

# Constitution

DMTC Limited

ACN 131 257 175

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A company limited by guarantee

# Constitution of DMTC Limited

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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 36.1(b).

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

**Australian Defence Organisation** means the organisations encompassed by the *Defence Act 1903* (Cth), the Department of Defence and other entities identified by Defence as supporting Defence requirements.

**Board Committee** has the meaning given in clause 36.1(a).

**Centre** means the 'DMTC' Centre operated by the Company.

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

**Centre IP** means intellectual property developed in the course of carrying out the activities of the Centre.

**CEO** means the chief executive officer of the Company, appointed pursuant to clause 43.1.

**Chair** means the person elected as Chair pursuant to clause 28.

**Company** means DMTC Limited (ACN 131 257 175).

**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.

**Defence** means the Commonwealth of Australia as represented by the Department of Defence.

**Deputy Chair** means the person elected as Deputy Chair pursuant to clause 28.5.

**Director** includes any person occupying the position of director of the Company including, where appropriate, an alternate director of the Company.

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

**Executive** means the CEO or a Director who is appointed as a full time or substantially full time executive employee of the Company pursuant to clause 31.1.

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

**Fit and Proper Person** means:

- (a) the person must not have been convicted of an offence under a law of the Commonwealth or of a State or Territory;
- (b) the person must not have been bankrupt, applied to take the benefit of a law for the benefit of bankrupt or insolvent debtors, compounded with his or her creditors or assigned his or her remuneration for the benefit of creditors;

- (c) the person must not have been disqualified from managing corporations under Part 2D.6 of the Corporations Act;
- (d) the person is of sufficiently good fame and character that association with the Commonwealth would not bring the Commonwealth into disrepute if they were a member of the board of the Company; and
- (e) the public is likely to have confidence in the person's reputation and suitability to be involved in an organisation that is receiving public monies.

**Member** means a member under clause 4.

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

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

**Officer** means:

- (a) a Director; or
- (b) a Secretary.

**Partner** means an entity that has entered into a Partner Agreement with the Company to become a partner (of whatever class or type) in the Centre.

**Partner Agreement** means an agreement between the Company and a Partner.

**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.

**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 at least 75% of Directors who are present (as provided in this Constitution) at a meeting of Directors and are entitled to vote.

**Special Majority Members Issues** means the issues specified in item 4 of Schedule 1.

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.

## Objects

### 2. Objects

- 2.1 The strategic objects for which the Company is established are to establish and manage a centre to:
- (a) enhance the Australian Defence Organisation's future operations, readiness and sustainment through industry led research programs; and
  - (b) develop and deliver advanced technology ready for incorporation into industry products and services to:
    - (i) enhance the operational capability and effectiveness of platforms and personnel; and
    - (ii) increase availability, improve sustainability and reduce through-life support costs of defence equipment.
- 2.2 The enabling objects to realise the strategic objectives are to:
- (a) be a non-profit scientific institution;
  - (b) apply world class research and technology responsive to industry needs using an integrated supply chain approach with the right people, participants and management processes relevant to the Centre Field;
  - (c) simplify and streamline collaboration to foster enduring relationships between the Members and other participants based on high levels of communications, integrity, co-operation, transparency and information sharing;
  - (d) 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;
  - (e) transfer technology and commercialise Centre IP in such a manner as to ensure that the maximum benefit accrues to Australia, including the Australian Defence Organisation, the Australian defence industry including small to medium enterprises (SMEs), the Australian environment and the Australian economy generally;
  - (f) promote a managed and cooperative approach to research and education in science and engineering to maximise the benefits from that research and education;
  - (g) maintain a strong graduate and undergraduate research program by providing support to a sustainable number of high quality research students working towards the technical aims

of the Centre;

- (h) promote a close industry involvement that enhances the skills and attributes of graduates and facilitates technology transfer to defence industry; and
- (i) carry out education and training activities in science and engineering for students and for the professional development of persons working in the defence industry.

2.3 The Company may only exercise the powers in section 124(1) 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 2.3(a).

