



Constitution

Cerebral Palsy Alliance

ABN 45 000 062 288

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Constitution – Cerebral Palsy Alliance

ABN 45 000 062 288

1. Interpretation

1.1 Definitions

In this Constitution, unless the context otherwise requires:

ACNC Legislation means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth);

ASIC means the Australian Securities and Investments Commission;

Board means the Board of Directors of the Company;

Book includes a register, any other record of information, financial report or record and any document, however compiled, recorded or stored, including electronically;

Business Day means a day which is not a Saturday, Sunday, bank holiday or public holiday:

- (a) for the purpose of sending or receiving a notice – in the city where the notice is intended to be received; and
- (b) for all other purposes – in Sydney, Australia.

Chair means the chairperson of a general meeting of Members or the chairperson of a meeting of the Board (as the context requires);

Commencement Date means the date of adoption of this Constitution by the Company;

Committee means a committee of Directors or a committee of Directors and other persons appointed to such committee by the Board formed under clause 16.7;

Company means Cerebral Palsy Alliance, a public company limited by guarantee registered without the word “Limited” in its name under section 150 of the Corporations Act;

Confidential Information:

- (a) means information (whether or not in material form) given to or gained by a Director before, during or after that person's term of Directorship that relates to:
 - (1) the Company; or
 - (2) beneficiaries of services or funding provided by the Company or suppliers of services to or on behalf of the Company; or

- (3) any funding, sponsorship or donation arrangements in respect of the Company; and
- (b) includes, but is not limited to:
 - (1) trade secrets;
 - (2) the business affairs, accounts, marketing plans, prospects, clients, donors, supplier lists, research, management, financing, business strategies, products, inventions, designs or processes;
 - (3) computer data bases and computer software; and
 - (4) data surveys, beneficiaries, donor or supplier lists, specifications, drawings, records, reports and statements;

Constitution means this Constitution as amended from time to time;

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

Director means any person occupying the position of a director of the Company;

Duties includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an Officer by the Company or, where applicable, a subsidiary of the Company to any other corporation;

Initial Directors means each person appointed as a Director at the Commencement Date;

Instantaneous Communication Device includes telephone, television, email, videoconference or any other audio, visual or data service or device which permits instantaneous communication between Directors or Members;

Invited Directors has the meaning given in clause 10.1(b);

Liability means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending an action for a liability incurred as an Officer;

Member-elected Directors has the meaning given in clause 10.1(a);

Members means persons that are, or who are admitted as members of the Company under clause 4.3;

Object means the object for which the Company is established set out in clause 3;

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

Officer means a Director or Secretary or a director or secretary of a subsidiary of the Company and includes a person who formerly held any such position;

Present in connection with a meeting of Members, means present in person, by Instantaneous Communication Device or by proxy (but not by attorney) at the meeting;

Register means the register of Members to be kept pursuant to the Corporations Act;

Related Body Corporate has the meaning given in the Corporations Act;

Relevant Extent means:

- (a) to the extent the Company is not precluded by law from doing so;
- (b) to the extent and for the amount that the Officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
- (c) where the Liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of Duties in relation to another corporation, to the extent and for the amount that the Officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation;

Secretary means a person who performs all or any of the Duties of a secretary of the Company or any person appointed to act temporarily as such;

Special Resolution has the meaning given to that term in the Corporations Act; and

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

1.2 Construction

In this Constitution unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes any other gender;
- (c) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (d) a reference to:
 - (1) a person includes a natural person 18 years or over, a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (2) any legislation includes subordinate legislation and includes that legislation and subordinate legislation as modified or replaced;
 - (3) an obligation includes a warranty or representation, and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

- (4) a right includes a benefit, remedy, discretion or power;
 - (5) time is to local time in New South Wales;
 - (6) "\$" or "dollars" is a reference to the currency of the Commonwealth of Australia;
 - (7) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission;
 - (e) if the date on or by which any act must be done under this Constitution is not a Business Day, the act must be done on or by the next Business Day; and
 - (f) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.
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2. Name

The name of the Company is: "Cerebral Palsy Alliance" or such other name as the Members may approve in accordance with this Constitution and the Corporations Act.

3. Object and Supporting Activities

3.1 Object

The Company's charitable and public benevolent object is to provide relief to persons who experience poverty, sickness, disability, destitution, suffering, misfortune or helplessness as a result of cerebral palsy (and where practicable, persons with other disabilities who can benefit from services provided by the Company), and their families, including without limitation, by:

- (a) providing and arranging access to a range of services and facilities to such persons;
 - (b) promoting the rights of and justice for such persons;
 - (c) raising awareness of the abilities and special needs of such persons;
 - (d) creating a positive image and profile for such persons;
 - (e) acquiring funds to facilitate the attainment of the object including without limitation, the recovery of moneys following persons who benefit from the Company's services realising their legal rights against any third parties responsible for their disabilities;
 - (f) funding and conducting research in respect of the causes and cures of cerebral palsy including in respect of improving early diagnosis, treatments and technology innovations both in Australia and internationally;
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- (g) improving the health and wellbeing of such persons through the funding and development of innovative products and technology to be utilised by and assist such persons; and
- (h) providing pre-vocational and vocational education, training and professional development both internally and to the external sector to assist such persons, as well as to assist such persons to enter into or continue in the workforce.

4. Members

4.1 Initial and Subsequent Members

The Members of the Company are:

- (a) the Members at the Commencement Date; and
- (b) any other person whom the Directors admit as a Member in accordance with clause 4.3.

4.2 Categories of Membership

- (a) As at the Commencement Date, there are four classes of Members, comprising:
 - (1) Category A: (Member with a Disability) - being a person aged 18 years or over who is registered as receiving or having received services from the Company;
 - (2) Category B: (Support Member) – being a parent, step-parent, legal guardian or any relative or person who has assumed or is assuming the role of primary carer or guardian (to a maximum of two) of any person who is registered as receiving or having received services from the Company;
 - (3) Category C: (Honorary Life Member) – being a person who has rendered a particular and important service to the Company and who, by resolution of the Board or by a resolution of Members, is appointed as an Honorary Life Member for his/her lifetime; and
 - (4) Category D: (Invited member) – being a person who is invited to apply for membership by the Board because, in the opinion of the Board, he or she possesses the necessary skills, abilities and attributes to further the Object.
- (b) Appointment as an Honorary Life Member is the Company's highest award for recognition of outstanding services to the Company. The maximum number of Honorary Life Members must not exceed 25 at any particular time.
- (c) The Directors may establish additional classes of Members and may prescribe and vary the qualifications, rights, privileges and obligations of any such classes of Membership, provided that any such additional class or variation is in furtherance of the Object.

- (d) Where classes of Members have been established, the Directors may, by resolution and subject to any requirement in the Corporations Act, reclassify or convert Members from one class to another.

4.3 Admission as a Member

Any person that:

- (a) forwards to the Secretary a written application for Membership (in the form determined by the Board from time to time);
- (b) agrees to be bound by the Constitution (including paying the guarantee under clause 31 if required);
- (c) provides evidence demonstrating that they comply with the criteria for Membership for Category A or Category B Members provided in clause 4.2(a) and otherwise as set out in regulations made by the Board in accordance with clause 15; and
- (d) pays the then applicable annual subscription fee,

may be admitted as a Member in the relevant class of Members by resolution of the Board in accordance with this Constitution.

4.4 Consideration of Membership Applications

- (a) On the Board accepting an application for Membership, the Secretary will send confirmation of acceptance as a Member (including the date of commencement of Membership) to the applicant.
- (b) If an application for Membership is rejected, the Secretary must, as soon as practicable, notify the applicant that the application has been rejected and must refund all annual subscription fees paid by the applicant in accordance with clause 4.3. Neither the Board nor the Company will be required to give any reason for the rejection of the application for membership.

4.5 Commencement of Membership

For the avoidance of doubt, an applicant's Membership commences on the making of a Board resolution to that effect.

