become bankrupt or mentally incapacitated.
- 9.7** Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall, for the purpose of this Constitution, be deemed to be joint holders of the share.

## **10. ALTERATION OF CAPITAL**

### **10.1** The Company may by resolution:-

- (a) increase its share capital by the creation of new shares of such amount as is specified in the resolution;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) subdivide all or any of its shares into shares of smaller amount than is fixed by this Constitution but so that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each such share of a smaller amount is the same as it was in the case of the share from which the share of a smaller amount is derived; and
- (d) cancel shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person or have been forfeited and reduce its share capital by the amount of the shares so cancelled.

**10.2** Subject to any direction to the contrary that may be given by the Company in general meeting, all unissued shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the Company of general meetings in proportion, as nearly as the circumstances allow, to the number of shares of that class that they already hold.

**10.3** The offer shall be made by notice specifying the number of shares offered and limiting a time within which the offer, if not accepted, will be deemed to be declined.

**10.4** After the expiration of that time or on being notified by the person to whom the offer is made that they decline to accept the shares offered, the directors may issue those shares in such manner as they think most beneficial to the Company.

**10.5** Where, by reason of the proportion that shares proposed to be issued bear to shares already held, some of the first-mentioned shares cannot be offered in accordance with this clause, the directors may issue the shares that cannot be so offered in such manner as they think most beneficial to the Company.

**10.6** Subject to the Act, the Company may, by special resolution, reduce its share capital, any capital redemption reserve fund or any share premium account.

## **11. GENERAL MEETINGS**

**11.1** Any director may whenever they think fit convene a general meeting.

**11.2** Notice of every general meeting must be given in the manner authorised by clause 22.1 to:

- (a) every member;
- (b) in consequence of the death, bankruptcy or mental incapacity of a member, to the person recognised by the Company under clause 9 as being entitled to the share; and

(c) the auditor for the time being of the Company.

**11.3** No other person is entitled to receive notices of general meeting.

**11.4** A notice of a general meeting shall:-

- (a) provide at least ten (10) business days notice of the meeting;
- (b) specify the place, the day and the hour of meeting; and
- (c) except as provided by clause 11.5 state the general nature of the business to be transacted at the meeting.

**11.5** It is necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes:-

- (a) the declaring of a dividend;
- (b) the consideration of accounts;
- (c) the reports of the directors and auditors;
- (d) the election of directors in the place of those retiring; or
- (e) the appointment and fixing of the remuneration of the auditors.

## **12. PROCEEDINGS AT GENERAL MEETINGS**

**12.1** No business will be transacted at a general meeting unless a quorum of members is present when the meeting proceeds to business.

**12.2** For the purposes of this Constitution, a quorum is:-

- (a) in the case of a single member Company, that member;
- (b) in every other case, two (2) members.

**12.3** For the purpose of determining whether a quorum is present, a person attending as a proxy or as representing a body corporate that is a member, will be considered to be a member.

**12.4** If a quorum is not present within half an hour from the time appointed for the meeting:-

- (a) where the meeting was convened upon the requisition of members - the meeting will be dissolved; or
- (b) in any other case - the meeting will be adjourned to the day, time and place that the directors determine or, if no determination is made, to the same day in the next week at the same time and place as specified in the original notice of meeting.

- 12.5** If at any adjourned meeting referred to in clause 12.4(b) a quorum is not present within half an hour from the time appointed for the meeting the meeting must be dissolved.
- 12.6** If the Vice-Chancellor has nominated a person to act as chair of general meetings, that person shall preside as chair at every general meeting.
- 12.7** Where a general meeting is held and:-
- (a) a chair has not been nominated as provided by clause 12.6; or
  - (b) a chair has been so nominated but:-
    - i) the chair is not present within 10 minutes after the time appointed for the holding of the meeting; or
    - ii) the chair is unwilling to act,
- the members present must elect one of them to be chair of the meeting.
- 12.8** The chair must, if so directed by the meeting, adjourn the meeting to another time and place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the original meeting.
- 12.9** It is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting unless the meeting is adjourned for thirty days or more.
- 12.10** At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:-
- (a) by the chair;
  - (b) by at least three members present in person or by proxy;
  - (c) by members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
  - (d) by members holding shares in the Company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.
- 12.11** Unless a poll is demanded, a declaration by the chair that a resolution has on a show of hands been:-
- (a) carried unanimously; or
  - (b) carried by a particular majority; or
  - (c) lost,

