

**Final** VERSION

Date: 15 August 2006

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# Constitution

[Insert name of CRC company] Ltd

ABN [insert after incorporation]

A company limited by guarantee

*As with Round 9 CRCs, all Round 10 CRCs are required to become incorporated entities unless the CRC Committee agrees otherwise.*

*The Constitution template that was used for the Round 9 CRCs was prepared as part of a project to develop a template model for incorporated CRCs with associated template contractual documentation. In preparation for the Round 10 CRCs, the Round 9 Constitution template has been amended as part of a project funded by DEST, led by Australian Institute for Commercialisation with the assistance of DEST, PricewaterhouseCoopers and Minter Ellison Lawyers. This project has involved consultation with organisations interested and experienced in the CRC program, with particular input from organisations involved in Round 9. These organisations include a number of research organisations and legal and accounting service providers who participated in the workshops and contributed to the drafting of Round 9 Participants Agreements. Some have also contributed more extensively by providing comments for inclusion in the draft Round 10 templates.*

*The objective of this project and the previous project has been to minimise the time, resources and money spent on development of legal documentation. Achievement of that objective ultimately depends upon the extent of input from the CRC community and their stakeholders and ultimately the adoption of the template documentation (comprising this participants agreement and a company constitution).*

*Nonetheless it is recognised that DEST has not specified the template documentation as mandatory for any CRC. Each individual CRC and its participants must determine the extent to which the template documentation fits their circumstances. The template documentation should be treated as a starting point and each CRC and its participants must seek their own professional legal, accounting and taxation advice to determine whether they appropriately address the objectives and risks applicable to their own CRC.*

*For further enquiries, please contact the Australian Institute of Commercialisation at [info@ausicom.com](mailto:info@ausicom.com)*

Deleted: Some of the documentation adopted by Round 9 CRCs has been considered in updating this document.

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# Constitution of **[Insert name of company]** Ltd

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**IMPORTANT:** This is a template document. It was not prepared by the Commonwealth and is not intended as legal or taxation advice. Any person intending to use this document should seek its own independent legal, financial and taxation advice to ensure that the document meets the circumstances of the user.

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# Drafting Notes - Version 5.0

This agreement has been prepared by reference to the Commonwealth funding agreement for Round 10 of the CRC Program available at

[https://www.crc.gov.au/HTMLDocuments/Documents/PDF/Comm\\_Agreement.pdf](https://www.crc.gov.au/HTMLDocuments/Documents/PDF/Comm_Agreement.pdf)

Some responses have been received from the CRC community regarding the nature of changes commonly made to the Round 9 template documentation and the working group preparing this version of the template documentation has had access to some de-identified final versions of the agreements signed by Round 9 CRCs and their participants. Many of the amendments made by the Round 9 CRCs and their participants were made to suit the particular circumstances of that CRC or the particular interests of the participants. Amendments have been made to the template by Round 9 CRCs where the changes were common across the CRC documentation that was available for review, and where the working group has considered that it is appropriate to do so.

Any further guidance or feedback on drafting applied to Round 9 CRC documentation that is common across multiple CRCs would inevitably assist the working group to develop templates that achieve greater efficacy and cost effectiveness.

**Yellow shaded** sections are for completion by the Participants.

In some **yellow shaded sections**, Participants will have an optional clause or a choice of clause depending on whether it is intended that the company will pursue income tax exemption.

It is recommended that before you finalise your documents that you delete this page, the Assumptions section and the user notes.

# Assumptions & Notes

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*Whilst the AIC Steering Committee believes this template document will be of benefit to the CRC community, users of the draft template documentation are strongly encouraged not to assume any particular CRC structure will satisfy the ATO's requirements. Users of the template documentation should seek their own independent advice especially in relation to any taxation implications and the ability of CRC participants to be entitled to the R&D tax concession.*

- A This is a template Constitution. It is designed for a CRC incorporated as a company limited by guarantee. It does not address transitional issues for existing CRCs converting to an incorporated structure.
- B Footnotes appear throughout this document to assist users to understand the implications of various clauses. They should all be deleted before this document is finalised for any particular CRC.
- C This Constitution should be read in conjunction with the Commonwealth Funding Agreement, template Participants Agreement (v 5.0) and [the Summary of Key Principles and Risks (v 3.0)]<sup>1</sup>.
- D The Schedule sets out the issues that are likely to vary between CRCs.

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*[Note E follows on the next page]*

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<sup>1</sup> This document has not been updated to reflect changes to the template documents for Round 10. We would welcome feedback on whether the CRC community believes that an updated version of this document is required.

**IMPORTANT:** This is a template document. It was not prepared by the Commonwealth and is not intended as legal or taxation advice. Any person intending to use this document should seek its own independent legal, financial and taxation advice to ensure that the document meets the circumstances of the user.

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- E This template Constitution has been prepared on the basis of the following assumptions. Every Participant should satisfy itself that these assumptions apply to the CRC in which they will be involved.

	Issue	Assumptions	✓
1.	Type of company	<p>The CRC will be a company limited by guarantee.</p> <p>This type of company has no share capital. It is not intended or suitable as a commercial vehicle operating for the purpose of providing members with equity or a right to dividends.</p> <p>It remains open to the CRC to, at a later date, establish companies limited by shares for particular purposes such as commercialisation of certain IP. Should it wish to do so, the CRC should obtain advice on relevant legal and taxation issues.</p>	
2.	Taxation status	<p>The Company may wish to pursue income tax exemption, in which case the necessary specified optional clauses in this Constitution (regarding objects and winding-up) and the Participants Agreement (regarding objectives, ownership of IP and rights to income) will need to be included. Changes to other provisions of the document may affect potential income tax exemption.</p> <p><i>Note: In the last six months there has been some discussion involving the ATO regarding a model that would enable the CRC to be tax exempt and allow relevant participants to claim the R&amp;D tax concession ("hybrid" model). Under the hybrid model, Participants contribute to the CRC which holds all funds in a deemed tax partnership at project level. The members own a proportionate share of IP based on their relative contribution. The Company also owns a proportion of the IP based on the proportion of Commonwealth funds contributed. The ATO has not expressed a view regarding the hybrid model although it is open to parties to approach the ATO and attempt to obtain a private binding ruling in this regard. Discussions with the ATO have yet to be progressed regarding this model.</i></p> <p><i>This document does not purport to reflect the hybrid model but can be adjusted to do so.</i></p>	
3.	Commonwealth Agreement	<p>The Commonwealth Agreement to be used for Round 10 CRCs is that published at <a href="https://www.crc.gov.au/HTMLDocuments/Documents/PDF/Comm_Agreement.pdf">https://www.crc.gov.au/HTMLDocuments/Documents/PDF/Comm_Agreement.pdf</a>. The only parties to the Commonwealth Agreement are the Commonwealth and the Company.<sup>2</sup></p> <p><u>There are a number of obligations and liabilities under certain clauses in the Commonwealth Agreement that must be imposed on Participants in the Participants Agreement. This does not alter obligations and liabilities upon the Company.</u></p>	

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<sup>2</sup> Note that this differs to the parties to the Commonwealth Agreement under the Round 9 CRCs, where all Participants, the Company and the Commonwealth were parties to the Commonwealth Agreement.

