

***CORPORATIONS ACT 2001***

*Company Limited by Guarantee*

# **Constitution**

of

**OPEN SOURCE INDUSTRY AUSTRALIA LIMITED**

*Corporations Law Act 2001*

*Company Limited by Guarantee*

*CONSTITUTION*

*OF*

*OPEN SOURCE INDUSTRY AUSTRALIA LIMITED*

*Interpretation*

1. In this Constitution, unless the context requires otherwise:-
  - (a) “Board” includes a meeting of the Directors duly called and constituted at which a quorum is present or, as the case may be, the Directors assembled or represented at such meeting;
  - (b) “Company” means the company with Australian Company Number 109 097 234 whatever its name may be from time to time;
  - (c) “Corporation” means any body corporate, whether formed or registered within or outside the State;
  - (d) “Constitutional Objects” means the purposes set out in clause 66;
  - (e) “Directors” means the directors for the time being of the Company and, in the case of a sole director, that director;
  - (f) “free software” means software which falls within the free software definition given by the Free Software Foundation;
  - (g) “free and open source software” means software which is either free software or open source software;
  - (h) “Law” means the Corporations Law and any statutory modification or enactment thereof;
  - (i) “Member” means a person or Corporation admitted to membership of the

Company in accordance with this Constitution;

- (j) “Office” means the registered office for the time being of the Company;
  - (k) “open source software” means those copies of software licensed under a licence which is an “approved open source license” within the meaning given to that term by the Open Source Initiative (<http://www.opensource.org> as at 23 March 2005);
  - (l) “Register” means the Register of Members kept pursuant to Section 169 of the Law;
  - (m) “Seal” means the Common Seal of the Company (if any);
  - (n) “Secretary” means any person appointed to perform the duties of a Secretary of the Company and includes an Honorary Secretary;
  - (o) “State” means the state or territory of Australia in which the Company is registered under the Law;
  - (p) “Statutes” means and includes every code and ordinance from time to time in force concerning incorporated companies;
  - (q) “In writing” or “written” includes printing, lithography, typing, writing or other modes of representing or reproducing words in a visible form;
  - (r) Words indicating the singular number include the plural number and vice versa, words indicating a gender include each other gender and references to persons include corporations.
  - (s) Words or expressions contained in this Constitution must be interpreted in accordance with Part 1.2 of the Law as in force as the date this Constitution became binding on the Company.
  - (t) In every case where in this Constitution general expressions are used in connection with powers, discretions or things those general expressions are be limited to or controlled by the particular powers, discretions or things in connection with which they are used.
  - (u) Any words and expressions denoting authority or permission are merely words or expressions of authority merely and do not denote directions or compulsory trusts.
  - (v) Subject to this Constitution, and except where the context requires otherwise, all words defined in the Law have the same meaning given to them in the Law.
2. The Company is established for the purposes set out in the Constitutional Objects.
  3. The Company must not employ its funds in the provision of loans to members or other forms of financial assistance where such employment is in contravention of the Law.

### *Membership*

4. The number of members with which the Company proposes to be registered is four (4) but the Board may from time to time register an increase of members.
5. The persons specified in the application for the Company’s registration and such other

persons as the Board admit to membership in accordance with this Constitution constitute the members of the Company.

6. Every applicant for membership of the Company must be proposed by one and seconded by another member of the Company but it is not necessary for the applicant to be personally known to either the proposer or seconder. Each application for membership must be made in writing, signed by the applicant and may be, but is not required to be, signed by his proposer and seconder and must be in such form as the Board from time to time prescribes.
7. At the next meeting of the Board after the receipt of an application for membership, that application must be considered by the Board. The Board must determine upon the admission or rejection of the applicant. In no case is the Board required to give any reason for the rejection of an applicant. The Board may defer its consideration or a determination under this clause to a time determined by the Board.
8. When an applicant has been accepted for membership the Secretary must promptly send to the applicant written notice of their acceptance and a request for payment of any applicable entrance fee and first annual subscription. Upon payment of any such entrance fee and first annual subscription the applicant will become a member of the Company. If any such payment is not made within two (2) calendar months after the date of the notice, the Board may, in its discretion, cancel its acceptance of the applicant for membership of the Company.
9. The membership fee and annual subscription (if any) payable by members of the Company will be such as the Directors from time to time prescribe.
10. All annual subscriptions (if payable) become due and payable in advance on the 1st day of July in every year.