is conclusive evidence of the result without proof of the number or proportion of the votes recorded in favour of or against the resolution where an entry of the result is made in the book containing the minutes of the proceedings of the Company.

- 12.12** A demand for a poll may be withdrawn.
- 12.13** If a poll is demanded, it shall be taken in the manner and (subject to clause 12.15) either immediately or after an interval of adjournment, as the chair directs, and the result of the poll shall be a resolution of the meeting in which the poll is demanded.
- 12.14** A poll demanded on the election of a chair or on a question of adjournment must be taken immediately.
- 12.15** If there is an equality of votes, on a show of hands or on a poll, the chair of that meeting, in addition to their deliberative vote (if any), has a casting vote.
- 12.16** Subject to any rights or restrictions attached to any class of shares:-
- (a) each member entitled to vote may vote in person or by proxy or attorney; and
  - (b) on a show of hands, every person present who is a member or a representative of a member has one vote; and
  - (c) on a poll every person present in person or by proxy or attorney has one vote for each share they hold.
- 12.17** In the case of joint holders the vote of the senior joint holder who votes, whether in person or by proxy or by attorney, shall be accepted to the exclusion of the votes of the other joint holders. Seniority shall be determined by the order in which the names stand in the register of members.
- 12.18** If a member is of unsound mind or their estate is to be dealt with in any way under mental health law, their trustee or any person who properly has the management of their estate may exercise the rights of the member in relation to a general meeting as if they were the member.
- 12.19** A member is not entitled to vote at a general meeting unless all calls and other sums presently payable by them in respect of their shares have been paid.
- 12.20** An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given.
- 12.21** Any objection shall be referred to the chair of the meeting, whose decision is final.
- 12.22** A vote not disallowed under such an objection is valid.
- 12.23** An instrument appointing a proxy must be in writing by the appointer or their authorised attorney or, if the appointer is a body corporate, under seal or by an authorised officer or attorney.



**12.24** An instrument appointing a proxy may specify the manner in which the proxy is to vote for a particular resolution and, where so specified, the proxy must vote in that manner.

**12.25** An instrument appointing a proxy is deemed to confer authority to demand or join in demanding a poll.

**12.26** An instrument appointing a proxy shall be in a form similar to the following:-

*{Name of Company}*

*I/we, \_\_\_\_\_ of \_\_\_\_\_ being a  
member of the above Company, hereby appoint \_\_\_\_\_ of  
or, in their absence, \_\_\_\_\_ of  
as my proxy to vote for me on my behalf at the \*annual general \*general  
meeting of the Company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ and at any  
adjournment of that meeting.*

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

*Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ .*

*\*Strike out whichever is not desired.*

*#To be inserted if desired.*

**12.27** Unless otherwise determined by the meeting, an instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed, or certified copies, are deposited at the registered office of the Company or at such other place in Australia as is specified in the notice convening the meeting:-

- (a) not less than 48 hours before the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
- (b) in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll.