	Issue	Assumptions	✓
4.	Participants Agreement	The Participants Agreement, in relation to which the Company will be a party, will be signed at the earliest opportunity after incorporation of the Company. This is important, given that this constitution is drafted to operate in conjunction with an operative Participants Agreement.	
5.	Objects	The Company's operations will be confined to the objects specified in the Constitution.	
6.	Members	The Members will be CRC Participants who have signed the Participants Agreement. Not every party to the Participants Agreement need be a member of the Company, although it is assumed that all will do so unless prevented by legislation or government policy.	
7.	Members' rights	There will be only one category of membership. Relative influence in decision-making by the <u>members</u> (ie. voting rights) will be determined on the basis of relative levels of contributions to the CRC.	
8.	Contributions	The principles and formula used to determine the value of contributions will be applied consistently across all Projects and other components of the CRC activities. The Participants Agreement sets out agreed Valuation Principles.	
9.	<a href="#">Special Majority Members Issues</a>	If there are any issues specified in the Schedule to be determined by <u>members</u> on a special majority basis, then those issues must be decided by the members and a 75% majority vote of members is required.	
10.	Directors <sup>3</sup>	The Directors, other than the CEO, will be elected by the members for 2 year terms, with an election for half the board annually. Directors can stand for reappointment.  The CEO will be a Director for the duration of his or her term of appointment as CEO.	
11.	Board Voting	Decisions of the Board are to be by majority vote <u>unless otherwise specified</u> . <u>A list of potential super majority issues are set out in the Attachment at the end of the document.</u>	
12.	Chairperson	The Chairperson will be elected by the Directors from amongst their number (subject to the requirements of the Commonwealth Agreement).	
13.	Winding-up	If the Company is wound up, the surplus assets of the Company will be distributed to a body corporate with similar objects to the Company (if the Company wishes to seek tax exemption) or to the members (if the Company is not seeking tax exemption).	

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<sup>3</sup> In a number of the Round 9 CRCs a concept of a Participants Committee or similar governing body was introduced into the Participants Agreement. Parties should be aware that there may be a risk that such a committee may give rise to the participant being construed as a shadow director. The degree of such risk will be determined by the roles and responsibilities given to that committee. We have not included such a concept in the revised template and each CRC and especially its participants need to carefully consider whether or not such a concept is required under the Participants Agreement.

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# Preliminary

## 1. Defined terms & interpretation

1.1 In this Constitution unless the contrary intention appears:

**Advisory Committee** has the meaning given in clause 35.1(b).

**Auditor** means the Company's auditor.

**Board Committee** has the meaning given in clause 35.1(a).

**Centre** means the cooperative research centre specified in item 2 of Schedule 1 which is in accordance with the Participants Agreement and operated by the Company.

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**Centre Field** means the field of research specified in item 3 of Schedule 1.

**Centre IP** has the same meaning as in the Participants Agreement.

**CEO** means the chief executive officer of the Company, appointed pursuant to clause 42.1.

**Chairperson** means the person appointed as Chairperson pursuant to clause 27.

**Commonwealth Agreement** means the agreement between the Commonwealth of Australia and the Company regarding funding of the Centre, as amended or replaced from time to time

**Company** means the name of the company as specified in item 1 of Schedule 1.

**Constitution** means the constitution of the Company as amended from time to time.

**Corporations Act** means the *Corporations Act 2001* (Cth) as modified or amended from time to time.

**Deputy Chairperson** means the person appointed as Deputy Chairperson pursuant to clause 27.4.

**Director** includes any person occupying the position of director of the Company.

**Directors** means all or some of the Directors acting as a board.

**Executive Director** means a Director who is an employee of the Company, including the CEO.

**Financial Year** means a 12 month period ending on 30 June.

**Member** means a member under clause 4.<sup>4</sup>

**Non-Executive Director** means a Director who is not an Executive Director.

**Objective of the CRC Program** has the same meaning as in the Participants Agreement.

**Office** means the Company's registered office.

**Participants** are parties to the Participants Agreement (other than the Company).

<sup>4</sup> The Members will be CRC Participants who have signed the Participants Agreement. Not every party to the Participants Agreement need be a member of the Company, although it is assumed that all will do so unless prevented by legislation or government policy.

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**Participants Agreement** means the agreement titled 'Participants Agreement' between the Company and the Participants governing the activities of the Centre, as amended or replaced from time to time.

**Project** has the same meaning as in the Participants Agreement.

**Register** means the register of Members of the Company.

**Registered Address** means the last known address of a Member as noted in the Register.

**Representative** means a person appointed as such under clause 7.

**Research Providers** has the same meaning as in the Commonwealth Agreement.

**Seal** means the Company's common seal (if any).

**Secretary** means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of such joint secretaries.

**Special Majority Approval of Directors** means in the case of a vote, resolution or consent of Directors, one passed or given by *insert required percentage*% of Directors who *are present and*<sup>5</sup> entitled to vote.

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**Special Majority Members Issues** means the issues specified in item 7 of Schedule 1.

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**Supporting Participant** has the same meaning as in the Commonwealth Agreement

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**Valuation Principles** has the same meaning as in the Participants Agreement.

1.2 In this Constitution, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) words importing natural persons include corporations;
- (c) words and expressions defined in the Corporations Act have the same meaning in this Constitution; and
- (d) headings are for ease of reference only and do not affect the construction of this Constitution.

1.3 Unless the contrary intention appears in this Constitution, an expression in a clause of this Constitution has the same meaning as in a provision of the Corporations Act that deals with the same matter as the clause.