#### *Cessation of Membership*

11. If the subscription of a member (if any has been set) remains unpaid for a period of two (2) calendar months after it becomes due then the member may after notice of the default has been sent to them by the Secretary be debarred by resolution of the Board from all privileges of membership and his name may be removed by the Board from the Register of Members provided that the Board may reinstate the member and restore their name to the Register on payment of all arrears if the Board thinks fit to do so.
12. A member may at any time by giving notice in writing to the Secretary resign their membership of the Company but will continue to be liable for any fixed annual subscription (if an annual subscription is payable) and all arrears due and unpaid at the date of his resignation and for all other moneys due by them to the Company and in addition for any sum that shall be as determined at each annual general meeting, for which they are liable as a member of the Company under Clause 69 of the Constitution of the Company.
13. If any member wilfully refuses or neglects to comply with the provisions of the Constitution of the Company, or is guilty of any conduct which in the opinion of the Board is unbecoming of a member or prejudicial to the interests of the Company, the Board may expel the member from the Company and erase their name from the

Register of Members. At least one week before the meeting of the Board at which a resolution for the member's expulsion is passed the member must be given notice of the meeting of the Board. That notice must set out what is alleged against the member and of the intended resolution for the member's expulsion and that the member will, at that meeting and before the passing of such resolution, have an opportunity to give orally or in writing any explanation or defence he may think fit. Any such member may by notice in writing lodged with the Secretary at least twenty four (24) hours before the time for holding the meeting at which the resolution for that member's expulsion is to be considered by the Board, elect to have the question of his expulsion dealt with by the Company in General Meeting and in that event a General Meeting of the Company is called for that purpose and if at the meeting a resolution for the expulsion of the member be passed by a majority of two-thirds of those present and voting (such vote to be taken by ballot) the member will be expelled and that member's name removed from the Register of Members.

#### ***General Meetings***

14. A general meeting must be held once in every calendar year at such time and place as may be determined by the Board.
15. Each Annual General Meeting of the Company must be held in accordance with the provisions of the Law. All Meetings other than the Annual General Meetings, are called "General Meetings".
16. Any member of the Board may whenever they think fit convene a General Meeting and General Meetings must be convened on such requisition or in default may be convened by such requisition as provided by Law.
17. Subject to the provision of the Law relating to special resolutions and agreements for shorter notice, at least twenty one (21) days' notice (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place the day and the hour of meeting and in case of special business the general nature of that business must be given to each person entitled to receive such notices from the Company.
18. All business that is transacted at a General Meeting and also all that is transacted at any Annual General Meeting is special business, with the exception of the consideration of the accounts, balance-sheets and the reports of the Board and Auditors, the election of members of the Board in the place of those retiring and the appointment and fixing of the remuneration of the Auditors.

#### ***Proceedings At General Meetings***

19. No business can be transacted at any General Meeting unless a quorum of members is present at the time when the meeting proceeds to business. Subject to the balance of this Constitution, there is a quorum at a General Meeting if the number of Members present exceeds the greater of: (a) three members; and (b) 2% of the total of all persons entitled to vote. For the purpose of this clause "Member" includes a person attending as a proxy or as representing a corporation which is a member.
20. If, within half an hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, will be dissolved

and in any other case it will be adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Board may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present (being not less than two (2)) will be a quorum.

21. The Chairman will preside as Chairman at every General Meeting of the Company, or if there is no Chairman, or if they are not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act, the Deputy Chairman will be the Chairman or if the Deputy Chairman is not present or is unwilling to act then the members present must elect one of their number to be Chairman of the meeting.
22. The Chairman may, with the consent of any meeting at which a quorum is present (and must if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting will be given as in the case of an original meeting. Except as set out above it is not necessary to give any notice of an adjournment for the business to be transacted at an adjourned meeting.
23. At any General Meeting a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:-
  - a. by the Chairman; or
  - b. by at least two (2) members present in person or by proxy.