4.6 Fees

- (a) The annual subscription fee payable and the period for which such fee entitles Membership will be determined by the Board from time to time.
- (b) The annual subscription fee will be payable annually in advance on or before the first day of the financial year determined in accordance with clause 23.3(a) or on such other day as the Board determines.

- (c) The Board may on the application by or on behalf of a Member or on its own initiative grant any concession with regards to the annual subscription fees as it thinks fit, including the full or partial waiver of all or any of such fees, and any such concession may apply to an individual Member or an applicant, or to any class of Members or applicants specified by the Directors from time to time.
- (d) A Member that ceases to be a Member before any fee becomes due and payable will not be liable for that fee.
- (e) Subject to clause 4.6(c), resignation or other termination of a person's Membership of the Company will not relieve the person of responsibility for any financial obligations under this Constitution, including fees and other amounts due and payable by the Member to the Company, accruing up to the effective date of termination.

4.7 Membership not transferable

Membership is personal to the Member and is not transferable.

4.8 Cessation of Membership

A person ceases to be a Member if the person:

- (a) resigns his or her Membership by giving one month's written notice to the Secretary or such lesser notice period as may be accepted by the Board;
- (b) dies;
- (c) becomes a person liable, or a person whose assets are liable, to any control or administration under any law relating to physical or mental health;
- (d) is convicted of an indictable offence which is determined by the Board to be inconsistent with the interests of the Company or the Object or likely to injure CPA's reputation or bring CPA into disrepute;
- (e) is expelled from membership in accordance with clauses 4.9 and 4.10; or
- (f) fails to pay any annual subscription fee within three (3) calendar months of the due date for such payment.

A Member who resigns, is expelled from the Company or whose Membership otherwise ceases in accordance with this clause 4, does not have any claim on the Company, its funds or property.

4.9 Expulsion from Membership

Subject to clause 4.10, if in the opinion of the Board:

- (a) a Member's conduct is detrimental or prejudicial to the interests of the Company or the Object or likely to injure CPA's reputation or bring CPA into disrepute;

- (b) a Member knowingly makes or gives any false, misleading or deceptive statement or representation verbally or in writing to the Company; or
- (c) a Member fails to comply with this Constitution or any regulations made pursuant to this Constitution;

the Board may resolve to expel such person from Membership of the Company.

4.10 Censure Procedure

- (a) A resolution of the Board passed at a Board meeting pursuant to clause 4.9 (**Censure Resolution**), will be of no force or effect unless prior to passing the Censure Resolution:
 - (1) the Board has given not less than ten (10) Business Days prior notice in writing to the Member referred to in the proposed Censure Resolution (**Censure Notice**);
 - (2) a Censure Notice must include:
 - (A) the date and time of the Board meeting at which the Censure Resolution will be considered;
 - (B) a description of the proposed Censure Resolution;
 - (C) a statement containing reasonable particulars of the person's conduct to be considered by the Board; and
 - (D) a statement that the Member has a right to put their case to the Board by giving the Secretary a written statement for circulation to the Directors and appearing at the Board meeting at which the proposed Censure Resolution is to be considered to speak for a reasonable time.
- (b) Either prior to or at the meeting of the Board, the person may request the Chair to elaborate on any of the particulars set out in the Censure Notice. The Board must use all reasonable endeavours to comply with such a request.
- (c) A Member who appears at a Board meeting to address the matters of conduct referred to in a Censure Notice will be entitled to speak for a reasonable time, such time to be determined by the Chair.
- (d) A statement given under clause 4.10(a)(2)(D) must be circulated to the Board before the meeting or, if there is insufficient time, read out at the meeting before the Censure Resolution is considered, unless the statement is more than one thousand (1,000) words or is considered by the Chair to be defamatory.
- (e) A Censure Resolution will only be passed if it receives the support of at least three-quarters of the Directors eligible to vote and voting on the resolution.

- (f) The Secretary must give the Member written notice of the passing of a Censure Resolution as soon as reasonably practicable after the Board meeting to consider the Censure Resolution is held.

5. Register of Members

- (a) The Secretary must keep the Register at the Office and must enter in the Register:
 - (1) the full names and addresses of Members;
 - (2) any alternative address nominated by a Member for the service of notices (which may include an email address); and
 - (3) the date on which each Member becomes and ceases to be a Member.
- (b) Each Member must notify the Company in writing of any change in that Member's name, address or email address, within one month after the change.

6. General Meetings

6.1 Holding of general meetings

- (a) General meetings are to be held at the times and places resolved by the Board.
- (b) The Company may hold a general meeting at two (2) or more venues using any Instantaneous Communication Device that gives Members as a whole a reasonable opportunity to participate, including hearing the proceedings and being heard.

6.2 Convening of general meetings

- (a) The Directors may at any time and must on receiving a written requisition made by at least five (5) percent of the total Membership (comprising Members who are entitled to vote), convene a general meeting of the Company.
- (b) Members may inspect and copy the Register by appointment with the Secretary but only for the purpose contemplated in clause 6.2(a). The Register must not be used for any other purpose.
- (c) The written request for a general meeting by the Members:
 - (1) must state the resolution/s to be proposed at the meeting;
 - (2) must be signed by all the Members requesting the meeting;
 - (3) must be given to the Company at the Office; and
 - (4) may consist of several documents in similar form, each signed by one or more of the Members making the requisition.

- (d) The Board may by notice not later than seventy-two (72) hours prior to the time of the meeting, change the venue for, postpone or cancel a general meeting, unless the meeting is called and arranged to be held by the Members or the Court under the Corporations Act. Any meeting postponed in accordance with this clause will be taken to have been duly convened under the first notice.
- (e) If a general meeting is requisitioned by Members in accordance with clause 6.2(a), the Directors may not cancel it without the consent of the requisitioning Members.

6.3 Notice of meetings

- (a) At least twenty-one (21) days' prior notice must be given of a meeting of Members. The notice must specify:
 - (1) the date, time and place of the meeting;
 - (2) if the meeting is to be held in two or more venues using an Instant Communications Device, the technology that will be used to facilitate the meeting;
 - (3) in the case of special business, the general nature of that business.
- (b) A notice convening a general meeting must be given to each Member, each Director and the auditor for the time being of the Company. Except as required by the Corporations Act, no other person is entitled to receive notices of general meetings.
- (c) A notice convening a general meeting may be given either personally, by post, courier, email or any other form of electronic communication.
- (d) A notice of meeting sent by post is taken to be delivered on the Business Day after it is posted.
- (e) A notice of meeting sent by electronic means is taken to be received on the Business Day that it is sent.

6.4 Omission to give notice

- (a) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by any person entitled to receive notice does not invalidate the proceedings or any resolution passed at the meeting.
- (b) A person's attendance at a general meeting waives any objection that person may have to a failure to give notice, or the giving of a defective notice of the meeting, unless the person objects to the holding of the meeting at the beginning of the meeting.

6.5 Ordinary and Special business

- (a) Other than items of business requiring a Special Resolution due to the provisions of the Corporations Act or this Constitution, all other items of business to be conducted at a meeting of Members will be dealt with as ordinary business and will be passed on the vote in favour of at least fifty percent (50%) of the votes cast by Members Present and entitled to vote on the resolution.
- (b) Business conducted at an annual general meeting for:
 - (1) the confirmation of the minutes of the preceding meeting;
 - (2) the receipt and consideration of the annual financial report and the reports of the Directors and the auditors;
 - (3) the appointment of the auditor of the Company;
 - (4) the election of Directors; and
 - (5) the transaction of any business which under the Corporations Act or this Constitution is required to be transacted,will be dealt with as ordinary business.

6.6 Resolutions to amend Constitution

- (a) A resolution to amend this Constitution or this clause 6.6 must be passed as a Special Resolution and will be decided in the affirmative where seventy-five percent (75%) of the votes cast by Members Present at the meeting and entitled to vote on the resolution are cast in favour of the resolution.
- (b) The Members must not pass a Special Resolution to amend this Constitution if such amendment has the effect that the Company no longer qualifies to be registered as a charity.