1.4 To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

<sup>5</sup> Members should decide whether the vote is to include directors who are not present at the meeting.

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# Objects

## 2. Objects<sup>6</sup>

2.1 The objects for which the Company is established are to [be a non-profit scientific institution to]<sup>7</sup>:

- (a) create a cooperative research centre in the Centre Field with the capability of pursuing world class research and training relevant to the Centre Field; Deleted: -
- (b) ensure that the Members and other Participants with their differing disciplines and background will, through their participation in the Centre, add value to each other so that the performance of the Centre will be greater than that of each Member and other Participant acting independently;
- (c) increase the skills of persons already working in the Centre Field and to train and equip new postgraduate and other students with skills and attributes to continue being productive in the Centre Field;
- (d) to promote a managed and cooperative approach to research and education in the Centre Field so as to maximise the benefits from that research and education; Deleted: -
- (e) to carry out education activities in the Centre Field for students and for the professional development of persons working in the Centre Field;
- (f) promote the Objective of the CRC Program; and
- (g) as an ancillary and supportive purpose, to commercialise Centre IP in such a manner as to ensure that the maximum benefit accrues to Australia, including Australian industry, the Australian environment and the Australian economy generally;
- (h) act as a trustee of Project IP/Centre IP [*delete reference to 'Project IP' if the parties adopt Option 1(b) in the Participants Agreement*] and Commercialisation Income in accordance with the Participants Agreement . [*delete if option 2 in clause 50.2 is selected*]

2.2 The Company may only exercise the powers in section 124(1)<sup>8</sup> of the Corporations Act to:

- (a) carry out the objects in this clause 2; and
- (b) do all things incidental or convenient in relation to the exercise of power under clause 2.2(a).

<sup>6</sup> Although this objects clause was drafted with the intention of seeking tax exempt scientific institution status for the Company, it remains suitable even if the Company is not seeking such status. If the Company intends to seek tax exemption as a scientific institution, it should not amend any of the words in this objects clause without obtaining specific tax advice.

<sup>7</sup> The parties should consider whether these words are appropriate for the particular CRC – will only need a reference to non-profit scientific institution if the CRC is seeking tax exemption.

<sup>8</sup> Section 124(1) lists the powers of a company, including all powers of an individual and of a body corporate.

# Income and property of Company

## 3. Income and property of Company

- 3.1 Subject to clause 50.1, the income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 2.
- 3.2 [Subject to clause 50.1 - **add this proviso if option 2 in clause 50.2 is selected.**] No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:
- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
  - (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

## Membership

### 4. Admission

- 4.1 The number of Members is unlimited.
- 4.2 The Members of the Company are:
- (a) the persons who consented to become Members in the application for registration of the Company; and
  - (b) any Participant admitted to membership in accordance with this clause 4.
- 4.3 Applications for membership of the Company must be made in writing and be signed by the applicant.
- 4.4 The Directors will consider each application for membership at the next Directors' meeting after the application is received.
- 4.5 In considering an application for membership, the Directors:
- (a) must accept any application from a Participant that is not already a Member; and
  - (b) must reject any application from an applicant that is not a Participant.
- 4.6 As soon as practicable following acceptance of an application for membership, the Secretary will send the applicant written notice of the acceptance. An applicant for membership becomes a Member upon such acceptance.
- 4.7 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

### 5. Ceasing to be a Member

- 5.1 A Member's membership of the Company will cease:

- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
- (b) if the Member ceases to be a Participant;
- (c) if a liquidator is appointed in connection with the winding-up of the Member; or
- (d) if an order is made by a Court for the winding-up or deregistration of the Member.

5.2 Any Member ceasing to be a Member will remain liable for and will pay to the Company any moneys which were due to the Company at the date of ceasing to be a Member.

## 6. Powers of attorney

- 6.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the Attorney to the Company for noting.
- 6.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.
- 6.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

## 7. Representatives

- 7.1 Any Member may by written notice to the Secretary:
  - (a) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
  - (b) remove a Representative.
- 7.2 A Representative is entitled to:
  - (a) exercise at a general meeting all the powers which the Member which appointed him or her could exercise if it were a natural person;
  - (b) stand for election as an office bearer or Director<sup>9</sup>; and
  - (c) be counted towards a quorum on the basis that the Member is to be considered personally present at a general meeting by its Representative.
- 7.3 A certificate executed in accordance with section 127 of the Corporations Act is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.
- 7.4 The chairperson of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by and to the satisfaction of the chairperson of the general meeting.

<sup>9</sup> If the Representative is elected as a Director it might be prudent for the individual to cease being a party's representative

7.5 The appointment of a Representative may set out restrictions on the Representative's powers.

## General meetings

### 8. Calling general meeting

8.1 The Directors may, at any time, call a general meeting.<sup>10</sup>

8.2 A Member may:<sup>11</sup>

- (a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Act; and
- (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

### 9. Notice of general meeting

9.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to all Members and other persons referred to in clause 49.1 of any general meeting.

9.2 A notice calling a general meeting:

- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
- (b) must state the general nature of the business to be transacted at the meeting; and
- (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.

9.3 The business to be transacted at an annual general meeting may, regardless of whether stated in the notice, include:

- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
- (b) the election of directors; or
- (c) the appointment and fixing of the remuneration of the Auditor.

<sup>10</sup> The first annual general meeting of the Company must be held within 18 months after the incorporation of the Company (section 250N(1) of *Corporations Act 2001*). The Company must hold an annual general meeting once each calendar year and within 5 months after the end of its financial year (section 250N(2) of *Corporations Act 2001*).

<sup>11</sup> Sections 249D, 249E and 249F set out the rights of company members in relation to calling general meetings, including the right of members with 5% of the voting rights to call general meetings. Sections 249N, 249O and 249P set out the rights of members to put resolutions to general meetings, including the right of members with 5% of the voting rights.

- 9.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 8.2).
- 9.5 The Directors must give notice to all Members and other persons referred to in clause 49.1 of:
- (a) the postponement or cancellation of a general meeting;
  - (b) the place, date and time of any new meeting.
- 9.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or other person referred to in clause 49.1 or the non-receipt of a notice (or form) by any Member or other person referred to in clause 49.1 does not invalidate the proceedings at or any resolution passed at the general meeting.

## Proceedings at general meetings

### 10. Member

In clauses 11 (Quorum), 12 (Chairperson), 14 (Decision on questions) and 16 (Voting rights), **Member** includes a Member present in person or by proxy, attorney or Representative.