**12.28** A vote given in accordance with an instrument of proxy or of a power of attorney is valid notwithstanding:-

- (a) the previous death or unsoundness of mind of the principal;
- (b) the revocation of the instrument (or of the authority under which the instrument was executed) or of the power; or
- (c) the transfer of the share in respect of which the instrument or power is given,

if no intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

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### **13. APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS**

- 13.1** 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.
- 13.2** No person shall be a director of the Company unless that person holds a Certificate of Approval.
- 13.3** A Certificate of Approval may be in such form as the Vice-Chancellor determines.
- 13.4** A Certificate of Approval may be withdrawn at any time. A person ceases to be a director of the Company upon the Vice-Chancellor withdrawing the Certificate of Approval.
- 13.5** The number of the directors shall not be less than one nor more than ten.
- 13.6** There shall be no share qualification for a director.
- 13.7** Subject to clauses 13.4 and 13.5, the Company may by ordinary resolution passed at a general meeting increase or reduce the number of directors.
- 13.8** A director shall hold office until the Certificate of Approval is withdrawn by the Vice-Chancellor or they are removed by ordinary resolution of the Company in general meeting or until their office becomes vacant under this Constitution or the Act.
- 13.9** The Vice-Chancellor may nominate for appointment a person to act as chair of the Board and may determine the period for which they are to hold office. The person so nominated shall act as chair of the Board for the period of time, if any, set by the Vice-Chancellor.
- 13.10** The directors have 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, but the total number shall not at any time exceed the number fixed in this Constitution.
- 13.11** 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.
- 13.12** The remuneration of the directors shall be determined by the Company in consultation with JCU. So long as JCU is a member of the Company no fees shall be paid to any director by way of directors' fees without prior written approval by JCU.
- 13.13** That remuneration shall be deemed to accrue from day to day.
- 13.14** The directors may resolve to pay 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 of the Company.

**13.15** A director may be appointed as secretary of the Company at a salary and on terms determined by the directors.

**13.16** 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) 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;
- (c) resigns their office by notice in writing to the Company;
- (d) is absent without the consent of the directors from meetings of the directors for six consecutive months;
- (e) without the consent of the Company in general meeting holds any other office of profit under the Company except that of managing director, principal executive officer, manager or secretary; or
- (f) 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.

#### **14. POWERS AND DUTIES OF DIRECTORS**

**14.1** Subject to the Act and to this Constitution, the business of the Company shall be managed by the directors.

**14.2** The directors may authorise the payment by the Company of all expenses incurred in promoting and forming the Company from Company funds.

**14.3** 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, including without limitation the powers of the Company to:-

- (a) borrow money;
- (b) charge any property or business of the Company or any of its uncalled capital; and
- (c) issue or give any security for a debt, liability or obligation of the Company or of any other person.

**14.4** 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.

**14.5** Any power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney.

**14.6** All negotiable instruments and receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or executed:-

- (a) in the case of a single director Company, by one (1) director;
- (b) if the company has more than one (1) director, then by any two (2) directors or by one (1) director and the secretary; or
- (c) in any manner the directors determine.

## **15. PROCEEDINGS OF DIRECTORS**

**15.1** The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

**15.2** A director may, and a secretary will on the requisition of a director, convene a meeting of the directors.

**15.3** 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, two directors or the number determined from time to time (but not at that meeting by the directors).

**15.4** 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 of the Company.

This clause takes effect subject to clause 13.2.

**15.5** The chair of the Board, nominated under clause 13.9, shall act as chair of the meetings.

**15.6** Where a meeting is held and:-

- (a) a chair of the Board has not been nominated under clause 13.9; 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 be a chair of the meeting.

**15.7** 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 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.

**15.8** A director taking part in a meeting under clause 15.7 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 by telephone or other means of communication, unless they have before or during the meeting obtained the consent of the chair to leave the meeting.

**15.9** The minutes of any meeting under clause 15.7 shall be sufficient evidence of the proceedings and of the observance of all necessary formalities.

**15.10** 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.

**15.11** If there is an equality of votes, the chair of the meeting, in addition to their deliberative vote (if any) has a casting vote.

**15.12** If the directors 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.

**15.13** For the purposes of clause 15.12, 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.

**15.14** A reference in clause 15.12 to the directors does not include a director who, at a meeting of directors, would not have the right to vote on the resolution.