7. Proceedings at general meetings

7.1 Quorum

- (a) No business is to be transacted at any general meeting unless a quorum is present at the time the meeting proceeds to business.
- (b) Fifteen (15) Members Present constitutes a quorum for the transaction of the business of a general meeting.
- (c) If a person is attending a general meeting both as a Member and as a proxy, the person may only be counted once for the purposes of this clause.

7.2 Lack of quorum

If within thirty (30) minutes after the time appointed for the general meeting a quorum is not present:

- (a) in the case of a meeting convened on the request of the Members, the meeting must be dissolved; and
- (b) in any other case, the meeting will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Directors determine. If at the adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the meeting, the meeting will be dissolved and in the case of the dissolution of an Annual General Meeting, the present Board will continue in office and will have the power to fill any vacancies and appoint an auditor for the ensuing year.

7.3 Chair

- (a) The Chair of the Board must preside over every meeting of Members.
- (b) If there is no Chair or if the Chair is not present within fifteen (15) minutes after the time appointed for the meeting or is unable or unwilling or refuses to chair the meeting, the Deputy Chair (if any) must chair the meeting.
- (c) If there is no Deputy Chair, or if the Deputy Chair is not present within fifteen (15) minutes after the time appointed for the meeting or is unable or unwilling or refuses to chair the meeting, the Members Present and entitled to vote at the meeting must choose another Director to chair the meeting.
- (d) If no Director is so chosen or if none of the Directors present are willing to chair the meeting, the Members Present must choose one of their own number to chair the meeting.

7.4 Adjournment

The Chair of a general meeting may, with the consent of the meeting (and must if directed by the meeting), adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

7.5 Notice of adjourned meeting

It is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned general meeting, unless the meeting is adjourned for fifteen (15) days or more, in which case new notice of the adjourned meeting must be given in accordance with clause 6.3.

7.6 Decision on resolutions

- (a) Subject to clause 7.6(d), a resolution put to the vote at a general meeting of the Company, is to 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 by the Chair (other than a resolution for the election of the Chair of a meeting or a resolution for the adjournment of a meeting) or by not less than eight (8) Members Present and having the right to vote at the meeting.
- (b) Before a vote is taken, the Chair must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- (c) In the event of an equality of votes on a show of hands or on a poll the Chair will have a casting vote in addition to any vote to which the Chair may be entitled as a Member.
- (d) A question arising at a general meeting of the Company relating to the order of business, the entitlement of any person to attend or vote at the meeting, any procedure or the conduct of the meeting must be referred to the Chair of the meeting, whose decision is final.
- (e) Any resolution that could be considered and voted on at a general meeting (other than the election of a Chair or the adjournment of the meeting), may be submitted to Members and voted on by an electronic or postal ballot, to be conducted at such time and in such manner as the Directors determine (subject to any applicable regulations), and a reference in this Constitution related to voting at a general meeting is to be interpreted as including voting in an electronic or postal ballot. A resolution passed by an electronic or postal ballot is regarded as passed at the time the result of the electronic or postal ballot is declared, unless the wording of the resolution itself states otherwise.

7.7 Minutes as evidence of result

Unless a poll is duly demanded in accordance with clause 7.6(a), a declaration by the Chair that a resolution has, on the show of hands, been carried or lost, and an entry to that effect in the Book containing the minutes of the proceedings of the Company signed by the Chair, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

7.8 Taking of poll

- (a) If a poll is duly demanded it must be taken before the close of the meeting in the manner and at the time and place, as the Chair of the meeting may direct. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded provided that a poll on the election of a Chair of a meeting or on any question of adjournment must be taken at the meeting and without adjournment.
- (b) The demand for a poll does not prevent the meeting continuing for the transaction of any business other than the question on which a poll has been demanded.

- (c) A poll may be demanded before a vote is taken, before the voting results on a show of hands are declared or immediately after the voting results on a show of hands are declared.
- (d) The demand for a poll may be withdrawn.
- (e) In the case of a dispute as to the admission or rejection of a vote on a show of hands or on a poll, the Chair must determine the dispute and the determination made in good faith will be final and conclusive.

7.9 Rights of Officers and Advisers to attend General Meetings

- (a) The Secretary is entitled to attend and to speak at any general meeting.
- (b) The Company's auditor (or auditor's representative) is entitled to attend and speak at any general meeting, on any part of the business of the meeting that concerns the auditor in their capacity as auditor. The auditor's right to attend and speak at any meeting is not affected by the auditor retiring at the meeting or a resolution being passed removing the auditor from office.
- (c) Any other person requested by the Board to attend any general meeting is entitled to be present and, at the request of the Chair, to speak at that general meeting.

7.10 Circulating resolutions

- (a) Nothing in this Constitution limits the Company's power to pass a resolution as a circulating resolution.
- (b) Circulating resolutions may not be used:
 - (1) for a resolution to appoint or remove a Director or an auditor;
 - (2) for passing a Special Resolution; or
 - (3) where the Corporations Act or this Constitution requires a meeting to be held.
- (c) The Company may circulate a resolution by email to Members and Members may agree by sending a reply email to that effect, provided it reasonably appears to the recipient that the email has been sent by the Member personally or on the Member's instructions.

8. Representation and voting of members

8.1 Representation

Members will have the right to attend and speak at meetings of Members, provided they have paid all fees due and payable at the date of the notice of meeting on or before the date on which the meeting is held.

8.2 Entitlement to vote

- (a) Subject to this Constitution and any rights or restrictions attached to any class of Membership, at a general meeting every Member Present has one vote, whether on a show of hands or on a poll.
- (b) An objection to the qualification of a person to vote at a general meeting:
 - (1) must be raised before or at the meeting at which the vote objected to is given or tendered; and
 - (2) must be referred to the Chair, whose decision is final.

9. Proxies

9.1 Appointment of proxy

- (a) A Member may appoint one proxy only, who must be a Member of the Company and that proxy is entitled to vote on a show of hands or on a poll.
- (b) A proxy may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.

9.2 Instrument of proxy

- (a) An instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument so provides:
 - (1) the proxy is not entitled to vote on the proposed resolution except as directed in the instrument; and
 - (2) the Chair may, by taking whatever steps he or she thinks fit, ensure that effect is given to those directions, including by pre-filling out relevant voting papers and regarding such votes as cast.
- (b) A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- (c) An instrument appointing a proxy need not be in any particular form provided it is in writing, legally valid and either:
 - (1) signed by the appointor or the appointor's attorney; or
 - (2) authenticated in such manner as the Directors may determine.

9.3 Proxy to be deposited at the Office

- (a) A proxy may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy, and the authority under which the instrument is

signed or a certified copy of the authority, are received at the address (including electronic address) specified in the notice of meeting at least:

- (1) forty-eight (48) hours; or
 - (2) such lesser period specified for this purpose in the notice calling the meeting, prior to the meeting. For this purpose, the lesser period may be any time before the time set for holding the meeting or adjourned meeting.
- (b) An instrument appointing a proxy is received when it is received at any of the following:
- (1) the Office;
 - (2) a place or electronic address specified for the purpose in the notice of meeting.
- (c) The Directors may waive all or any of the requirements of clauses 9.2 and 9.3 and in particular may, on the production of such other evidence as the Directors require to prove the validity of the appointment of a proxy, accept:
- (1) an oral appointment of a proxy;
 - (2) an appointment of a proxy which is not signed or executed in the manner required by clause 9.2(b); and
 - (3) the deposit, tabling or production of a copy (including a copy sent by facsimile) of an instrument appointing a proxy or of the power of attorney or other authority under which the instrument is signed.
- (d) A vote given in accordance with the terms of an instrument appointing a proxy is valid despite the revocation of the instrument or of the authority under which the instrument was executed, if no notice in writing of the revocation has been received by the Company by the time and at one of the places at which the instrument appointing the proxy is required to be received under clause 9.3(b).
- (e) The appointment of a proxy is not revoked by the appointor attending and taking part in the general meeting but, if the appointor votes on any resolution, the proxy is not entitled to vote, and must not vote, as the appointor's proxy on the resolution.