## Income and property of Company

### 3. Income and property of Company

- 3.1 Subject to clause 51.1, 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 51.1, 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 any entity 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 and either approve or reject the application.
- 4.5 The Directors will develop a set of guidelines to assist the Directors in considering whether to admit a Member.
- 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 a liquidator is appointed in connection with the winding-up of the Member;
  - (c) if an order is made by a Court for the winding-up or deregistration of the Member, or
  - (d) in the circumstances set out in the guidelines to be developed the Directors.
- 5.2 If a Member undergoes a change in ownership structure, its membership of the Company will be subject to an automatic review by the Directors, and where such review will involve consultation with the affected Member and possibly other Members. At the end of the review, the Directors at their discretion may determine that the affected Member's membership of the Company will cease.
- 5.3 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 to verify 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 (including where a new Representative needs to be appointed to replace a Representative that has been removed, become a Director or otherwise ceased to be a Representative); and
  - (b) remove its Representative.
- 7.2 A Representative is entitled to:
- (a) exercise at a general meeting all the powers that 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 in accordance with this Constitution (but if the Representative is appointed as a Director that person will, on and from the date of their appointment as a Director, cease to be a Representative); 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 chair 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 chair of the general meeting.
- 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.
- 8.2 A Member may:
- (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 50.1 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 of the Auditor.
- 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 50.1 of:
- (a) the postponement or cancellation of a general meeting; and
  - (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 50.1 or the non-receipt of a notice (or form) by any Member or other person referred to in clause 50.1 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 (Chair), 14 (Decision on questions) and 17 (Voting rights):

**Member** includes a Member present in person (including in accordance with clause 10A) or by proxy, attorney or Representative.

#### 10A. Use of Technology

10A.1 A general meeting of Members may be held at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

10A.2 Without limitation to clause 10A.1 and subject to the Corporations Act, if a separate meeting place is linked to the main place of a general meeting by an instantaneous audio-visual communication device which, by itself or in conjunction with other arrangements:

- (a) gives the Member(s) in the separate meeting place a reasonable opportunity to participate in proceedings in the main place; and
- (b) enables the Member(s) in the separate meeting place to vote on a show of hands or on a poll,

a Member present at the separate meeting place is taken to be present at the general meeting (including for the purposes of the quorum) and is entitled to exercise all rights (including voting rights) as if he or she was present at the main place.

### 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.

- 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. Chair

- 12.1 The Chair, or in the Chair's absence the Deputy Chair, will be the chair at every general meeting.
- 12.2 The Directors present may elect a chair of a general meeting if:
- (a) there is no Chair or Deputy Chair; or
  - (b) neither the Chair nor Deputy Chair is present within 15 minutes after the time appointed for holding the general meeting; or
  - (c) the Chair and Deputy Chair are unwilling to act as chair 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 chair 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 chair of the general meeting.

## 13. Adjournment

- 13.1 The chair 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 53, 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 The Company must not do, or commit to do, any of the Special Majority Members Issues without a resolution passed by, or written consent given by, Members who would together hold 75% of the votes in the event of a poll (without limitation to clause 16).
- 14.3 The chair of a general meeting has a casting vote at general meetings in addition to any vote they may have in another capacity (for example, 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 chair 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.
- 14.6 Unless a poll is demanded:
- (a) a declaration by the Chair 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 chair 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 chair 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 chair of a general meeting may determine any dispute about the admission or rejection of a vote on a poll.
- 15.4 The Chair's determination, if made in good faith, will be final and conclusive.
- 15.5 A poll demanded on the election of the chair 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.

## 16. Resolutions without Meetings

- 16.1 Other than in respect of a resolution to remove an auditor, the Company may pass a resolution without a general meeting being held, if seventy five percent (75%) of the Members 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 Member constituting the required seventy five percent (75%) of the Members signs.
- 16.2 For the purposes of clause 16.1, separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- 16.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 16.4 The minutes of Members' meetings must record that a meeting was held in accordance with this clause 16.
- 16.5 Without limitation to the foregoing, this clause 16 may apply to a resolution in respect of any of the Special Majority Members Issues.

## Votes of Members

### 17. Voting rights

A Member entitled to vote has on a poll or a show of hands, subject to clause 18.1, one vote.

### 18. Objections

- 18.1 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.
- 18.2 An objection must be referred to the chair of the general meeting, whose decision is final.
- 18.3 A vote which the Chair does not disallow because of an objection is valid for all purposes.