**15.15** A reference in clause 15.12 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.

**15.16** 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.

## **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 clause 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 they have a conflict of interest:

**16.3** receive information about the matter;

**16.4** be present at the meeting during the discussion of that matter;

**16.5** participate in the discussion of that matter; and

**16.6** vote in relation to that matter.

**16.7** A director is not disqualified from participation in meetings just because the director is an employee or officer of JCU, but that director must comply with any conflict of interest policy, promulgated by JCU from time to time, that applies to that director.

**16.8** If a declaration is made by a director and recorded under clause 16.1:-

- (a) the director shall not be disqualified by their office from contracting with the Company as vendor, purchaser or otherwise;
- (b) a contract or arrangement entered into by or for the Company in which the director is in any way interested shall not be avoided;
- (c) the director will not be liable to account to the Company for any profit realised by a contract or arrangement by reason of any fiduciary duty or of the director holding that interest;

- (d) the director may as director or shareholder vote in respect of any contract or arrangement in which the director is interested and may affix the seal of the Company (if the Company has a seal) to and execute any document for the Company in respect of any such contract or arrangement.

## **17. ALTERNATE DIRECTORS**

- 17.1** Subject to clause 17.7, a director may, with the approval of the other directors, appoint a person (whether a member of the Company or not) to be an alternate director in their place during such period as they think fit.
- 17.2** The appointment of an alternate director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the alternate director has not expired, and terminates in any event if the appointor vacates office as a director.
- 17.3** An appointment, or the termination of an appointment, of an alternate director must be in writing signed by the director who made the appointment and served on the Company.
- 17.4** An alternate director is entitled to notice of meetings of the directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in their place.
- 17.5** An alternate director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate director shall be deemed to be the exercise of the power by the appointor.
- 17.6** An alternate director is not required to have any share qualifications.
- 17.7** An alternate director must hold a Certificate of Approval.

## **18. COMMITTEE OF DIRECTORS**

- 18.1** The directors may delegate any of their powers to a committee of two or more directors.
- 18.2** 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.
- 18.3** The members of such a committee may elect one of them as chair of their meetings.
- 18.4** Where such a meeting is held and:-
  - (a) a chair has not been elected under clause 18.3; 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;

the members present may elect one of them to be chair of the meeting.

**18.5** A committee may meet and adjourn as it thinks proper.

**18.6** Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.

**18.7** In the case of an equality of votes, the chair, in addition to their deliberative vote (if any), has a casting vote.

## **19. SECRETARY**

**19.1** A secretary of the Company holds office on the terms and conditions, including as to remuneration, if applicable, as the directors determine.

## **20. SEAL**

**20.1** Nothing in this clause, or elsewhere in this Constitution, obliges the Company to have a seal. The following clauses only apply if, and for as long as, the Company chooses to have a seal.

**20.2** The directors shall provide for the safe custody of the seal.

**20.3** The seal must be used only by the authority of the directors, and every document to which the seal is affixed must be signed by a director and countersigned by another director, a secretary or other person appointed by the directors to countersign the document.

## **21. INSPECTION OF RECORDS AND PROVISION OF INFORMATION**

**21.1** Subject to clauses 21.2 and 21.3, 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.

**21.2** 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.

**21.3** So long as JCU is a member, JCU has the right at any time, upon request, to:

**21.4** inspect any accounting records or other documents of the Company or the CPB Trust; and

**21.5** obtain any information relating to the affairs of the Company or the CPB Trust,

**21.6** as JCU may reasonably request.

## **22. NOTICES**

**22.1** A notice may be given by the Company to a member by:-

(a) serving it on them personally; or

(b) leaving it at the member's last disclosed address for notices; or



- (c) sending it by facsimile transmission to the member's last disclosed facsimile address; or
- (d) sending it by post:-
  - i) at their address shown in the register of members; or
  - ii) the address supplied by them to the Company for the giving of notices.

**22.2** A notice by facsimile transmission will be deemed to have been given when the sender's facsimile machine produces a report that the facsimile was sent in full to the member. That report is conclusive evidence that the member received the facsimile in full at the time indicated on the report.