9.4 Form of proxy

The Board must from time to time determine the form of the instrument of proxy, which will be valid, if it is signed by the Member making the appointment.

9.5 Proxy's Authority

- (a) Unless otherwise provided in the instrument, an instrument appointing a proxy will be taken to:
 - (1) confer authority to agree to a meeting being convened by shorter notice than is required by this Constitution;
 - (2) confer authority to speak to any proposed resolution on which the proxy may vote;
 - (3) appoint the Chair as the proxy unless the Member clearly specifies another person as proxy and that person attends the general meeting;
 - (4) demand, or join in demanding, a poll;
 - (5) even though the instrument may refer to specific resolutions and may direct the proxy how to vote on those resolutions, confer authority to:
 - (A) vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (B) vote on any procedural motion, including any motion to elect the Chair, to (only in the case of a Chair elected under clause 7.3(d)) vacate the chair or to adjourn the meeting; and
 - (C) to act generally at the meeting; and
 - (6) even though the instrument may refer to a specific meeting to be held at a specified time or place, where the meeting is rescheduled or adjourned to another time or changed to another place, confer authority to attend and vote at the re-scheduled or adjourned meeting or at the new place.
- (b) A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting, unless the Member directs otherwise.

9.6 Identification of proxy

The Chair of a meeting may require a person acting as a proxy to establish to the satisfaction of the Chair that he or she is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person does not comply, that person may be excluded from voting either on a show of hands or on a poll.

10. Directors

10.1 Number and Composition

The Board will consist of not less than five (5) persons and not more than ten (10) persons provided that the number of Directors who are Invited Members must not exceed one-half of the total number of Directors at any time and:

- (a) will contain up to ten (10) persons elected by Members (comprising Disability Members, Support Members, Honorary Life Members and Invited Members) (**Member-elected Directors**) (such number in each category to be determined by the Board); and
- (b) if the Board determines, will contain Invited Members appointed by the Board, provided that such Invited Members do not exceed the cap on Invited Members in this clause (**Invited Directors**).

10.2 Directors

The Directors of the Company are:

- (a) the Initial Directors; and
- (b) each other person appointed or elected as a Director in accordance with this clause 10 or clause 11.

10.3 Change to the Number of Directors

The Company in general meeting may by resolution increase or reduce the number, or alter the composition, of Directors specified in clause 10.1 and may determine the number of Directors to retire by rotation in accordance with clause 12.1(a).

10.4 Director remuneration

Except as provided for in clause 29, no Director may receive any remuneration for his or her services as a Director.

10.5 Vacancies

- (a) Subject to clause 10.3, if any vacancy of Member-elected Directors occurs, that vacancy may be filled by a person appointed by the Board.
- (b) The person filling the vacancy holds office only until the next annual general meeting and is then eligible for election by the Members.
- (c) The appointment of a person to fill a casual vacancy will not be taken into account in determining the Directors whose tenure is to expire by rotation at that meeting under clause 11.

10.6 Invited Directors

- (a) Subject to the cap on Invited Members as Directors in clause 10.1 and to clause 10.3, the Board may at any time appoint an Invited Member as an Invited Director.
- (b) A person appointed as an Invited Director must have such skills or relevant experience as are agreed by a majority of Directors to be beneficial to the Company in achieving the Object and/or to facilitate the optimum operation of the Board and the Company.
- (c) The tenure of all Invited Directors expires at the next Board meeting to occur after every annual general meeting of the Company. On the expiry of the tenure of any Invited Director, the Board may re-appoint him or her as an Invited Director in accordance with this clause.

11. Election and Appointment of directors

11.1 Director Nominations

- (a) Subject to clause 12.1(a), the Directors must, at least forty-five (45) days prior to each annual general meeting, call for nominations for election as Member-elected Directors from Members. Such notice may be given by the Directors to the Members on the Company's website or using any other method the Directors think fit and need not be given to Members individually.
- (b) Each Member may nominate one Member to be elected as a Member-elected Director.
- (c) All nominations of candidates for election as Member-elected Directors must be received in writing at least twenty-eight (28) clear days before the relevant annual general meeting (**Nominations Closing Date**).
- (d) The nominations must be duly signed by two (2) Members and include a consent to act as a Director signed by the candidate and any other information required by the Board. The nomination must include particulars of the candidate (in writing), provided such particulars must not exceed one thousand (1,000) words.

11.2 Director Candidate List

- (a) The Secretary must compile a list of candidates (**Director Candidate List**) from all duly completed nominations received by the Secretary before the Nominations Closing Date.
- (b) The Board may nominate such additional candidates for inclusion in the Director Candidate List as it thinks fit.
- (c) The Secretary must provide the Director Candidate List to all Members not less than fifteen (15) days prior to the annual general meeting at which an election is to take place.

- (d) No person except a Member-elected Director whose tenure has expired, a person nominated in accordance with clause 11.1 or a person recommended by the Board for election in accordance with clause 11.2(b) is eligible to be included in the Director Candidate List.

11.3 Election of Directors by Members

- (a) The election of Directors will take place by way of resolution of Members Present and having the right to vote at the annual general meeting or by ballot, in the event that more candidates have been nominated than vacancies exist on the Board, as determined by the Board.
- (b) Any ballot to elect Directors in accordance with clause 11.3(a) will be supervised by the Secretary or such other person as may be appointed by the Board to act as returning officer.
- (c) In the case of an equality of votes for two (2) or more candidates for the same position, a further ballot will be taken to determine the successful candidate.

12. Director retirement and removal

12.1 Director's retirement by rotation:

- (a) At the second annual general meeting after the Commencement Date and thereafter annually, and subject to clauses 12.1(b) to 12.1(d), the tenure of one-third of the Member-elected Directors holding office prior to each annual general meeting (or, if their number is not a multiple of three (3), then the whole number nearest to and less than one-third of the Member-elected Directors appointed) less the number of Member-elected Directors who have retired or been removed since the last annual general meeting, will automatically expire.
- (b) Subject to clause 12.1(c), for the purpose of clause 12.1(a), those Member-elected Directors whose tenure will automatically expire will be determined by:
 - (1) selecting from among those Directors (not being Invited Directors) whose three (3) year term of office under clause 12.1(d) has expired, beginning with those Directors who have been in office for the longest continuous period of time; and
 - (2) where two (2) or more Directors have held office for an equal continuous period of time, the selection between them will be determined by lot administered by the Secretary.
- (c) No Member-elected Director will have his or her tenure automatically expire due to the operation of clause 12.1(a) more than once in every three (3) year period.
- (d) Subject to the operation of clause 11, each Member-elected Director is elected for a term of three (3) years expiring on the commencement of the third annual general meeting held after the Director was last appointed.

- (e) A Director whose tenure expires is eligible for re-election without needing to give any prior notice of his or her intention to submit himself or herself for re-election.
- (f) A retiring Member-elected Director will be entitled to act as a Director throughout the meeting at which he or she retires.

12.2 Director Resignation

Any Director may resign from office on giving notice in writing to the Secretary of the Director's intention to do so and such resignation takes effect on the expiration of the notice or its earlier acceptance by the Board.

12.3 Removal of Directors

- (a) Subject to clause 12.3(b), the Company in general meeting may, by resolution, remove any Director from office.
- (b) No resolution for the removal of a Director from office is to be put to a general meeting, unless notice signed by a Member duly qualified to vote at that meeting and signifying the intention of that Member to propose that resolution is received by the Company not less than twenty-eight (28) clear days before the date appointed for holding the meeting.
- (c) The Director who is the subject of the notice referred to in clause 12.3(b) may give the Company a written statement for circulation to Members and may request and must be granted permission to speak to the motion at the meeting.
- (d) A statement given under clause 12.3(c) must be circulated to the Board before it is despatched to Members or, if there is insufficient time for the statement to be despatched to Members, read out at the meeting before the resolution is considered by the Members Present, unless the statement is more than one thousand (1,000) words or is considered by the Chair to be defamatory.