### 19. Votes by proxy and direct votes

- 19.1 If a Member appoints a proxy or an attorney, the proxy or attorney may vote on a show of hands.
- 19.2 A proxy need not be a Member.
- 19.3 A proxy may demand or join in demanding a poll.
- 19.4 A proxy or attorney may vote on a poll.
- 19.5 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.

- 19.6 The Directors may determine that at any general meeting, a Member who is entitled to attend that meeting is entitled to a direct vote. A 'direct vote' includes a vote delivered to the Company by post, fax or other electronic means approved by the Directors. The Directors may specify the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

## 20. Document appointing proxy

- 20.1 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.
- 20.2 For the purposes of clause 20.1, 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.
- 20.3 A proxy's appointment is valid at an adjourned general meeting.
- 20.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 20.5 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 Chair, 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.
- 20.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the Chair may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Secretary.

## 21. Lodgement of proxy

21.1 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.

21.2 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.

## 22. 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

## 23. Number and Composition of Directors

23.1 The number of Directors is listed in item 2 of Schedule 1.

23.2 A majority of the Directors, including the Chair, must be independent.

23.3 Collectively the Directors must have skills in the categories or fields specified in item 3 of Schedule 1.

23.4 Each Director must declare to the Company:

- (a) prior to appointment as a Director, that he or she is a Fit and Proper Person; and
- (b) at each annual general meeting, that he or she continues to be a Fit and Proper Person.

23.5 Each Director must immediately notify the Company if he or she is no longer a Fit and Proper



Person, in which case clause 27(g) applies.

## 24. Appointment of Directors and alternate directors

- 24.1 All Directors, other than alternate directors, must be appointed by the Members by election at a general meeting (without limitation to clause 24.4).
- 24.2 The CEO (not including any person acting in that position temporarily in accordance with clause 43.3) must not be a Director for the period of his or her appointment as CEO.
- 24.3 An election must be conducted at each annual general meeting at which a Director is scheduled to retire.
- 24.4 The Directors may appoint a person to fill a casual vacancy, who will hold office until the next general meeting following the vacancy arising, and is eligible for election at that meeting.
- 24.5 Each election will be decided by majority vote of eligible voting Members on a preferential basis.
- 24.6 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.
- 24.7 Voting rights for Members for election of Directors are the same as for any other resolutions at general meetings.
- 24.8 A person (including another Director) may be appointed by the Directors as an alternate director of a Director who is unable to perform his or her duties for any period.
- 24.9 The Directors may terminate the appointment of an alternate director at any time and must do so where the Director for whom the alternate director was appointed is willing and able to resume the performance of his or her duties.
- 24.10 An alternate director is entitled to receive notice of meetings of Directors and, subject to this Constitution and the Corporations Act, to attend, count in the quorum of, speak at, and vote at a meeting of Directors at which the Director for whom the alternate director was appointed is not present.
- 24.11 Subject to this Constitution, the Corporations Act, and the instrument of appointment of an alternate director, an alternate director may exercise all the powers of a Director, to the extent that the Director for whom the alternate director was appointed has not exercised them.
- 24.12 The office of an alternate director is terminated if the Director for whom the alternate director was appointed ceases to be a Director.
- 24.13 The Company is not required to pay any remuneration or benefit to an alternate director.
- 24.14 An alternate director is an officer of the Company and not an agent of the Director for whom the alternate director was appointed.

## 25. Retirement

- 25.1 Subject to clause 25.3, at the close of every annual general meeting, one-half of the Directors or, if their number is not a multiple of two, then the number nearest to but not more than one-half of the Directors, must retire.
- 25.2 The Directors to retire by rotation at an annual general meeting are those Directors who have been longest in office since their last appointment. Directors appointed on the same day may agree among themselves or determine by lot which of them must retire.
- 25.3 A Director 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.
- 25.4 A retiring Director remains in office until the end of the relevant meeting and will be eligible for re-appointment at the meeting.

## 26. Nomination of Director

- 26.1 A retiring Director is eligible for re-election as a Director in accordance with clause 25. 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:
- (a) stating that a Member nominates the person for election as a Director; and
  - (b) stating that the person consents to the nomination; and signed by the proposing Member and the nominated person.
- 26.2 A notice given in accordance with clause 26.1 must be left at the Office at least 14 days before the relevant general meeting.
- 26.3 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.