### 11. Quorum

- 11.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 11.2 A quorum of Members is the majority of Members for the time being, provided that those Members also hold a majority of the voting entitlements on a poll pursuant to clause 16.2.<sup>12</sup>
- 11.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
  - (b) in any other case:
    - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
    - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

### 12. Chairperson

- 12.1 The Chairperson, or in the Chairperson's absence the Deputy Chairperson, will be the chairperson at every general meeting.
- 12.2 The Directors present may elect a chairperson of a general meeting if:

<sup>12</sup> Participants may wish to set a higher quorum.

- (a) there is no Chairperson or Deputy Chairperson; or
- (b) neither the Chairperson nor Deputy Chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
- (c) the Chairperson and Deputy Chairperson are unwilling to act as chairperson of the general meeting.

12.3 If no election is made under clause 12.2, then:

- (a) the Members may elect one of the Directors present as chairperson of the general meeting; or
- (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson of the general meeting.

## 13. Adjournment

13.1 The chairperson of a general meeting at which a quorum is present:

- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
- (b) must adjourn the general meeting if the meeting directs him or her to do so.

13.2 An adjourned general meeting may take place at a different venue to the initial general meeting.

13.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.

13.4 Notice of an adjourned general meeting must only be given in accordance with clause 9.1 if a general meeting has been adjourned for more than 21 days.

## 14. Decision on questions

14.1 Subject to the Corporations Act in relation to special resolutions and clauses 14.2 and 52, a resolution is carried at a general meeting if a majority of the votes cast on the resolution are in favour of the resolution.

14.2 Resolutions as to Special Majority Members Issues must be referred to the Members and, in order to be carried, require a 75%<sup>13</sup> majority of votes cast by Members to be in favour.

14.3 The chairperson of a general meeting does not have a casting vote at general meetings in addition to the chairperson's votes as a Member, proxy, attorney or Representative.

14.4 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded by any Member or the chairperson of the meeting.

14.5 A poll may be demanded before a vote is taken or before or after the voting results on a show of hands are declared.

<sup>13</sup> A majority of 75% for Special Majority Members Issues has been used in this template for consistency with the required majority for special resolutions under the Corporations Act. However, a higher majority can be selected. Alternatively, a lower majority can be selected (other than for those issues requiring a special resolution under the Corporations Act, such as alteration of the Constitution).

- 14.6 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
  - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 14.7 The demand for a poll may be withdrawn.
- 14.8 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.
- 14.9 If there is a dispute at a general meeting about a question of procedure, the chairperson of the general meeting may determine the question.

## 15. Taking a poll

- 15.1 A poll will be taken when and in the manner that the chairperson of the general meeting directs.
- 15.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 15.3 The chairperson of a general meeting may determine any dispute about the admission or rejection of a vote on a poll.
- 15.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 15.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 15.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

## Votes of Members

### 16. Voting rights

- 16.1 A Member entitled to vote has:
- (a) on a show of hands, subject to clause 18.1, one vote<sup>14</sup>; and
  - (b) on a poll, the number of votes specified in clause 16.2.
- 16.2 Each Member is entitled to a number of votes on a poll in proportion to its relative Centre Contributions made prior to the Financial Year in which the vote is taken, in accordance with the following formula:

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<sup>14</sup> A vote by show of hands with one vote per Member and no proxy votes allows non-contentious matters to be dealt with quickly and simply. Any Member or proxy can call a poll (see clause 14.4) if they would prefer to exercise voting rights in proportion to their Centre Contributions.

$$NV = (CC/TCC) \times 100$$

where:

- (a) **NV** is the number of votes for a Member on a poll (rounded up to the nearest whole vote);
- (b) **TCC** is the total of all Members' Centre Contributions made up to the most recent 30 June;
- (c) **CC** is the Centre Contributions of a Member made up to the most recent 30 June;
- (d) **Centre Contributions** of a Member means the total of:
  - (i) the amount of the Member's cash contributions made to all Projects or otherwise to the Centre (not contributions owing nor future contributions promised); and
  - (ii) the deemed monetary value of the Member's in-kind contributions made (not contributions owing nor future contributions promised):
    - (A) to all Projects, as valued in accordance with the Participants Agreement or, if not able to be determined in that manner, as determined by the Directors in accordance with the Valuation Principles; and
    - (B) otherwise to the Centre, as determined by the Directors in accordance with the Valuation Principles;

provided that:

- (e) the Member's respective voting entitlements on a poll are to be recalculated by the Company at each 1 July based on the aggregate of Centre Contributions made up to that date and will apply for the Financial Year commencing on that date;
- (f) the voting entitlements to apply for the period from incorporation of the Company until the first 1 July occurring after incorporation will be as set out in item 4 of Schedule 1.

## 17. Objections

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

## 18. Votes by proxy

- 18.1 If a Member appoints a proxy or an attorney, the proxy or attorney may not vote on a show of hands.
- 18.2 A proxy need not be a Member.
- 18.3 A proxy may demand or join in demanding a poll.
- 18.4 A proxy or attorney may vote on a poll.

- 18.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

## 19. Document appointing proxy

- 19.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by section 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 19.2 For the purposes of clause 19.1, an appointment received at an electronic address will be taken to be signed by the Member if:
- (a) a personal identification code allocated by the Company to the Member has been included with the appointment; or
  - (b) the appointment has been verified in another manner approved by the Directors.
- 19.3 A proxy's appointment is valid at an adjourned general meeting.
- 19.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 19.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
    - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
    - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,
 even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
  - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 19.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Secretary.

## 20. Lodgement of proxy

- 20.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the appointee is intended to vote; or
  - (b) the taking of a poll on which the appointee is intended to vote.

- 20.2 The Company receives an appointment of a proxy or attorney and any power of attorney or other authority under which the appointment was executed when they are received at:
- (a) the Office;
  - (b) a facsimile number at the Office; or
  - (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

## 21. Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

# Appointment and removal of Directors

## 22. Number and Composition of Directors

- 22.1 The number of Directors is listed in item 5 of Schedule 1.
- 22.2 A majority of the Directors must be independent of the Research Providers<sup>15</sup>.
- 22.3 Collectively the Directors must have skills in the categories or fields specified in item 6 of Schedule 1.