12.4 Vacation of Office of Directors

- (a) In addition to the circumstances in which the office of Director becomes vacant by virtue of the Corporations Act or elsewhere in this Constitution, the office of a Director becomes vacant if:
 - (1) the Director becomes of unsound mind or a person whose personal estate is dealt with in any way under the law relating to mental health;
 - (2) the Director becomes bankrupt or an insolvent under administration or makes any composition or arrangement with, or enters into an assignment for the benefit of, his or her creditors or any class of them;
 - (3) the Director is removed from office pursuant to this Constitution or the Corporations Act;

- (4) the Director becomes ineligible to be a Director under the ACNC Legislation;
 - (5) the Director resigns by notice in writing to the Secretary;
 - (6) the Director is convicted of an indictable offence which is determined by a majority of the Board to be inconsistent with the welfare, interests or character of the Company or the Object;
 - (7) the Director is absent from two (2) consecutive meetings of the Board without leave of absence from the Chair;
 - (8) the period for which the Director is appointed expires; or
 - (9) the Director dies or ceases to be a Member.
- (b) No proceedings of the Board, or any resolution passed at any meeting, will be invalidated by reason of any Director taking part or concurring in such meeting or resolution being then disqualified until an entry is made in the minutes of the Board of the Director's office having been so vacated.

13. Office Bearers

13.1 Office Bearers

The Office Bearers of the Company will consist of a Chair and a Deputy Chair, each of whom must be a Member-elected Director.

13.2 Appointment and Termination of Office Bearers

- (a) At the first meeting of the Board following each annual general meeting, the Board must appoint Member-elected Directors to be the Office Bearers.
- (b) If the position of any Office Bearer becomes vacant, the Board must elect a new Office Bearer to fill that vacancy from its Member-elected Directors.
- (c) Each appointment, whether pursuant to clause 13.2(a) or 13.2(b), will expire on the commencement of the first Board meeting following the next annual general meeting.
- (d) Office Bearers will be eligible for re-election by the Board and may serve an unlimited number of times as an Office Bearer.
- (e) The Board must determine the powers and Duties of each Office Bearer and may terminate a Director's appointment as an Office Bearer at any time.

13.3 Chair to preside at annual general meeting

Despite clause 11 and subject to clause 7.3, the person holding the office of Chair of the Board immediately before the commencement of an annual general meeting will preside as Chair of that annual general meeting.

14. Management of the Company

- (a) Subject to the Corporations Act, the ACNC Legislation and any other provision of this Constitution, the business and affairs of the Company will be managed by the Board which may exercise all the powers and do everything that the Company may exercise or do and which is not required to be exercised or done by the Company in general meeting.
- (b) The Board may by resolution:
 - (1) appoint or employ a person to be an Officer, agent or attorney of the Company with powers, authorities, discretions and Duties, including those vested in or exercisable by the Board for such period and subject to such conditions as the Board thinks fit;
 - (2) authorise an Officer to delegate powers and Duties vested in that Officer; and
 - (3) subject to any provision of this Constitution, the Corporations Act or the ACNC Legislation to the contrary, dismiss or remove any agent, Officer or attorney, with or without cause.
- (c) The Board must decide on the responsible financial management of the Company including the manner in which electronic transfers, negotiable instruments or cheques must be authorised, signed or otherwise approved.

15. Regulations

15.1 Regulations are made by the Directors

The Directors may from time to time, in their absolute discretion, make, amend, add to, rescind or replace regulations concerning any aspect of the Membership, governance, management, operation or activities of the Company including:

- (a) any matter this Constitution envisages may be governed by regulations; and
- (b) any other matter relevant to the Company that the Directors choose to regulate.

15.2 Conflict between the Constitution and Regulations

To the extent of any conflict between this Constitution and any regulation, this Constitution prevails.

15.3 Effectiveness and promulgation of Regulations

Any regulation made, and any amendment, addition, rescission or replacement:

- (a) has effect on and from the date it is made unless otherwise stated in the relevant instrument; and

- (b) must be displayed on the website of the Company as soon as practicable after such regulation or variation is made, provided that failure to bring it to the attention of any person does not render the regulation or anything done in accordance with the regulation void, voidable or ineffective.

15.4 Enforceability of Regulations

- (a) Any regulation:
 - (1) is as valid and enforceable as if it was repeated in this Constitution; and
 - (2) can be enforced by legal action.
- (b) A failure by a Director, Officer or Member to comply with a regulation is deemed to be a failure by that Director, Officer or Member to comply with this Constitution.

16. Proceedings of directors

16.1 Procedure generally

- (a) Subject to clause 16.1(b), the Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
- (b) The Directors must meet at least four (4) times in each period of twelve (12) months at such place and time as the Board may determine.
- (c) Additional meetings of the Board may be convened by a Director at any time by written notice to the Secretary and the Secretary must forthwith on the requisition of a Director, convene a Board meeting.

16.2 Quorum

- (a) The quorum for a Board meeting will be the presence of fifty percent (50%) of Directors then holding office and entitled to vote on the relevant resolution plus one Director.
- (b) No business may be conducted unless a quorum is present.
- (c) A meeting of the Directors will be adjourned if a quorum is not present within thirty (30) minutes of the time specified for the meeting, to a date and time five (5) Business Days following the time of, and at the same place as, the original meeting to be notified to all Directors.
- (d) Any Directors present at any meeting adjourned due to insufficiency of quorum will constitute a quorum for that adjourned meeting.
- (e) If the number of Directors in office at any time is not sufficient to constitute a quorum at a Board meeting, the remaining Directors must act as soon as possible to:

- (1) increase the Directors to a number sufficient to constitute a quorum required under the Constitution;
- (2) convene a general meeting of the Company for that purpose; or
- (3) appoint additional Directors, and

until such action has been taken the Directors may only act if and to the extent that there is an emergency requiring them to act.

16.3 Notice of Board meetings

- (a) Reasonable notice of a Board meeting is to be given to all Directors except to a Director whom the Secretary when giving notice to other Directors reasonably believes to be outside Australia.
- (b) A notice of meeting must:
 - (1) specify the date, time and place of, and if relevant, the form of technology for, the meeting;
 - (2) indicate the general nature of the business to be conducted; and
 - (3) be given at least five (5) days before the date of the meeting.
- (c) A Director may waive notice of any meeting of Directors by notifying the Company to that effect in person or by post, or by telephone or other electronic means.
- (d) Non-receipt of notice of a Board meeting by, or a failure to give notice of a Board meeting to a Director does not invalidate any act, matter or thing done by or resolution passed at the meeting if:
 - (1) non-receipt or failure occurred by accident or error;
 - (2) before or after the meeting, the Director:
 - (A) has waived or waives notice of that meeting under clause 16.3(c); or
 - (B) has notified or notifies the Company of his or her agreement to that act, matter, thing or resolution personally or by post or by telephone or other electronic means; or
 - (3) the Director attended the meeting.

16.4 Chair

The Chair will preside at every Board meeting, or if at any Board meeting the Chair is not present within ten (10) minutes after the appointed time for holding the meeting, or if being present the Chair is unable or unwilling to preside, the Deputy Chair will preside or if the

Deputy Chair is also unable or unwilling to preside at the meeting, then the Directors who are present may choose one of their number to chair the Board meeting.

16.5 Determinations

- (a) Subject to this Constitution, questions arising at any Board meeting are to be decided by a majority of votes of Directors present and voting and such decision will for all purposes be taken as a decision of the Board.
- (b) Each Director has one vote and a determination by a majority of the Directors will for all purposes be deemed a determination of the Directors.
- (c) If there is an equality of votes at a meeting at which a quorum is present, the Chair will have a second or casting vote in addition to his or her deliberative vote.

16.6 Alternate Directors

A Director may not appoint any person to act as their alternate Director in the place of the appointing Director.