Unless a poll is so demanded a declaration by a Chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect has been made in the book containing the minutes of the proceedings of the Company will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

24. If a Poll is duly demanded it must be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairman directs and the result of the poll will be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a Chairman or on a question of adjournment must be taken immediately.
25. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded may cast a second or casting vote.
26. A member may vote in person or by proxy or by attorney and on a show of hands every person present who is a member or a representative of a member will have one vote and on a poll every member present in person or by proxy or by attorney or other duly authorised representative will have one vote.
27. A member who is of unsound mind or whose person or estate is liable to be dealt with

in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by his committee or by his trustee or by such other person as properly has the management of his estate, and any such committee, trustee or other person may vote by proxy or attorney.

28. No member is entitled to vote at any General Meeting if their annual subscription (if any) is more than one (1) month in arrears at the date of the meeting.
29. For an instrument appointing a proxy to be valid: (a) it must be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised; (b) the signature of the appointor or his attorney must be witnessed by a person other than the proxy; and (c) the person appointed as proxy must be a member of the Company. The instrument appointing a proxy confers the authority to demand or join in demanding a poll. A member may instruct his proxy to vote in favour of or against each proposed resolution. Unless otherwise instructed the proxy may vote as he thinks fit.
30. The instrument appointing a proxy may be in the following form or in a common or usual form.

I \_\_\_\_\_ of \_\_\_\_\_  
 being a member of \_\_\_\_\_  
 hereby appoint \_\_\_\_\_ of \_\_\_\_\_  
 or failing them \_\_\_\_\_ of \_\_\_\_\_  
 as my proxy to vote for me on my behalf at the (annual or general as the case may be) meeting of the Company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ and at any adjournment of that meeting.

My proxy is hereby authorised to vote \*in favour of/\*against the following resolutions:-

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .

Note: in the event of the member desiring to vote for or against any resolution they may instruct their proxy accordingly, unless otherwise instructed, the proxy may vote as they think fit.

31. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed must be deposited at the registered office of the Company or at such other place within the State as is specified for that purpose in the notice convening the meeting, not less than forty eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty four (24) hours before the time appointed for the taking of the poll, and in default the instrument of proxy is treated as invalid.
32. A vote given in accordance with the terms of an instrument of proxy or attorney will

be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no intimation in writing of such death, unsoundness of mind or revocation has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

### *Directors*

33. The persons specified in the application for the Company registration are the first Directors of the Company. They must all retire at the first General Meeting, but will be eligible for re-election.
34. Thereafter the Board of Directors will consist of a minimum of three (3) members of the Company elected as herein provided unless altered pursuant to clause 38 of this Constitution.
35. At the first General Meeting of the Company and at the Annual General Meeting of the Company in each following year the members of the Board will be elected from among the members and such members of the Board will hold office until the next Annual General Meeting when they will retire but they will be eligible for re-election.
36. The continuing Directors may act notwithstanding any vacancy in their number, but for as long as the numbers of Directors is below the minimum fixed by this Constitution, the Directors will not act except in emergencies or for the purpose of filling up vacancies or convening a general meeting of the Company.
37. The election of persons to the Board will take place in the following manner:-
  - (a) Any two (2) members of the Company may nominate any person to serve as a Director.
  - (b) The nomination, which must be in writing and signed by the member and his proposer and seconder, must be lodged with the Secretary at least twenty-one (21) days before the Annual General Meeting at which the election is to take place.
  - (c) A list of the candidates' names in alphabetical order, with the proposers' and seconders' names, must be posted in a conspicuous place in the registered office of the Company for at least seven (7) days immediately preceding the Annual General Meeting.
  - (d) Balloting lists must be prepared (if necessary) containing the names of the candidates only in alphabetical order, and each member present at the Annual General Meeting is entitled to vote for any number of such candidates not exceeding the number of vacancies.
  - (e) In case there is not a sufficient number of candidates nominated the Board may fill up the remaining vacancy or vacancies.
38. The Company may from time to time by ordinary resolution passed at a General Meeting increase or reduce the maximum or minimum number of the Board provided the minimum will not be less than three.
39. The Board has the power at any time, and from time to time, to appoint any person to