## 27. Vacation of office

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

- (a) is prohibited by the Corporations Act or other legislation from holding office or continuing as a Director;
- (b) 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;
- (c) resigns by notice in writing to the Company;
- (d) is removed by a resolution of the Company in general meeting;
- (e) 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;

- (f) is appointed as CEO in accordance with clause 43 (subject to clause 43.3); or
- (g) is no longer a Fit and Proper Person.

## 28. Chair

- 28.1 The Directors shall at the first Directors' meeting following each annual general meeting, elect by ordinary majority resolution a Director as Chair.
- 28.2 If the Chair ceases to be a Director during his or her term of office, the Directors may appoint another Director as Chair, and such Director will hold office as Chair until the next annual general meeting.
- 28.3 A retiring Chair is eligible for re-election as Chair.
- 28.4 The Directors may elect a Director as Deputy Chair to act as chair in the Chair's absence.
- 28.5 The Directors present may elect a chair of a Directors' meeting if:
  - (a) there is no Chair or Deputy Chair; or
  - (b) neither the Chair nor Deputy Chair is present within 15 minutes after the time appointed for holding the Directors' meeting; or
  - (c) the Chair and Deputy Chair are unwilling to act as chair of the Directors' meeting.

# Powers and duties of Directors

## 29. Directors to manage Company

- 29.1 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.
- 29.2 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 34.8; or
    - (iv) when requested by the Directors to disclose information, to the auditors of the Company or a general meeting of the Company; and
  - (b) if requested by the Directors, sign and make a declaration, subject to the exceptions in clause 29.2(a)(i) to (iv), that he or she will not disclose or publish any aspect of any transaction of the Company.

# Remuneration of Directors

## 30. Remuneration of Non-Executive Directors

- 30.1 The Directors may agree that a Non-Executive Director may be paid or provided remuneration for their services as a Director, 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; and
  - (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 a Partner, such Member or Partner has notified the Company that it consents to that Non-Executive Director receiving such remuneration.
- 30.2 The aggregate sum to be paid under clause 30.1 will be divided among the Non-Executive Directors in such proportion and manner as the Directors agree or, in default of agreement, equally and shall be deemed to accrue from day to day.
- 30.3 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.
- 30.4 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.
- 30.5 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.

## 31. Remuneration of Executives

- 31.1 Subject to clause 43, the Directors may appoint a Director to act as an Executive in the Company, on such terms as they think fit.
- 31.2 The remuneration of an Executive from time to time will be fixed by the Directors.
- 31.3 The Company may reimburse an Executive for his or her expenses properly incurred as a Director or in the course of his or her office.
- 31.4 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 against liability incurred by the person as a Director or as an employee of the Company.

# Proceedings of Directors

## 32. Directors' meetings

- 32.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 32.2 A Directors' meeting must be called on at least 48 hours' notice of a meeting to each Director, unless the Directors unanimously agree otherwise.
- 32.3 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.
- 32.4 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 32.5 Subject to clause 34, 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.
- 32.6 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 32.7 A quorum is a majority of Directors for the time being or three Directors, whichever is higher.
- 32.8 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chair of the meeting of Directors may call a general meeting to deal with the matter.
- 32.9 Notice of a meeting of Directors is to be given to each Director and alternate director appointed by the Directors and may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

## 33. Decision on questions

- 33.1 Subject to this Constitution (including clause 33.3 and clause 38), 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 34, each Director has one vote.
- 33.2 If there is an equality of votes, the chair of a meeting of Directors will have a casting vote in addition to his or her deliberative vote.
- 33.3 The Company must not do, or commit to do, any of the things listed in item 5 of Schedule 1 without the Special Majority Approval of Directors.
- 33.4 Clauses 33.1 and 33.3 are without prejudice to any other consent or approval required under the Corporations Act or the Company's Constitution for any matter requiring the Special Majority Approval of Directors or the consent or approval of Members (including Special Majority Members Issues).