16.7 Delegation to Committees

- (a) The Board may delegate any of its powers to one or more Committees consisting of one or more Directors or other persons as the Board thinks fit.
- (b) Any Committee formed must comply with this Constitution, the Corporations Act and the regulations that may be imposed on it by the Board in exercising the Committee's delegated power. A power so exercised will be taken to have been exercised by the Board.
- (c) Committees must report periodically to the Board and must conduct their business in accordance with the directions of the Board.
- (d) The Chair and any Director nominated in writing by the Board will be ex officio members of each Committee.

16.8 Procedure of Committees

- (a) The meetings of Committees consisting of more than one person are governed by the clauses of this Constitution regulating the meetings of the Directors so far as they are applicable and are not superseded by any regulations made by the Directors under this Constitution.
- (b) The number of members whose presence at a meeting of a Committee is necessary to constitute a quorum is the number determined by the Board, and if not so determined is two (2).

- (c) Minutes of all the proceedings and decisions of every Committee must be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Corporations Act to be made, entered and signed.

16.9 Validation of irregular acts

Any act done by any Board meeting or by a Committee or by any person acting as a Director will be valid even if it is later discovered:

- (a) that there was some defect in the appointment or continuance in office of a Director or such other person; or
- (b) that any of them was disqualified or had vacated office or were not entitled to vote.

16.10 Written resolutions

- (a) If a document:

- (1) is sent to all those entitled to receive notice of a Board meeting at which a resolution could be put;
- (2) contains a statement that the signatories to it are in favour of that resolution;
- (3) the terms of the resolution are set out or identified in the document; and
- (4) has been signed by not less than fifty percent (50%) of all Directors of the Company entitled to vote on that resolution,

a resolution in those terms is passed on the day on which and at the time at which the document was signed by the last of such Directors and the document is as valid and effectual as if it had been passed at a duly held Board meeting.

- (b) For the purposes of clause 16.10(a):

- (1) "signed" will include an email from or on behalf of a Director indicating assent to the resolution, provided it reasonably appears to the recipient that the email has been sent by the Director personally or on the Director's instructions;
- (2) two (2) or more separate documents containing statements in identical terms, each of which is signed by one or more Directors will together be taken to constitute one document containing a statement in those terms signed by those Directors at the time at which the last of those documents to be signed was signed by a Director; and
- (3) an email which is received by the Company or an agent of the Company and is sent by a Director will be taken to be signed by that Director not later than the time of receipt of the email by the Company or its agent in legible form.

16.11 Board Meetings by Instantaneous Communication Device

- (a) For the purposes of this Constitution and the Corporations Act, each Director consents to the use of an Instantaneous Communication Device for calling or holding a Board meeting.
- (b) The contemporaneous linking together by Instantaneous Communication Device of a number of Directors not less than the quorum, whether or not any one or more of the Directors is out of Australia, is deemed to constitute a Board meeting and all the provisions of this Constitution as to the Board meetings will apply to such meetings held by Instantaneous Communication Device so long as the following conditions are met:
 - (1) all the Directors for the time being entitled to receive notice of the Board meeting to be linked by Instantaneous Communication Device receive notice of such meeting. Notice of any such meeting may be given by the Instantaneous Communication Device or in any other manner permitted by this Constitution;
 - (2) at the commencement of the Board meeting each Director taking part in the meeting by Instantaneous Communication Device is able to hear each of the other Directors taking part;
 - (3) at the commencement of the Board meeting each Director must acknowledge his or her presence for the purpose of the Board meeting to all the other Directors taking part; and
 - (4) a minute of the proceedings of a meeting by Instantaneous Communication Device is sufficient evidence of those proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chair, and

all proceedings of the Board will be as valid and effective as if conducted at a meeting at which all of the Directors were present.

17. Directors' obligations

- (a) The Directors must ensure they are aware of and comply with their duties as directors under relevant legislation, including in particular, the duties referred to in any standards made under the ACNC Legislation.
- (b) Each Director must use all reasonable endeavours to assist the Company to comply with the ACNC Legislation.

18. Confidentiality

18.1 Non-disclosure

A Director must:

- (a) keep confidential all Confidential Information; and
- (b) not disclose any Confidential Information to any person, except:
 - (1) as required by law;
 - (2) with the prior written consent of the Company; or
 - (3) to the Company's agents, employees or advisers in the proper performance of the Director's responsibilities and Duties under this Constitution and as may be determined from time to time by the Board.

18.2 Use

No Director may use any Confidential Information for the benefit of any person except the Company.

18.3 Confidential Information in the public domain

If any Confidential Information is lawfully within the public domain then to the extent that the Confidential Information is public, and subject to clause 18.4, a Director's obligations under clause 18 will cease in respect of that Confidential Information.

18.4 Uncertainty

If there is uncertainty as to whether:

- (a) any information is Confidential Information; or
- (b) any Confidential Information is lawfully within the public domain,

that information will be deemed to be Confidential Information and not within the public domain, unless the Director is advised by the Board in writing to the contrary.

18.5 Security

A Director must:

- (a) maintain proper and secure custody of all Confidential Information; and
- (b) use his or her best endeavours to prevent the use or disclosure of the Confidential Information by third parties.

18.6 Delivery or destruction

- (a) A Director must immediately deliver to the Company all Confidential Information that is physically capable of delivery:
 - (1) at the end of that person's term as a Director; and

- (2) at any time at the request of a person authorised by the Board.
- (b) Instead of delivering Confidential Information, the Board may direct the Director to destroy Confidential Information and certify in writing to the Company that the Confidential Information has been destroyed.
- (c) The Board may direct that Confidential Information contained in computer software or data be destroyed by erasing it from the media on which it is stored so that the information cannot be recovered or reconstructed.

18.7 No copies

- (a) A Director must not make any copy or summary of any Confidential Information, except if required to do so in the course of his or her Duties as a Director.
- (b) If a Director is required to make a copy or summary of Confidential Information in the course of the Director's Duties and functions as a Director, the copy or summary belongs to the Company.

18.8 Obligations to continue

A Director must comply with the obligations under clauses 18 to 18.7 at all times during and after that person's term as a Director.

18.9 No limitation

Nothing in this clause 18 will limit any other duty of confidentiality of a Director at law or in equity.

19. Director's interests

19.1 Management of Interests

Subject to the Corporations Act and clause 29:

- (a) a Director is not disqualified by the Director's office from contracting with the Company in any capacity and may enter into any arrangement, contract or dealing with the Company in any capacity;
- (b) no Director or proposed Director is disqualified by that office from becoming or remaining a director of any company in which the Company is in any way interested or which is in any way interested in the Company;
- (c) provided that the Corporations Act and this clause have been complied with by a Director, no contract, agreement or arrangement in which the Director is in any way interested, entered into by or on behalf of the Company can be avoided merely because of that Director's interest and the fact that the Director signed the document evidencing the contract, agreement or arrangement will not in any way affect its validity;

- (d) a Director must not, and must procure that any company in relation to which he or she is a director does not, without the Board's prior approval, directly or indirectly supply goods or services to the Company for valuable consideration where such goods or service can be satisfactorily obtained elsewhere; and
- (e) no Director who:
 - (1) enters into a contract, agreement or arrangement in which the Director has an interest; or
 - (2) is a director of the other company with which the Company has entered into the contract, agreement or arrangement,

is liable to account to the Company for any profits or remuneration realised by that Director as a result of him or her being interested or being a director of the other company, if the Director has declared the Director's interest in the matter in accordance with clause 19.2 and not contravened this Constitution or the Corporations Act in relation to the matter.

19.2 Declaration of interests

- (a) The nature of a Director's interest in any contract, agreement or arrangement must be declared by that Director at a meeting of the Directors as soon as practicable after the relevant facts have come to his or her knowledge.
- (b) A general notice that a Director is a member of any specified firm or corporation and is to be regarded as interested in all transactions with that firm or corporation is a sufficient declaration under this clause as regards the Director and the transactions, provided that the extent of that interest is not materially greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.
- (c) After giving the general notice it is not necessary for the Director to give any special notice relating to any particular transaction with that firm or corporation.
- (d) The Secretary must record in the minutes any declaration made or any general notice given by a Director under this clause.