**22.3** A notice sent by post must be properly addressed and prepaid. Service of notices sent by post will be deemed to be made:-

- (a) in the case of a notice of a meeting, on the second day after the date of its posting; and
- (b) in any other case, at the time the letter would be delivered in the ordinary course of post.

**22.4** A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder of that share first named in the register of members.

**22.5** A notice may be given by the Company to a person entitled to a share as a result of the death, bankruptcy or mental incapacity of a member by:-

- (a) serving it on them personally (where applicable); or
- (b) sending it to them by post addressed to them by name, or as representative of the member, at the address supplied by the person; or
- (c) if an address has not been supplied by sending it to the address of the member in the register of members.

## **23. INDEMNITY**

**23.1** Every officer of the Company will be indemnified out of the property of the Company against liability, including legal costs and expenses incurred by them in their capacity as officer when defending any proceedings, whether civil or criminal:-

- (a) in which judgement is given in their favour; or
- (b) in which they are acquitted; or
- (c) in connection with an application relating to the proceedings in which relief under the Act is granted to them by the Court.

## **24. ENTITY RULES AND SIGNPOSTING**

### **24.1 Incorporation of Requirements of Entity Rules**

- (a) Subject to clause 24.2 and 24.3, and the requirements of the Act, the provisions of the Entity Rules are deemed to apply to the Company as if those provisions were expressly set out in this Constitution.
- (b) A change to the Entity Rules is taken not to be an amendment to this Constitution for the purposes of clause 25.

### **24.2 Directions as to Application of Entity Rules**

- (a) This clause applies to the extent that the effect or requirement of any Entity Rule is:
  - i) uncertain or ambiguous; or
  - ii) expressed in terms that are not mandatory, including, for example, that the requirement would be applicable in most circumstances, or like terms ("Uncertain Entity Rule").
- (b) If this clause applies:
  - i) the Vice-Chancellor may from time to time give the Company a direction in writing (consistent with the Entity Rules) about the meaning to be given to an Uncertain Entity Rule; and
  - ii) subject to any later direction given by the Vice-Chancellor, the Uncertain Entity Rule is to be interpreted and given effect in the manner directed by the Vice-Chancellor.

### **24.3 Inconsistency**

If there is any inconsistency between the express terms of this Constitution and any Entity Rule, the requirements of the Entity Rule prevail to the extent of the inconsistency.

### **24.4 Signposting**

For the purposes of this clause 26, it is acknowledged that:

- (a) as at the date of this Constitution, the Entity Rules deal with the following:
  - i) appointment of chair;
  - ii) appointment and removal of directors;
  - iii) conflicts of interest;
  - iv) remuneration of directors;
  - v) statement of governance principles by directors;

- vi) financial and other reporting to JCU;
  - vii) continuous disclosure;
  - viii) monitoring of performance of subsidiaries of the Company;
  - ix) internal controls;
  - x) risk management; and
- (b) Council has passed a policy entitled "Indemnity, Insurance and Legal Claims Policy" (the Policy). The Policy contains Guidelines for Indemnity of JCU Nominee Directors (the Guidelines). Attachment 4 to the Guidelines is a draft pro-forma Policy on Disclosure of Information which relates to disclosure of information by JCU Nominee Directors on the Board to JCU.

#### **24.5 Good Governance**

The Vice-Chancellor may give written notice to the Board of recommendations or requirements for the good governance of the Company. In such cases the Board shall act in accordance with such recommendations.

#### **25. CHANGE TO CONSTITUTION**

- 25.1** No amendment to this Constitution is effective until such time as the consent of the Council has been obtained to the amendment(s).

#### **26. WINDING UP**

- 26.1** In the event of the organisation being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes which is not carried on for the profit or gain of its individual members.

#### **27. AUDITOR**

- 27.1** The accounts of the Company shall be audited by the Queensland Audit Office (QAO) or its nominee as notified by QAO to JCU from time to time.