## 34. Directors' interests

- 34.1 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.
- 34.2 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.
- 34.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 34.4 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.
- 34.5 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.
- 34.6 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.
- 34.7 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.

34.8 Subject to clause 29.2, a Director who is an employee or board member of a Member may, after obtaining the approval of the Directors, disclose to that Member specified information (confidential or otherwise) about the affairs, finances and accounts of the Company that comes into the Director's possession, subject to requiring the Member to maintain the confidentiality of any confidential parts of the specified information. Disclosure will not be authorised if:

- (a) it is inconsistent with this Constitution or the Director's fiduciary or other legal duties; and
- (b) where:
  - (i) the Directors reasonably consider that disclosure would be seriously detrimental to the interests of the Company; and
  - (ii) the information is not information to which a Member or Partner may have access either under this Constitution, a Partner Agreement or by operation of law.

## 35. Remaining Directors

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

35.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may:

- (a) appoint Directors sufficient to constitute a quorum in accordance with clause 24.4; or
- (b) convene a general meeting.

## 36. Committees

36.1 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**).

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

36.3 At least two members of each Board Committee must be a Director.

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

36.5 Clause 38 regarding written resolutions applies to resolutions of Board Committees and

Advisory Committees as if each Board Committee or Advisory Committee member was a Director.

## 37. Delegation

37.1 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; or
- (b) a Director,

or, subject to more than 75% of Directors who are entitled to vote being in favour of the decision to delegate, to:

- (c) an employee of the Company; or
- (d) any other person.

37.2 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.

37.3 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.

37.4 The Directors may at any time revoke any delegation of power made under clause 37.1.

## 38. Written resolutions

38.1 The Directors may pass a resolution without a Director's meeting being held if 75% of 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 constituting the required seventy five percent (75%) of the Directors signs.

38.2 For the purposes of clause 38.1, 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.

38.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.

38.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause 38.

## 39. Validity of acts of Directors

39.1 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 27 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.

## 40. Minutes and Registers

40.1 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 38;
- (d) all appointments of Officers;
- (e) all orders made by the Directors and Board Committees; and
- (f) all disclosures of interests made under clause 34.

40.2 Minutes must be signed by the chair of the meeting or by the chair of the next meeting of the relevant body.

40.3 The Company must keep all registers required by this Constitution and the Corporations Act.

## Management

### 41. Local management

41.1 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.

41.2 Without limiting clause 41.1, 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) subject to compliance with clause 37.1, delegate to any person appointed under clause 41.2(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.

41.3 The Directors may at any time revoke or vary any delegation under this clause 41.

## 42. Appointment of attorneys and agents

- 42.1 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.
- 42.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- (a) any member of any local board established under this Constitution;
  - (b) any company;
  - (c) the members, directors, nominees or managers of any company or firm; or
  - (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 42.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 42.4 The Directors may appoint attorneys or agents in writing to act for and on behalf of the Company.
- 42.5 An attorney or agent appointed under this clause 42 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

### 43. Chief Executive Officer

- 43.1 Subject to clause 43.2, the Directors may appoint any person, including any Director, to the position of CEO for the period and on the terms (including as to remuneration) that the Directors see fit.
- 43.2 Subject to clause 43.3:
- (a) the CEO must not be a Director for the period of his or her appointment as CEO; and
  - (b) in the event of the appointment of a Director as CEO, that Director will not be regarded

as a Director from the date of effect of appointment as CEO and a vacancy in the Directors will arise at that time.

- 43.3 In the event of a vacancy in the position of CEO or other executive officer of the Company, the Directors may appoint a Director(s) to perform the duties of the CEO or other executive officer on a temporary or acting basis until such time as a person has been appointed to fill the vacancy, and such Director may continue in the role of Director during the period in which he or she performs the role of temporary or acting CEO or other executive officer.

## Secretary

### 44. Secretary

- 44.1 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.
- 44.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 44.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.
- 44.4 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

### 45. Common Seal

- 45.1 If the Company has a Seal:
- (a) the Directors must provide for the safe custody of the Seal;
  - (b) the Seal must not be used without the authority of the Directors; and
  - (c) 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.