## 23. Appointment of Directors

- 23.1 The initial Directors of the Company are the persons who have consented to act as directors and are set out in the Company's application for registration as a Company. Those persons hold office subject to the Constitution.
- 23.2 All Directors, other than the initial Directors and the CEO, must be appointed by the Members by election at a general meeting.<sup>16</sup>
- 23.3 The CEO (not including any person acting in that position temporarily) will be a Director for the period of his or her appointment as CEO, subject to clause 26.

<sup>15</sup> Reflects clause 5.7 of the Commonwealth Agreement

<sup>16</sup> There is no provision in this constitution for the Directors to appoint alternates.

- 23.4 An election must be conducted at each annual general meeting at which a Director is scheduled to retire.
- 23.5 In the case of a casual vacancy, an election will be held at the next general meeting following the vacancy arising or, if the Company would not have time to comply with clause 25.3 for that meeting, at the next general meeting for which the Company is able to comply.
- 23.6 The election result must be declared by the Company at the general meeting and the appointment will take effect at the end of the meeting.
- 23.7 Subject to clause 23.8, each election will be decided by majority vote of eligible voting Members on a preferential basis.
- 23.8 The Members may resolve to postpone an election of Directors until a later general meeting and the Company may call for additional nominations prior to that later meeting.
- 23.9 Voting rights for Members for election of Directors are the same as for any other resolutions at general meetings.
- 23.10 The Members must ensure that the composition of the Directors at any time complies with any requirements in the Commonwealth Agreement.<sup>17</sup>

## 24. Retirement<sup>18</sup>

- 24.1 Subject to clause 24.3, at the close of every annual general meeting (not including the Company's first annual general meeting), one-half of the Directors (not including the CEO) or, if their number is not a multiple of two, then the number nearest to but not more than one-half of the Directors (not including the CEO), must retire.
- 24.2 The Directors to retire by rotation at an annual general meeting are those Directors who have been longest in office since their last appointment (not including the CEO). Directors appointed on the same day may agree among themselves or determine by lot which of them must retire.
- 24.3 A Director (other than the CEO and the Chairperson) must retire from office at the conclusion of the second annual general meeting after the Director was last appointed, even if his or her retirement results in more than one-half of all Directors retiring from office.
- 24.4 A retiring Director remains in office until the end of the relevant meeting and will be eligible for re-appointment at the meeting.

<sup>17</sup> Clause 5.7 of the Commonwealth Agreement requires that a majority of the Governing Board not be 'Research Providers', as defined in that agreement. Clause 5.6 of the Commonwealth Agreement requires the Chairperson to be independent of each Participant, Supporting Participant and the management of the CRC.

<sup>18</sup> This clause assumes a term of appointment of two years, hence the rotation of at least one-half of the directors every two years (may be more than one-half if, for example, there are an odd number of Directors). If a three year term is preferred, the words reflecting a two year term in subclauses 24.1 and 24.3 will all need to be replaced with 'one-third', 'three' and 'third' as the case requires.

## 25. Nomination of Director<sup>19</sup>

- 25.1 A person other than a retiring Director is not eligible for election as a Director at a general meeting unless a written notice has been left at the Office :
- stating that the Member nominates the person for election as a Director;
  - stating that the person consents to the nomination; and
  - signed by the proposing Member and the nominated person.
- 25.2 A notice given in accordance with clause 25.1 must be left at the Office at least 14 days before the relevant general meeting.
- 25.3 A written notice referring to all Director vacancies and each candidate for election, must be sent to all Members at least seven days before every general meeting at which an election of a Director will take place.

## 26. Vacation of office

The office of a Director immediately becomes vacant if the Director:

- is prohibited by the Corporations Act or other legislation from holding office or continuing as a Director;
- is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it;
- resigns by notice in writing to the Company;
- is removed by a resolution of the Company in general meeting;
- is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act;
- is an employee or officer of a Member that ceases to be a Member; or
- was nominated to be elected as a Director by a Member that ceases to be a Member.

## 27. Chairperson

- 27.1 The Directors shall at the first Directors' meeting following each annual general meeting, elect by ordinary majority resolution a Director as Chairperson<sup>20</sup>, provided that the Chairperson meets any criteria specified in the Commonwealth Agreement.<sup>21</sup>

<sup>19</sup> One CRC in Round 9 established a committee to identify suitable nominees for the Board. This may be important and the parties may wish to consider including this in the Constitution.

<sup>20</sup> This template provides for the Directors to elect a Chairperson from amongst their own number. Alternative approaches include having the Chairperson elected by the Members (either from amongst the existing Directors or otherwise).

- 27.2 The Chairperson's term of office as Chairperson shall expire on the earlier to occur of the conclusion of the [first/second/third/fourth<sup>22</sup> - **delete whichever is inapplicable**] annual general meeting after he or she was last elected as Chairperson or the expiry of the Chairperson's term of office as a Director where not re-elected as Director.
- 27.3 A retiring Chairperson is eligible for re-election as Chairperson.
- 27.4 The Directors may elect a Director as Deputy Chairperson to act as chairperson in the Chairperson's absence.
- 27.5 The Directors present may elect a chairperson of a Directors' meeting if:
- (a) there is no Chairperson or Deputy Chairperson; or
  - (b) neither the Chairperson nor Deputy Chairperson is present within 15 minutes after the time appointed for holding the Directors' meeting; or
  - (c) the Chairperson and Deputy Chairperson are unwilling to act as chairperson of the Directors' meeting.

## Powers and duties of Directors

### 28. Directors to manage Company

- 28.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.
- 28.2 Every Director and other agent or officer of the Company must:
- (a) keep secret all aspects of all transactions of the Company, except:
    - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
    - (ii) as required by law;
    - (iii) where authorised pursuant to clause 33.8; and
    - (iv) when requested by the Directors to disclose information, to the auditors of the Company or a general meeting of the Company; and

<sup>21</sup> Clause 5.6 of the Commonwealth Agreement requires the Chairperson to be independent of each Participant, Supporting Participant and the management of the CRC.

<sup>22</sup> Under this document, Directors have two year terms of appointment, with a rotation of half the Board each year. The term of appointment of the Chairperson should be for a reasonable period of time having regard to that timeframe.

- (b) if requested by the Directors, sign and make a declaration, subject to the exceptions in clause 28.2(a)(i) to (iv)<sup>23</sup>, that he or she will not disclose or publish any aspect of any transaction of the Company.