the Board, either to fill a casual vacancy or as an addition to the existing member of the Board but so that the total number of members of the Board does not at any time exceed the number fixed in accordance with these regulations. Any member of the Board so appointed will hold office only until the next following Annual General Meeting.

40. The Company may, by ordinary resolution, remove any member of the Board before the expiration of their period of office, and may by an ordinary resolution appoint another person in their stead; the person so appointed will hold office only until the next following Annual General Meeting.
41. The office of a member of the Board will become vacant if the member:
- (a) ceases to be a member of the Board by virtue of the Law;
  - (b) becomes bankrupt or makes any arrangement or composition with their creditors generally;
  - (c) becomes prohibited from being a director of a Company by reason of any order made under the Law;
  - (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health.
  - (e) resigns their office by notice in writing to the Company;
  - (f) for more than six (6) months is absent without permission of the Board from meetings of the Board held during that period;
  - (g) holds any office of profit under the Company;

Provided always that nothing in this Clause affects the operation of Clause 69 of the Constitution of the Company.

#### ***Powers And Duties Of The Board***

42. The business of the Company will be managed by the Board who may pay all expenses incurred in promoting and registering the Company, and may exercise all such powers of the Company as are not, by the Law or by these regulations, required to be exercised by the Company in General Meeting. The Board must comply with these Regulations, the provisions of the Law, and with such regulations, being not inconsistent with the previously listed regulations or provisions, as are prescribed by the Company in General Meeting. Any rule, regulation or by-law of the Company made by the Board may be disallowed by the Company in General Meeting. No resolution of or regulation made by the Company in General Meeting will invalidate any prior act of the Board which would have been valid if that resolution or regulation had not been passed or made.
43. The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property, or any part of it, and to issue debentures and other securities whether outright or as security for any debt liability, or obligation of the Company.
44. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, must be signed drawn

accepted endorsed or otherwise executed, as the case may be, by any two (2) members of the Board or in such other manner as the Board from time to time determines.

45. The Board must cause minutes to be made;
- (a) of all appointments of officers and servants;
  - (b) of names of members of the Board present at all meetings of the Company and of the Board; and
  - (c) of all proceedings at all meetings of the Company and of the Board.

Such minutes will be signed by the Chairman of the meeting at which the proceedings were held or by the Chairman of the next succeeding meeting.

#### *Proceedings Of The Board*

46. The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A member of the Board may at any time and the Secretary must on the requisition of a member of the Board summon a meeting of the Board.
47. Subject to these regulations questions arising at any meeting of the Board will be decided by a majority of votes and a determination by a majority of the members of the Board will for all purposes be deemed a determination of the Board. In case of an equality of votes the Chairman of the meeting may cast a second or casting vote.
48. A member of the Board will not vote in respect of any contract or proposed contract with the Company in which that member is interested, or any matter arising from such a contract, and if the member does so vote that vote must not be counted.
49. Subject to the Law, the quorum necessary for the transaction of the business of the Board is three (3), or such greater number as may be fixed by the Board.
50. The continuing members of the Board may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to these regulations as the necessary quorum of the Board, the continuing member or members may act for the purpose of increasing the number of members of the Board to that number for summoning a General Meeting of the Company but for no other purpose.
51. The Chairman of Directors will preside at every meeting of the Board, or if there is no Chairman of Directors or if at any meeting he is not present within ten (10) minutes after the time appointed for holding the meeting, the Deputy Chairman will be Chairman. If the Deputy Chairman is not present at the meeting then the members may choose one of their number to be Chairman of the meeting.
52. The Board may delegate any of its powers to committees consisting of such member or members of the Board as they think fit; any committee so formed must in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Board.
53. A committee may elect a Chairman of its meetings; if no such Chairman is elected, or if at any meeting the Chairman is not present within ten (10) minutes after the time appointed for holding the meeting, the members present may choose one of their

number to be Chairman of the meeting.

54. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting will be determined by a majority of votes of the members present, and in the case of an equality of votes the Chairman may cast a second or casting vote.
55. All acts done by any meeting of the Board or of a committee or by any person acting as a member of the Board will, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such member of the Board or person acting as aforesaid or that the members of the Board or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member of the Board.
56. A resolution in writing signed by all members of the Board for the time being entitled to receive notice of a meeting of the Board, will be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more members of the Board.

#### *Secretary*

57. The Secretary will in accordance with the Law be appointed by the Board for such term, at such remuneration and upon such conditions as it thinks fit; and any Secretary so appointed may be removed by it. Nothing herein will prevent the Board from appointing a member of the Company as Honorary Secretary and any member so appointed immediately becomes an officer of the Company and, if not already a member of the Board, ex officio a member of the Board and they will be subject to the provisions of Clause 67 of the Constitution.

#### *Seal*

58. The Board will provide for the safe custody of the Seal, which must only be used by the authority of the Board or of a committee of members of the Board authorised by the Board in that behalf, and every instrument to which the Seal is affixed must be signed by a member of the Board and countersigned by the Secretary or by a second member of the Board or by some other person appointed by the Board for that purpose.

#### *Accounts*

59. The Board must cause proper accounting and records to be kept and must distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached to the account or balance sheet) accompanied by a copy of the Auditor's report on them as required by the Law. The Board must cause to be made out and laid before each Annual General Meeting a balance sheet and profit and loss account made up to date as required by the Law.
60. The Board may from time to time determine in accordance with Clause 71 of this Constitution at what times and places and under what conditions or regulations the accounting and other records of the Company will be open to the inspection of members of the Board, and no member (not being a member of the Board) has any right to inspect any account or book or paper of the Company except as conferred by

statute or by Clause 71 of this Constitution or authorised by the Board or by the Company in General Meeting.

***Audit***

61. A properly qualified Auditor or Auditors must be appointed and may be removed as provided in the Law. Their remuneration will be fixed and duties regulated in accordance with the Law and Clause 71 of this Constitution.

***Notices***

62. A notice may be given by the Company to any member either personally or by sending it by post to them at their registered address, or (if that member has no registered address) to the address, if any, supplied by him to the Company for the giving of notices to that member or by sending it by facsimile transmission to a facsimile number nominated by the Member for the purpose of serving notices on them. Where a notice is sent by post, service of the notice is deemed to be effected in the case of the notice of a meeting on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post.
63. Notice of every General Meeting must be given in any manner authorized by this Constitution to:
- (a) every member except those members who (having no registered address) have not supplied to the Company an address for the giving of notice to them; and
  - (b) the Auditor or Auditors for the time being of the Company.

***Winding Up***

64. The provisions of Clause 70 of this Constitution relating to the winding up or dissolution of the Company will have effect and be observed.

***Officers: Indemnities and Insurance***

65. Indemnities and Insurance
- 65.1 To the extent permitted by law:
- (a) every person who is or has been an Officer of the Company or of a subsidiary of the Company will be indemnified out of the property of the Company against any liability for costs and expenses incurred by that person in defending any Proceedings in which judgment is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any Proceedings in which the Court grants relief to the person under the Corporations Law; and
  - (b) every person who is or has been an Officer of the Company or of a subsidiary of the Company will be indemnified out of the property of the Company against any liability to another person (other than the Company or a related body corporate of the Company) where the liability is incurred by the Officer in his or her capacity as an Officer of the Company or a subsidiary of the Company PROVIDED THAT this indemnity does not apply where the liability arises out of conduct involving a lack of good faith.

- 65.2 To the extent permitted by law the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Company or of a subsidiary of the Company against a liability:
- (a) incurred by the person in his or her capacity as an Officer of the Company or a subsidiary of the Company PROVIDED THAT the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of sections 232(5) or (6) of the Corporations Law; or
  - (b) for costs and expenses incurred by that person in defending Proceedings, whatever their outcome.