### 46. Duplicate Seal

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

# Audit and accounts

## 47. Audit and accounts

- 47.1 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.
- 47.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.
- 47.3 The Company will, where its total annual income exceeds, or may reasonably be expected to exceed, \$100,000, cause a report by a registered company auditor on the accounts of the Company to be made every twelve (12) months and to be submitted to each Member or, where instructed to do so by any Member, to that Member's governing body within three (3) months after the end of each twelve (12) month period to which the report relates.

# Inspection of records

## 48. Inspection of records

- 48.1 Except as otherwise required by the Corporations Act, 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

## 49. Service of notices

- 49.1 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.
- 49.2 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.
- 49.3 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.

- 49.4 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.
- 49.5 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.
- 49.6 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.
- 49.7 Subject to the Corporations Act, the signature to a written notice given by the Company may be written or printed.
- 49.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

## 50. Persons entitled to notice

- 50.1 Notice of every general meeting must be given to:
- (a) every Member;
  - (b) every Director and Secretary; and
  - (c) the Auditor.
- 50.2 No other person is entitled to receive notice of a general meeting.

## Winding up

### 51. Winding up

- 51.1 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 51.1(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.
- 51.2 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

### 52. Indemnity

- 52.1 To the extent permitted by law and subject to the restrictions in sections 199A and 199B 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).
- 52.2 To the extent permitted by law and subject to the restrictions in sections 199A and 199B 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).
- 52.3 The amount of any indemnity payable under clauses 52.1 or 52.2 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.

## Variation

### 53. Variation

- 53.1 This Constitution must only be amended in accordance with the Corporations Act.

# Schedule 1- Company details

Item	Issue	Clause Reference	Details
1.	Centre Field	Clause 1.1	The science and engineering requirements of defence and national security.
2.	Number of Directors	Clause 23.1	The number of Directors (not counting alternate directors of the Company) will be from 5 to 11 including the Chair (with such number being determined by the Members at each annual general meeting).
3.	Skills of the Directors	Clause 23.3	<p>Collectively the Directors must:</p> <ul style="list-style-type: none"> <li>• be skilled and experienced in managing research and education processes;</li> <li>• have commercial skills and experience relevant to Defence industry covering a range from small and medium enterprises (SMEs) through to Defence primes;</li> <li>• have skills and experience in Defence systems and policies, including knowledge of capability development and acquisition processes; and</li> <li>• have skills and experience in financial management, risk management and corporate governance,</li> </ul> <p>as decided from time to time by the Directors or by the Company in general meeting.</p>
4.	Special Majority Members Issues	Clause 14.2	As set out in Schedule 2.
5.	Things requiring Special Majority Approval of Directors	Clause 33.3	As set out in Schedule 3.

# Schedule 2 - Special Majority Members Issues (clause 14.2)

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1. **(Acquisition or establishment of company)** Acquisition of a controlling interest in or the establishment of an entity.
2. **(Remuneration of Directors)** Increase the aggregate maximum remuneration payable to Directors.
3. **(Bonuses)** Pay any executive, profit or other bonus to a Director, increase the remuneration payable to Directors.
4. **(Winding up)** Take a step to dissolve or wind up the Company.
5. **(Overseas presence)** The registration or recognition as a body corporate in any place outside Australia.
6. **(Company type)** Change the type of the Company.
7. **(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 Company.
8. **(Merger)** The merger with any entity of all or a substantial part of any business which is conducted by the Company.



# Schedule 3-Things requiring Special Majority Approval of Directors (clause 33.3)

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1. **(Chair and senior management)** Remove the Chair of the Company, CEO, chief operating officer or chief financial officer or materially change their role or responsibilities subject in all cases to the preservation of contractual or other legal rights which by law cannot be varied without the consent of the party affected.
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. **(Encumbrances)** Encumber an asset or undertaking.
6. **(Guarantee)** Give or enter into a guarantee, letter of comfort or performance bond, except in accordance with the usual activities of the Centre.
7. **(Auditor)** Appoint or remove the Auditor.
8. **(Related party transactions)** Enter into a contract or other arrangement with a Director or an associate of a Director.
9. **(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.
10. **(Balance date)** Change the balance date or alter the accounting period of the Company.
11. **(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.
12. **(Disputes)** Commence, conduct or settle any dispute or litigation (including with a tax authority) except debt collection in the ordinary course of business.