## Remuneration of Directors

### 29. Remuneration of Non-Executive Directors

29.1 The Non-Executive Directors may be paid or provided remuneration for their services as Directors, provided that:

- (a) the total amount or value of remuneration to all Non-Executive Directors must not exceed an aggregate maximum amount determined by the Company in general meeting;
- (b) if no maximum amount has been determined by the Company in general meeting, then the Non-Executive Directors may not be paid remuneration for their services as Directors; and
- (c) if the Non-Executive Director is an employee of a Member or Participant, such Member or Participant has notified the Company that it consents to that Non-Executive Director receiving such remuneration.

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29.2 The aggregate sum to be paid under clause 29.1 will be divided among the Non-Executive Directors in such proportion and manner as the Company in general meeting may determine or, if not so determined, as the Directors agree or, in default of agreement, equally and shall be deemed to accrue from day to day.

29.3 A Non-Executive Director may be paid for any service rendered to the Company by the Non-Executive Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors and where the amount payable is approved by the Directors and is not more than an amount which commercially would be reasonable payment for the service.

29.4 Non-Executive Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any Board Committee or Advisory Committee or general meetings of the Company or otherwise in connection with the Company's business.

29.5 The Company may also pay a premium for a contract insuring a person who is or has been a Non-Executive Director against liability incurred by the person as a Director, except in circumstances prohibited by the Corporations Act.

### 30. Remuneration of Executive Directors

30.1 The Directors may appoint a Director to any full-time or substantially full-time executive position in the Company, including as CEO, on such terms as they think fit.

30.2 The remuneration of an Executive Director from time to time will be fixed by the Directors.

<sup>23</sup> Amendment made to address concerns that original clause was too strongly weighed in favour of the Board and that fiduciary obligations should apply.

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- 30.3 The Company may reimburse an Executive Director for his or her expenses properly incurred as a Director or in the course of his or her office.
- 30.4 Except in circumstances prohibited by the Corporations Act, the Company may pay a premium for a contract insuring a person who is or has been an Executive Director against liability incurred by the person as a Director.

## Proceedings of Directors

### 31. Directors' meetings

- 31.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 31.2 A Directors' meeting must be called on at least 48 hours notice of a meeting to each Director.
- 31.3 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 31.4 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 31.5 Subject to clause 33, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 31.6 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 31.7 A quorum is a majority of Directors for the time being or three Directors, whichever is higher.
- 31.8 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson of the meeting of Directors may call a general meeting to deal with the matter.
- 31.9 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

### 32. Decision on questions

- 32.1 Subject to this Constitution (including clause 14.2, ~~clause 32.3~~ and clause 37), questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 33, each Director has one vote.
- 32.2 If there is an equality of votes, the chairperson of a meeting of Directors will have a casting vote in addition to his or her deliberative vote.
- 32.3 The Company must not do, or commit to do, any of the things listed in item 8 of Schedule 1 without the Special Majority Approval of Directors.<sup>24</sup>

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<sup>24</sup> See Attachment for list of typical issues that the parties may wish to include in item 8 of Schedule 1.

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32.4 Clauses 32.1 and 32.3 are without prejudice to any other consent or approval required under the Corporations Act or the Company's constitution for any matter requiring a the Special Majority Approval of Directors or Shareholders.

### 33. Directors' interests

- 33.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 33.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 33.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 33.4 A Director or a body or entity in which a Director has a direct or indirect interest may:
- (a) enter into any agreement or arrangement with the Company;
  - (b) hold any office or place of profit other than as auditor in the Company; and
  - (c) act in a professional capacity other than as auditor for the Company,
- and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- 33.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
- (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter,
- unless permitted by the Corporations Act to do so, in which case the Director may:
- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
  - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
  - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 33.6 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

33.7 Without limiting his or her other obligations, a Director who is an employee, board member or contractor of a Member that has a material financial interest in a matter that is being considered at a Directors' meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless the other Directors resolve otherwise.

33.8 A Director who is an employee or board member of a Member may disclose to that Member any information (confidential or otherwise) about the affairs, finances and accounts of the Company that comes into the Director's possession from time to time, subject to requiring the Member to maintain the confidentiality of any confidential information. This right will not apply if:

- (a) the exercise of such a right is inconsistent with this Constitution or the Director's fiduciary or other legal duties; and
- (b) the Board has directed that such information not be disclosed to the relevant Member but only if:
  - (i) the Board reasonably considers that disclosure would be seriously detrimental to the interests of the Company; and
  - (ii) the information is not information to which a Member or Participant may have access either under this Constitution, the Participants Agreement or by operation of law.

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## 34. Remaining Directors

34.1 The Directors may act even if there are vacancies on the board.

34.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to call a general meeting.

## 35. Committees

35.1 The Directors may establish either or both of the following:

- (a) committees with powers delegated by the Directors (**Board Committees**); and
- (b) advisory committees, with no delegated powers, to advise the Directors on specified matters (**Advisory Committees**).

35.2 Board Committee members and Advisory Committee members will be appointed by the Directors.

35.3 At least one member of each Board Committee must be a Director.<sup>25</sup>

35.4 Meetings of any Board Committee or Advisory Committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not

<sup>25</sup> There are sound governance reasons for Board Committees to comprise a majority of directors.

inconsistent with any directions of the Directors. The provisions apply as if each Board Committee or Advisory Committee member was a Director.

- 35.5 Clause 37 regarding written resolutions applies to resolutions of Board Committees and Advisory Committees as if each Board Committee or Advisory Committee member was a Director.

## 36. Delegation

- 36.1 The Directors may, upon any terms and conditions or restrictions as they see fit, delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to:
- (a) a Board Committee;
  - (b) a Director;
  - (c) an employee of the Company; or
  - (d) any other person.
- 36.2 A Board Committee to which, or person to whom, any powers have been delegated must exercise their powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 36.3 A Board Committee to which, or person to whom, any powers have been delegated may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- 36.4 The Directors may at any time revoke any delegation of power.

## 37. Written resolutions

- 37.1 The Directors may pass a resolution without a Director's meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.
- 37.2 For the purposes of clause 37.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 37.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 37.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause 37.