65.3 Interpretation

In Clause 65.1 and 65.2:

- (a) the term **“Proceedings”** means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in his or her capacity as an Officer of the Company or of a subsidiary of the Company (including proceedings alleging that he or she was guilty of negligence, default, breach of trust or breach of duty in relation to the Company or a subsidiary of the Company).
- (b) the term **“Officer”** has the meaning given to that term in section 9 of the Law and includes every member of the Board.

***Constitutional Objects***

66. The objects for which this Company has been established are:

- (a) the promotion of awareness of the existence and utility of free and open source software, and of its associated licensing terms and the demonstration, through case studies, market research, information gathering, and other methodologies, of the specific benefits of the use of free and open source software;
- (b) the promotion of awareness of the existence and utility of material other than software which is licensed under terms equivalent, or practically analogous to, the licensing terms of any free and open source software;
- (c) the maintenance of a web site, resource database, and issuance of press releases to further the aims of the Company and its members;
- (d) providing information referral services for the target government and corporate sectors, including education as to companies’ rights and obligations with respect to free and open source software and to the licences under which such software is licensed;
- (e) providing information responses to the media, including correcting misleading or deceptive advertising in relation to free and open source software or the licence under which any free and open source software is licensed;
- (f) providing information referral to its own members;
- (g) the advocacy of legislative or policy changes to Government or corporations;

- (h) to subscribe to, become a member of and co-operate with any other association or organisation, whether incorporated or not, whose objects are altogether or in part similar to those of the Company. The Company must not subscribe to or support with its funds any association or organisation which does not prohibit the distribution of its income and property among its members to an extent at least as great as that imposed on the Company under or by virtue of Clause 67 of this Constitution;
- (i) In furtherance of the objects of the Company to buy, sell and deal in all kinds of apparatus, literature and other items required by the members of the Company or persons frequenting the Company's premises, if any;
- (j) to purchase, take on lease or in exchange, hire and otherwise acquire any lands, buildings, easements or property, real and personal and any rights or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the objects of the Company. Where the Company takes or holds any property which is subject to any trust the Company may only deal with the same in such manner as is allowed by law having regard to such trusts;
- (k) to enter into any arrangements with any Government or authority, supreme, municipal, local or otherwise that may seem conducive to the Company's objects or any of them; and to obtain from any such Government or authority any rights, privileges and concessions which the Company thinks it desirable to obtain; and carry out, exercise and comply with any such arrangements, rights privileges and concessions;
- (l) to appoint, employ, remove or suspend such managers, clerks, secretaries, servants, workmen and other persons as may be necessary or convenient for the purposes of the Company;
- (m) to establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the Company or dependants or connections of any such persons; and to grant pensions and allowances; and to make payments towards insurance; and to subscribe or guarantee money for charitable or benevolent objects, or for any public, general or useful object;
- (n) to construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, buildings, grounds, works or conveniences which may seem calculated directly or indirectly to advance the Company's interests, and to contribute to, subsidise or otherwise assist and take part in the construction, improvement, development, working, management, carrying out, alteration or control thereof;
- (o) to invest and deal with the money of the Company not immediately required in such manner as may be permitted by law for the investment of trust funds;
- (p) to borrow or raise or secure the payment of money in such manner as the Company may think fit and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement

incurred or to be entered into by the Company in any way and in particular by the issue of debentures perpetual or otherwise charged upon all or any of the Company's property (both present and future), and to purchase, redeem or pay off any such securities;