19.3 Votes by interested Directors

Subject to the Corporations Act, a Director who has a material personal interest in a matter that is being considered at a meeting of Directors must not vote on the matter unless:

- (a) the Directors have passed a resolution that the interest does not disqualify the Director from considering or voting on the matter;
- (b) the interested Director is entitled to be present and vote as a result of a declaration or order made by ASIC under the Corporations Act; or

- (c) the interested Director is otherwise permitted by the Corporations Act to be present and vote, and

may not be present while the vote is taken.

19.4 Director's conflicts of interest

If a Director holds any office or possesses any property such that he or she might have Duties or interests which directly or indirectly conflict with his or her Duties or interests as Director, that Director must declare at a meeting of the Directors the fact, nature, character and extent of the conflict.

20. Minutes and records

20.1 Minute books

The Directors must cause the Company to keep minute Books in which the Secretary ensures the following are recorded within one month after the relevant meeting is held or resolution passed or otherwise in accordance with the Corporations Act:

- (a) the names of the Directors present at each Board meeting and each Committee meeting;
- (b) all appointments of Officers;
- (c) proceedings and resolutions of meetings of Members, Directors and of any Committee; and
- (d) resolutions passed by Members, Directors or any Committee without a meeting.

20.2 Signing of minutes

- (a) The minutes of a meeting must be signed by the Chair within a reasonable time of the meeting or by the Chair of the next meeting.
- (b) The minutes of the passing of a resolution without a meeting must be signed by a Director within a reasonable time after the resolution is passed.
- (c) The signing of minutes by a Chair or a Director may occur electronically in any manner permitted by relevant law, which may include signing a printed copy of the document and sending it electronically to the Company.
- (d) Such minutes if purporting to be signed by the Chair of the meeting at which the proceedings were held or by the Chair of the next succeeding meeting, will be receivable as prima facie evidence of the matters stated in such minutes.
- (e) Once signed, all minutes must be provided to the Secretary for retention on behalf of the Company as soon as practicable.

20.3 Minutes as evidence

A minute that is recorded and signed under rules 20.1 to 20.2 is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

21. Chief Executive Officer

21.1 Appointment

- (a) The Directors may at any time engage a person to perform the office of Chief Executive Officer for any period and on any provisions decided by the Directors.
- (b) The Directors may at any time revoke the engagement of the Chief Executive Officer, subject to the provisions of any applicable engagement agreement and all applicable employment laws.

21.2 Remuneration

The Directors may at any time decide the remuneration of the Chief Executive Officer, subject to the provisions of any applicable engagement agreement.

21.3 Powers

- (a) The Directors may confer on the Chief Executive Officer any powers exercisable by the Directors, subject to any provisions or restrictions decided by the Directors.
- (b) Any delegated powers may be concurrent with, or exclude, the powers of the Directors.
- (c) The Directors may at any time revoke or vary any delegated powers conferred on the Chief Executive Officer.
- (d) An act done by a person acting as a Chief Executive Officer is not invalidated by reason only of:
 - (1) a defect in the person's appointment; or
 - (2) the person being disqualified to be an executive officer,if that circumstance was not known by the person when the act was done.

22. Secretary

- (a) The Directors must appoint a Secretary in accordance with the Corporations Act at the remuneration and on the terms and conditions as the Directors think fit.
- (b) A Secretary must be appointed at the first meeting of the Board after a vacancy in that office occurs.

- (c) Any Secretary so appointed may be removed by the Directors.
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23. Financial records

23.1 Financial and other records

- (a) The Directors must:
- (1) cause proper financial and other Books to be kept that:
 - (A) correctly record and explain its transactions and financial position and performance; and
 - (B) enable true and fair financial statements to be prepared and audited, andensure such records are retained by the Company for at least seven (7) years; and
 - (2) provide annual financial reporting to Members, as required by the ACNC Legislation.
- (b) Directors have the right to access the Company's financial records at any reasonable time.

23.2 Inspection of Books

- (a) The Directors must ensure the minute Books for general meetings are open for inspection by Members free of charge.
- (b) Subject to rule 23.2(a), the Directors may determine whether and to what extent (if any), and at what time and places and under what conditions, the minute Books, financial records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors).
- (c) A Member who is not a Director has no right to inspect any books, records or documents of the Company except as conferred by statute or authorised by the Board or by the Company in general meeting.

23.3 Financial Year

- (a) The financial year of the Company will run from 1 July to 30 June of the ensuing year.
- (b) In accordance with the Corporations Act, the Company's books of account must be audited by a properly qualified auditor (not being a member of the Company) appointed by the Members at the annual general meeting. Audits must be conducted at regular intervals of not more than twelve (12) months.

23.4 Reporting to Members

The Board must send Members copies of the financial report for each financial year, the Directors' report for the year and the auditor's report on the financial report, which must include a profit and loss statement for the year, a balance sheet as at the end of the year and a statement of cash flows for the year and every other document required by law to be attached to such reports.

23.5 Consideration of Accounts at the AGM

The Board must cause to be laid before each annual general meeting the financial report, the Directors' report and the auditor's report for the last financial year that ended before the annual general meeting.

24. Notices

24.1 Entitlement to Notice

Any Member who has not left at or sent to the Office a place of address or an email address (for registration in the Register) at or to which all notices and documents of the Company may be served or sent will not be entitled to receive any notice.

24.2 Notices to Members

The Company may give notice to a Member by:

- (a) serving it on the Member personally;
- (b) sending it by post to the Member or leaving it at the Member's address as shown in the Register or the address supplied by the Member to the Company for the giving of notices;
- (c) transmitting it to the electronic mail address (if any) supplied by the Member for the giving of notices; or
- (d) in any other way allowed under the Corporations Act.

24.3 Deemed service

Subject to clause 6.3, a notice sent by:

- (a) post, is taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected at the time at which the letter would be delivered in the ordinary course of post;
- (b) electronic mail is taken to be effected by properly addressing and sending the notice and to have been effected on the day of transmission, if transmitted before 5.00pm on a Business Day, otherwise on the next Business Day; and

- (c) electronic mail is deemed not to be served only if the computer system used to send it reports that delivery failed.

25. Disputes and mediation

25.1 Application

- (a) The grievance procedure set out in this clause applies to disputes under this Constitution or otherwise in relation to the Company or its affairs between:
 - (1) a Member and another Member; or
 - (2) a Member and the Company.
- (b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within ten (10) Business Days after the dispute came to the attention of all of the parties.

25.2 Mediation

- (a) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend the meeting, then the parties must, within ten (10) Business Days, hold a meeting in the presence of a mediator.
- (b) The mediator must be:
 - (1) a person chosen by agreement between the parties; or
 - (2) in the absence of agreement:
 - (A) in the case of a dispute between a Member and another Member, a person appointed by the Board; or
 - (B) in the case of a dispute between a Member and the Company, a person who is a mediator appointed by the Chair of the Resolution Institute or the Chair's designated representative.
- (c) A mediator can be a Member but not a party to the dispute.
- (d) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (e) Unless the parties to the dispute agree otherwise:
 - (1) the Resolution Institute Mediation Rules will apply to the mediation;
 - (2) the mediation will be held in Sydney, New South Wales; and

- (3) the costs of mediation will be borne equally amongst the parties to the dispute.
 - (f) The mediator, in conducting the mediation must:
 - (1) give the parties to the mediation every opportunity to be heard;
 - (2) allow due consideration by all parties of any written statement by any party; and
 - (3) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
 - (g) The mediator must not determine the dispute.
 - (h) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Corporations Act or otherwise at law.
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26. Winding up or dissolution

- (a) In the event of the Company being dissolved, the amount which remains after such dissolution and the satisfaction of all debts and liabilities (**Surplus**) must not be paid to or distributed amongst Members but must be distributed in accordance with clause 26(b) or, if that is not applicable, clause 26(d).
- (b) At or before the winding up or dissolution of the Company, the Members may determine that the Surplus must be given or transferred to one or more institutions or entities provided the institution or entity:
 - (1) has objects similar to some or all of those of the Company;
 - (2) prohibits the distribution of its income or property amongst its members to an extent at least as great as imposed under this Constitution; and
 - (3) has been granted Deductible Gift Recipient status (**DGR Status**) under the Tax Act by the Australian Taxation Office.
- (c) If there is a determination in accordance with clause 26(b), the Surplus must be transferred to the institution or entity after the winding up or dissolution of the Company. If there is more than one institution or entity specified in the determination, the Surplus must be transferred in the proportion specified in the determination or, if there is no such proportion specified, then, in proportions as determined by the Directors.
- (d) If there is no determination made in accordance with clause 26(b), the Surplus must be given or transferred to another organisation in Australia, as determined by the Board, which has substantially similar objects to those of the Company and which prohibits the distribution of its income or property amongst its members to an extent at

least as great as imposed under this Constitution, in such manner as the Directors determine.