## 38. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director; or
- (b) any of the circumstances specified in clause 26 applied to a person appointed as a Director,

all acts of the Directors before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## 39. Minutes and Registers

- 39.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all Directors' meetings and meetings of Board Committees;
  - (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Board Committees;
  - (c) all resolutions passed by Directors in accordance with clause 37;
  - (d) all appointments of officers;
  - (e) all orders made by the Directors and Board Committees; and
  - (f) all disclosures of interests made under clause 33.
- 39.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 39.3 The Company must keep all registers required by this Constitution and the Corporations Act.

## Management

### 40. Local management

- 40.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.
- 40.2 Without limiting clause 40.1 the Directors may:
- (a) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and
  - (b) delegate to any person appointed under clause 40.2(a) any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution,
- on any terms and subject to any conditions determined by the Directors.
- 40.3 The Directors may at any time revoke or vary any delegation under this clause 40.

### 41. Appointment of attorneys and agents

- 41.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:
- (a) for the purposes;
  - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
  - (c) for the period; and

- (d) subject to the conditions, determined by the Directors.
- 41.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- any member of any local board established under this Constitution;
  - any company;
  - the members, directors, nominees or managers of any company or firm; or
  - any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 41.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 41.4 The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Company.
- 41.5 An attorney or agent appointed under this clause 41 may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in it.

## Chief Executive Officer

### 42. Chief Executive Officer

- 42.1 The Directors may appoint any person, including a Director but excluding the Chairperson<sup>26</sup>, to the position of CEO for the period and on the terms (including as to remuneration) that the Directors see fit.
- 42.2 The CEO will be a Director pursuant to clause 23.3.
- 42.3 In the event of the appointment of a Director as CEO, that Director will be regarded from the date of effect of appointment as a Director under clause 23.3 and a vacancy in the Directors will arise at that time.
- 42.4 The Company in general meeting may, pursuant to clause 26(d), remove the CEO from holding office as a Director, but may not remove the CEO from his or her position as CEO.

## Secretary

### 43. Secretary

- 43.1 There must be at least one secretary of the Company, appointed by the Directors for a term and at remuneration and on conditions determined by them.

<sup>26</sup> Clause 5.8 of the Commonwealth Agreement provides that the CEO and Chairman cannot be the same individual.

- 43.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 43.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.
- 43.4 If the CEO is appointed as Secretary, the CEO will not be entitled to any remuneration in addition to his or her remuneration as CEO.

## Seals

### 44. Common Seal

- 44.1 If the Company has a Seal:
- the Directors must provide for the safe custody of the Seal;
  - the Seal must not be used without the authority of the Directors;
  - every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document.

### 45. Duplicate Seal

- 45.1 If the Company has a Seal, the Company may have one or more duplicate Seals of the Seal each of which:
- must be a facsimile of the Seal with the addition on its face of the words 'Duplicate Seal';
  - must not be used except with the authority of the Directors.

## Audit and accounts

### 46. Audit and accounts

- 46.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.
- 46.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.

## Inspection of records

### 47. Inspection of records

- 47.1 Except as otherwise required by the Corporations Act or the Participants Agreement, the Directors may determine whether and to what extent, and at what times and places and under what

conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.

- 47.2 Except as otherwise required by the Corporations Act or the Participants Agreement, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

## Notices

### 48. Service of notices

- 48.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
- (a) by serving it on the person; or
  - (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 48.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
  - (b) on the day after the day on which it was posted.
- 48.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
  - (b) on the day after its despatch.
- 48.4 If a Member has no Registered Address a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Office.
- 48.5 A Member whose Registered Address is not in Australia may specify in writing an address in Australia to be taken to be the Member's Registered Address within the meaning of this clause.
- 48.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 48.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 48.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

### 49. Persons entitled to notice

- 49.1 Notice of every general meeting must be given to:
- (a) every Member;

- (b) every Director and Secretary; and
- (c) the Auditor.

49.2 No other person is entitled to receive notice of a general meeting.

## Winding up

### 50. Winding up

50.1 If the Company is wound up:

- (a) each Member; and
- (b) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the Company for the:
  - (c) payment of debts and liabilities of the Company (in relation to clause 50.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
  - (d) adjustment of the rights of such Members and former Members amongst themselves, such amount as may be required, not exceeding \$10.

50.2 **Select one option below and delete other option and both option headings**

**Option 1: This clause may be selected if the Company does not wish to pursue income tax exemption as a scientific institution. Selection of this clause will preclude the Company from obtaining such tax status.**

If the Company is wound up, any surplus assets remaining after payment of the debts and liabilities of the Company will be divided amongst Members proportionately in the same relative shares as the respective voting rights on polls of Members pursuant to clause 16.2 as at the date of the division of assets, provided that no Member will be required to accept any assets in respect of which there is any liability.

**Option 2: This clause is necessary (but not sufficient) if the Company wishes to pursue income tax exemption as a scientific institution. Company will also need to select other necessary options in the Participants Agreement.**

If any surplus assets remain following the winding up of the Company, the surplus assets will not be paid to or distributed amongst Members, but will be given or transferred to another body corporate which, by its constitution, is:

- (a) required to pursue objects similar to the objects of the Company;
- (b) required to apply its profits (if any) or other income in promoting its objects; and
- (c) prohibited from making any distribution to its members or paying fees to its directors,

such corporation to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of the Australian Capital Territory for determination.

# Indemnity

## 51. Indemnity

- 51.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against any liability (other than for legal costs) incurred by that person as such an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 51.2 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against reasonable legal costs incurred in defending an action for a liability incurred by that person as such an officer of the Company (including such legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 51.3 The amount of any indemnity payable under clauses 51.1 or 51.2 will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.
- 51.4 For the purposes of this clause 51, **officer** means:
- (a) a Director; or
  - (b) a Secretary.