- (q) to take, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (r) in furtherance of the objects of the Company to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company;
- (s) to take or hold mortgages, liens and charges to secure payment of the purchase price or any unpaid balance of the purchase price, of any part of the Company's property of whatever kind sold by the Company, or any money due to the Company from purchasers and others;
- (t) to take any gift of property whether subject to any special trust or not, for any one or more of the objects of the Company but subject always to the proviso in paragraph (h) of this Clause 66;
- (u) to take such steps by personal or written appeals, public meetings or otherwise, as the Company from time to time considers expedient for the purpose of procuring contributions to the funds of the Company, by way of donations, annual subscriptions or otherwise;
- (v) to print and publish any newspapers, periodicals, books, emails, email lists, web sites, wikis leaflets or other communications that the Company thinks desirable for the promotion of its objects;
- (w) in furtherance of the objects of the Company to amalgamate with any companies, institutions, societies or associations having objects altogether or in part similar to those of the Company and which prohibits the distribution of its or their income and property among its or their members to an extent at least as great as that imposed upon the Company under or by virtue of Clause 67 of this Constitution;
- (x) in furtherance of the objects of the Company to purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate;
- (y) in furtherance of the objects of the Company to transfer all or any part of the property, assets, liabilities and engagements of the Company to any one or more of the Companies, institutions, societies or associations with which the Company is authorised to amalgamate;
- (z) to make donations for charitable purposes;
- (aa) grant licences over software or other material such that that software or material is free and open source software or, in the case of material other than software, is licensed under terms which are equivalent or analogous to ther

terms under which any free and open source software is licensed;

- (bb) to do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the Company.

Without limiting the generality of the foregoing the Company has the powers set out in the Law.

67. Distribution of Income and Property

- (a) The Company must only apply the income and property of the Company towards the promotion of the objects of the Company as set forth in this Constitution; and no portion of that income or property may be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise in any manner by way of profit, to the members of the Company.
- (b) Nothing in this clause 69 prevents the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Company, or to any member of the Company, in return for any services actually rendered to the Company, nor prevent the payment of interest at a rate not exceeding interest at the rate for the time being charged by bankers in Sydney for overdrawn accounts on money lent or reasonable and proper rent for premises demised or let by any member to the Company. Any such payment to a Director must be approved by Board Resolution passed in accordance with this Constitution. Any payment to any company of which a member of the Board is a member and in which that member holds no more than one-hundredth part of the capital, that member is not bound to account for any share of profits they receive in respect of such payment.
- (c) Ordinary members and members who are officers of the Board may be employees and are subject to the same rights and obligations as employees, and their obligations as employees will take precedence over their rights as members. A member who is an officer of the Board is not entitled to a salary, wage or fee or other remuneration solely because that person is a member of the Board.

68. The liability of the members is limited.

69. Every member of the Company undertakes to contribute to the property of the Company in the event of the Company being wound up while that person is a member, or within one (1) year after they cease to be a member, for payment of the debts and liabilities of the Company contracted before they cease to be a member, and for the costs, charges, and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one dollar (\$1.00).

70. If upon the winding up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any property or other assets that property or those assets must not be paid to or distributed among the members of the Company but must be given or transferred to some other institution or institutions having objects similar to the objects of the Company and which must prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is

imposed on the Company under or by virtue of Clause 67 of this Constitution such institution or institutions to be determined by the members of the Company at or before the time of dissolution and if and so far as effect cannot be given to this clause 72 then to some charitable objects.

- 71. True accounts must be kept of the sums of money received and expended by the Company and the matter in respect of which such receipt and expenditure takes place and of the property, credits and liabilities of the Company and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the regulations of the Company for the time being in force will be open to the inspection of the members. Once at least in every year the accounts of the Company must be examined by one or more properly qualified Auditor or Auditors who will report to the members in accordance with the provisions of the Corporations Law.
- 72. The names and addresses of the persons who consent to become members of the Company and adopt this Constitution are as follows:-

Name and Address

Signature

Brendan Adrian Scott  
141 Station Street,  
Newtown, NSW, 2042

.....

Con Zymaris  
55 Kinlock Avenue,  
Murrumbeena, VIC, 3036

.....

Arjen Galt Lentz  
59 Gilruth Road,  
Kenmore, QLD, 4069

.....

David Nicholas Elson  
2/83 Birkley Road,  
Manly, NSW, 2095

.....

DATED this 14<sup>th</sup> day of May, 2004