- (e) If and so far as effect cannot be given to clause 26(d), the Surplus must be applied in Australia to some charitable object.

27. Indemnity of officers

- (a) The Company must indemnify each Officer out of the assets of the Company to the Relevant Extent against any Liability incurred by the Officer in or arising out of the conduct of the business of the Company or a subsidiary of the Company or in or arising out of the discharge of the Duties of the Officer, except where the Liability:
 - (1) is owed to the Company or a Related Body Corporate;
 - (2) arises out of conduct involving a lack of good faith;
 - (3) is for a pecuniary penalty order under section 1317G of the Corporations Act;
 - (4) is for a compensation order under section 1317H of the Corporations Act; or
 - (5) is for legal costs.

- (b) To the Relevant Extent, the Company must indemnify each Officer against any Liability for legal costs incurred in defending an action for a Liability incurred as an Officer, except if the costs are incurred:
 - (1) in defending or resisting proceedings in which the person is found to have a Liability for which they could not be indemnified under clause 27(a);
 - (2) in defending or resisting criminal proceedings in which the person is found guilty;
 - (3) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
 - (4) in connection with proceedings for relief to the person under the Corporations Act in which the court denies the relief.

Clause 27(b)(3) does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

- (c) The Company may, to the Relevant Extent:
 - (1) purchase and maintain insurance; or
 - (2) pay or agree to pay a premium for insurance,

for any person to whom this clause 27 applies against any Liability incurred by the person as an Officer.

- (d) The Company may give an Officer a loan or advance in respect of legal costs for defending an action for a Liability incurred as an Officer, provided that such loan or advance does not contravene the Corporations Act.
- (e) Subject to the Corporations Act, where the Board considers it appropriate, the Company may execute a documentary indemnity or insurance policy in any form in favour of any Officer.
- (f) Subject to the Corporations Act, where the Board considers it appropriate, the Company may:
 - (1) make payments or agree to make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an Officer against any Liability incurred by the Officer in or arising out of the conduct of the business of the Company or a subsidiary of the Company or in or arising out of the discharge of the Duties of the Officer other than one for legal costs or conduct involving a wilful breach of duty in relation to the Company; and
 - (2) bind itself and amend any contract or deed with any Officer to make the payments.
- (g) The benefit of each indemnity given in clauses 27(a) and 27(b) continues, even after its terms or the terms of this clause are modified or deleted, in respect of a Liability arising out of acts or omissions occurring prior to the modification or deletion.

28. Powers and Capacity

28.1 Exercise of Powers

- (a) Subject to the Corporations Act and clause 29, the Company has the legal capacity of a natural person including the capacity to exercise the powers set out in section 124 of the Corporations Act, which powers may only be used to carry out the Object.
- (b) Where this Constitution provides that a person or body may do a particular act or thing and the word 'may' is used, the act or thing may be done at the discretion of the person or body.
- (c) Where this Constitution confers a power to make appointments to any office or position other than a Director, the power is, unless the contrary intention appears, to be taken to include a power:
 - (1) to appoint a person to act in the office or position until a person is appointed to the office or position;

- (2) subject to any contract between the Company and the relevant person and any applicable industrial law, to remove or suspend any person appointed, with or without cause; and
- (3) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- (d) Where this Constitution confers a power or imposes a duty on the holder of an office then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- (e) Where this Constitution confers power on a person or body to delegate a function or power:
 - (1) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;
 - (2) the delegation may be either general or limited in any manner provided in the terms of delegation;
 - (3) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position;
 - (4) the delegation may include the power to delegate;
 - (5) where the performance or exercise of that function or power is dependent on the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
 - (6) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

28.2 Capacity

- (a) Solely for carrying out the Object, the Company may, in any manner permitted by the Corporations Act or the ACNC Legislation:
 - (1) exercise any power;
 - (2) take any action; or
 - (3) engage in any conduct or procedure,

which under the Corporations Act or the ACNC Legislation a company limited by guarantee may exercise, take or engage in, if authorised by its constitution.

- (b) The Company may pursue its Object through operations and activities carried out by itself and/or by its subsidiaries.

29. Non-profit

The income and property of the Company must be applied solely towards the promotion of the Object. In particular, no portion of the income and property of the Company is to be paid or transferred directly or indirectly by way of dividend or distribution of profit to Members or paid to Directors as fees for their services as Directors. This clause does not prevent the payment in good faith:

- (a) of remuneration to any Officers or servants of the Company for any services rendered in a professional or technical capacity, where the amount payable is not more than an amount that would be commercially reasonable for the service;
- (b) of reasonable and proper remuneration to any employee of the Company;
- (c) for goods supplied by Members in the ordinary and usual course of business at fair and reasonable prices or prices more favourable to the Company;
- (d) of interest on money borrowed from any Member at a rate not exceeding from time to time the Company's overdraft rates of interest paid for moneys borrowed from its bankers;
- (e) of reasonable and proper rent for premises leased or licensed by any Member to the Company;
- (f) of any amount to a person in carrying out the Company's objects; or
- (g) of sums permitted to be paid under Chapter 2E of the Corporations Act,

provided that any such payment is approved by the Board.

30. Limited liability

The Company is a company limited by guarantee and the Liability of the Members is limited to the amount provided in clause 31 of this Constitution.

31. Members' guarantee

Every Member undertakes to contribute an amount not exceeding \$20.00 to the property of the Company if the Company is wound up while he or she is a Member or within one year after ceasing to be a Member, for:

- (a) payment of the debts and liabilities of the Company contracted before they ceased to be a Member;
- (b) the costs, charges and expenses of winding up the Company; and
- (c) for an adjustment of the rights of contributories among themselves.

32. Application of the Corporations Act

32.1 What parts of the Corporations Act apply

Unless the contrary intention appears:

- (a) an expression used in this Constitution that deals with a matter dealt with by a provision of the Corporations Act has the same meaning as in that provision of the Corporations Act; and
- (b) subject to clause 32.1(a), an expression in a clause of this Constitution that has a defined meaning for the purposes of the Corporations Act has the same meaning when used in this Constitution.

32.2 Actions authorised under Corporations Act or ACNC Legislation

Where the Corporations Act or the ACNC Legislation authorises or permits a company to do any matter or thing if so authorised by its constitution, the Company is and will be taken by this clause to be authorised or permitted to do that matter or thing, despite any other provision of this Constitution.

32.3 Replaceable rules displaced

- (a) The clauses of this Constitution displace each provision of a section or sub-section of the Corporations Act that applies (or would apply but for this clause) to the Company.
- (b) The replaceable rules do not apply to the Company.

32.4 Inconsistencies

While the Company is a registered charity under the ACNC Legislation, the ACNC Legislation and the Corporations Act override any clauses in this Constitution to the extent of any inconsistency.

33. General

33.1 Submission to jurisdiction

Each Member submits to the non-exclusive jurisdiction of the Supreme Court of New South Wales and the Courts which may hear appeals from that Court.

33.2 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this Constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.