

Constitution of National  
Stroke Foundation  
ACN 006 173 379

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**CORPORATIONS ACT 2001**  
**CONSTITUTION**  
**OF**  
**NATIONAL STROKE FOUNDATION**  
**ACN 006 173 379**  
**A COMPANY LIMITED BY GUARANTEE**

**1 INTERPRETATION**

**1.1 Replaceable rules inapplicable**

The replaceable rules in the Corporations Act do not apply to the Foundation except those which operate as mandatory rules for public companies limited by guarantee under the Corporations Act.

**1.2 Definitions**

In this Constitution, unless the context otherwise requires:

“**ACNC Act**” means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

“**ASIC**” means the Australian Securities and Investments Commission.

“**Board**” means the board of Directors from time to time.

“**Business Day**” means a day which is not a Saturday, Sunday or bank or public holiday in Victoria.

“**Chairperson**” means the chairperson of meetings determined pursuant to **clause 9**.

“**Committee**” means a committee or council of Directors formed pursuant to **clause 16.6**.

“**Constitution**” means this constitution as amended from time to time.

“**Corporations Act**” means the *Corporations Act 2001* (Cth).

“**Directors**” means the Directors for the time being or such number of them as has authority to act for the Foundation.

“**Foundation**” means National Stroke Foundation, a company limited by guarantee registered without “Limited” in its name pursuant to sections 150 or 151 of the Corporations Act.

“**Gift Fund**” means the gift fund established under **clause 21** and known as the “National Stroke Foundation Gift Fund”.

“**Honorary Life Members**” means members appointed pursuant to **clause 7.2**.

“**Independent Members**” means persons who:

- (a) are not employed by the Foundation or any of its Related Bodies Corporate;

- (b) are not members of management of the Foundation or any of its Related Bodies Corporate and otherwise have no interest or relationship that could interfere with their ability to act in the best interests of the Foundation and independently of management;
- (c) in the opinion of the Board, have the appropriate skills and characteristics needed by the Board to maximise its effectiveness and skills, knowledge and experience for the present and future needs of the Foundation;
- (d) in the opinion of the Board, provide the Board with a broad range of expertise covering technical, commercial, financial, legal and operational management; and
- (e) bring the benefit of experience from other boards, companies and industries.

“**Instantaneous Communication Device**” includes telephone, television, fax, email, videoconference or any other audio, visual or data device which permits instantaneous communication.

“**Members**” means Independent Members, Special Interest Members and Honorary Life Members who are, or who are admitted as, members of the Foundation pursuant to **clause 7**.

“**Nomination Member**” means Independent Members and Special Interest Members who are, or who are admitted as, members of the Foundation pursuant to **clause 7** and who are also Directors.

“**Objects**” means the objects for which the Foundation is established as set out in **clause 5**.

“**Office**” means the registered office from time to time of the Foundation.

“**Ordinary Members**” means Independent Members and Special Interest Members.

“**Patron**” means a person appointed pursuant to **clause 20**.

“**President**” means the Chairperson of the Board of the Foundation from time to time.

“**Register**” means the register of Members to be kept pursuant to the Corporations Act.

“**Related Body Corporate**” has the meaning given to that term in section 50 of the Corporations Act.

“**Seal**” means the common seal (if any) of the Foundation.

“**Secretary**” means any person appointed to perform all or any of the duties of a secretary of the Foundation or any person appointed to act temporarily as such.

“**Special Interest Members**” means persons who represent the interests of the Foundation’s stakeholders, consisting of:

- (a) two special interest members will be persons who represent the interests of the community (including stroke survivors, those at risk of stroke, families of stroke survivors, and carers);
- (b) one special interest member will be a person who represents the interests of clinicians and other service providers providing stroke treatment in Australia at all stages of recovery; and
- (c) one special interest member will be a person who represents the interests of researchers (being individuals and organisations that do stroke-related research in Australia).

“**Special Resolution**” has the meaning given to that term in the Corporations Act.

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

**“Tax Deductible Gift”** means a gift or contribution for which an income tax deduction is available to the donor under section 30-15 of the Tax Act.

**“Term”** has the meaning given to it in **clause 13.6**.

**“Vice President”** means the Vice President of the Foundation from time to time.

### 1.3 Construction

In this Constitution unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) “includes” means includes without limitation;
- (e) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iii) 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;
  - (iv) a right includes a benefit, remedy, discretion or power;
  - (v) time is to local time in Victoria;
  - (vi) “\$” or “dollars” is a reference to Australian currency;
  - (vii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission;
- (f) 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
- (g) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

## 2 CAPACITY

Subject to the Corporations Act and **clauses 5 and 6**, the Foundation has the legal capacity to exercise the powers set out in section 124 of the Corporations Act.