# Variation

## 52. Variation

- 52.1 This Constitution must only be amended:
- (a) in accordance with the Corporations Act; and
  - (b) if the proposed amendment will:
    - (i) cause an inconsistency with the Participants Agreement, only with the prior written approval of all of the Participants; or
    - (ii) not cause an inconsistency with the Participants Agreement, only with the prior written approval of **[all/insert required majority]** of the Participants.<sup>27</sup>

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<sup>27</sup> The parties may prefer to delete this sub-paragraph if they are of the view that non members should not have a role in the management of the company where the rights and obligations of non-members under the Participants

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 Constitution of **[insert name of CRC company]** Ltd

Template CRC constitution - company limited by guarantee | page 35

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# Schedule 1- Company details

Item	Issue	Clause Reference	Details
1.	Company Name	Clause 1.1	[insert name] Ltd
2.	Centre name	Clause 1.1	CRC for [insert name of CRC].
3.	Centre Field	Clause 2.1	The field of research for the Company is: [insert]. <sup>28</sup>
4.	Initial voting rights of Members on a poll	Clause 16.2(f)	The voting entitlements of Members to apply on a poll for the period from incorporation of the Company until the first 1 July occurring after incorporation will be as follows: [insert initial voting rights of each Member].
5.	Number of Directors	Clause 22	The number of Directors is not less than [insert] and not more than [insert], including the Chairperson and the CEO. <sup>29</sup>
6.	Skills of the Board	Clause 22	Collectively the Directors must have skills and experience across the following: [insert]
7.	<a href="#">Special Majority Members Issues – general meeting of Members</a>	Clause 14.2	[insert issues] <sup>30</sup>
8.	<a href="#">Special</a>	<a href="#">Clause 32.3</a>	[insert issues] <sup>31</sup>

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agreement are not affected. Some Universities that are Members may require the consent of its Council before the notification for the Constitution can be effective.

<sup>28</sup> The Centre Field should be identical to that specified in the Participants Agreement.

<sup>29</sup> For a company of this type, it is recommended that the size of the board not exceed nine Directors.

<sup>30</sup> These issues will be referred to the Members to decide (by 75% majority vote). Examples of the major issues that CRCs may decide to include as [Special Majority Members Issues are set out in the Attachment](#). The longer the list of [Special Majority Members Issues](#), the greater the restrictions on the Governing Board in managing the Company. If no [Special Majority Members Issues](#) are specified, then the Board has the power under clause 28.1 to decide all company issues other than those specified in this Constitution or the Corporations Act as requiring a decision by a general meeting of the Company (eg. alteration of Constitution, appointment and removal of Directors, removal and appointment of auditors, setting maximum aggregate remuneration of Non-Executive Directors).

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	<a href="#">Majority Issues - Board</a>		
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<sup>31</sup> [Refer to the Attachment of options to include](#)

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## Attachment

[For considering what issues might be included in items 7 and 8 of Schedule 1]

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## Things requiring Special Majority Approval of Shareholders (clause 14.2)

1. (Establishment of Commercialisation company) Establishment or acquisition of a controlling interest in an entity to Commercialise Centre IP.
2. (Expulsion of a Member) Expulsion of a Member other than in accordance with the Participants Agreement.
3. (New Directors) Appoint a Director (except as permitted by the Participants Agreement).
4. (Remuneration of Directors) Increase the remuneration payable to Directors.
5. (Bonuses) Pay any executive, profit or other bonus to a Director, Increase the remuneration payable to Directors, except in accordance with the Business Plan.
6. (Winding up) Take a step to dissolve or wind up the Company.
7. (Change in nature of Business) Carrying on activities that are inconsistent with clause 2 (Objects).
8. (Overseas presence) the registration or recognition as a body corporate in any place outside Australia.
9. (Company type) Change the type of the Company.

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## Things requiring Special Majority Approval of Directors (clause 32.3)

1. (Chairperson and senior management) Appoint or remove the chairperson of the Company, chief executive officer, chief operating officer or chief financial officer or materially change their role or responsibilities.
2. (Power to appoint directors of other corporation) Appoint or remove a director of a corporation that the Company has the power to appoint or remove.
3. (Acquisitions) Acquire securities in another entity by a Group Company.
4. (Equity Securities) Issue or allot or grant a right to issue or allot Equity Securities
5. (Borrowing) Borrow, or accept any financial accommodation of, \$[insert] or more, except in accordance with the Business Plan.
6. (Encumbrances) Encumber an asset or undertaking, except in accordance with the Business Plan.

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7. (Guarantee) Give or enter into a guarantee, letter of comfort or performance bond, except in accordance with the usual activities of the Centre.
8. (Business Plan and budgets) Adopt or vary a business plan or another operating, capital or cash budget or business financial plan.
9. (Auditor) Appoint or remove the Company's auditor.
10. (Assets) Acquire or dispose of an asset or assets (either tangible or intangible) having a value of \$[insert] or more, except in accordance with the Business Plan.
11. (Capital expenditure) Incur capital expenditure of \$[insert] or more in a Financial Year.
12. (Related party transactions) Enter into a contract or other arrangement with a Director or an associate of a Director.
13. (Finance and operating leases) Enter into a finance or operating lease with a cost of \$[insert] or more per annum, except in accordance with the Business Plan.
14. (Contracts) Enter into, terminate, amend, vary, assign, novate, enforce or waive a right under, a contract, other than in the ordinary course of carrying out the activities of the Centre.
15. (Accounting Standards and principles) Materially alter the Accounting Standards or principles previously adopted by the Company for the preparation or presentation of any individual or consolidated financial statements, except if required by law.
16. (Balance date) Change the balance date or alter the accounting period of the Company.
17. (Loans) Make a loan or provide credit or other financial accommodation to a person, other than in the ordinary course of carrying out the activities of the Centre.
18. (Financial assistance) Provide a loan or other financial assistance to a Director or his or her associates or vary the terms of any loan or other financial assistance previously provided to a Director or his or her associates.
19. (Disputes) Commence, conduct or settle any dispute or litigation (including with a tax authority) except debt collection in the ordinary course of business.
20. (Special resolution) Pass a special resolution of Shareholders.
21. (Committees of Directors) Appoint, dissolve or alter the composition of any committee of the Board.
22. (Partnerships and joint ventures) Enter into, amend or vary a partnership or joint venture.
23. (Insurance) Amend or vary the insurance cover over the Company or any key man insurance policy.

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# Signing page

We, the undersigned, being each person specified in the application for the Company's registration as a person who consents to become a Member, agree to the terms of this Constitution:

Signed for **[Name of Member]** by an authorised officer in the presence of

\_\_\_\_\_  
Signature of officer ←

\_\_\_\_\_  
Signature of witness ←

\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Office held

Date: \_\_\_\_\_

Signed for **[Name of Member]** by an authorised officer in the presence of

\_\_\_\_\_  
Signature of officer ←

\_\_\_\_\_  
Signature of witness ←

\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Office held

Date: \_\_\_\_\_

Signed for **[Name of Member]** by an authorised officer in the presence of

\_\_\_\_\_  
Signature of officer ←

\_\_\_\_\_  
Signature of witness ←

\_\_\_\_\_  
Name of officer (print)

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