## 3 LIMITED LIABILITY

The Foundation is a company limited by guarantee and the liability of the Members is limited as provided by **clause 4** in this Constitution.

## 4 MEMBERS’ GUARANTEE

Every Member undertakes to contribute an amount not exceeding fifty dollars (\$50.00) to the property of the Foundation if it 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 Foundation contracted before the time when he or she ceased to be a Member;

- (b) the costs, charges and expenses of winding up; and
- (c) an adjustment of the rights of contributories among themselves.

## **5 OBJECTS**

The Foundation shall pursue charitable purposes and for the public benefit only, its objects being:

- (a) to promote, foster, develop and assist the study of and the acquisition, dissemination and application of knowledge and information concerning the causes, diagnosis, prevention and treatment of stroke and diseases and other disorders of the nervous system;
- (b) to encourage, stimulate and aid research in branches of health and medical science pertaining to stroke and diseases and other disorders of the nervous system;
- (c) to stimulate public interest in and enhance public knowledge of the prevention and treatment of stroke;
- (d) to assist in keeping the health profession in Australia conversant with the latest developments in the field of medical and scientific research and the diagnosis, prevention and treatment of stroke;
- (e) to assist in the development and provision of support and information for stroke survivors and their families and carers; and
- (f) to encourage and assist an international interchange of health professionals, researchers, students and others to exchange ideas for purposes of teaching, research, study and training relating to the above objects.

In relation to the above objects, the Foundation shall do all other lawful things as are incidental or conducive to the attainment of these objects or any of them which may be calculated to advance directly or indirectly the interests of the Foundation.

## **6 NON-PROFIT**

The income and property of the Foundation must be applied solely towards the promotion of the Objects of the Foundation as set out in this Constitution and no portion of it is to be paid or transferred directly or indirectly by way of profit to Members or paid to Directors as fees for their services as Directors. This does not prevent the payment in good faith:

- (a) of remuneration to any officers or servants of the Foundation in return for any services rendered to the Foundation, if such payment is approved by the Board and the amount payable is not more than an amount that would be commercially reasonable for the service;
- (b) for goods supplied in the ordinary and usual course of business;
- (c) of interest at a reasonable and proper rate on money borrowed from any Member;
- (d) for premiums for insurance indemnifying the Directors, as allowed for by law and this Constitution;
- (e) of reasonable and proper rent for premises leased or licensed by any Member to the Foundation; or
- (f) of out of pocket expenses incurred by a Director in performing Foundation duties if such payment is approved by the Board.

## **7 MEMBERS**

### **7.1 Eligibility for Ordinary Membership**

Subject to the composition set out in **clause 13.2**, the Board may, in its full discretion, admit a new Ordinary Member (and therefore, a new Director) if:

- (a) the potential Ordinary Member has provided a signed application for membership in a form acceptable to the Board including their full name, address and qualifications;
- (b) the potential Ordinary Member agrees to assume the liability to pay the Member guarantee specified in **clause 4**;
- (c) the potential Ordinary Member undertakes to be bound by this Constitution;
- (d) the potential Ordinary Member is eligible to be appointed a Director under the provisions of this Constitution and under law (including the Corporations Act and ACNC Act); and
- (e) the potential Ordinary Member has submitted to the Foundation a signed consent to becoming a Director.

The Board may decline any application for Membership and is not bound to give reasons why an application was not accepted.

### **7.2 Honorary Life Members**

- (a) The Board may appoint a person to be an Honorary Life Member of the Foundation.
- (b) An Honorary Life Member shall be eligible to attend and speak at general meetings of the Foundation, but is not entitled to vote.
- (c) Honorary Life Members are eligible to be appointed as Directors.

### **7.3 Cessation of Membership**

A person ceases to be a Member if the person:

- (a) dies;
- (b) resigns as a Member by written notice to the Secretary;
- (c) becomes of unsound mind or a person who is or whose estate is liable to be dealt with in any way under a law relating to mental health;
- (d) is convicted of an indictable offence;
- (e) becomes bankrupt, insolvent, under administration, suspending payment generally to creditors or compounding with or assigning the Member's estate for the benefit of creditors;
- (f) is expelled under **clause 7.4**; or
- (g) being an Ordinary Member, otherwise ceases to be a Director for any reason.

### **7.4 Expulsion**

- (a) The Board may by ordinary resolution expel a Member from the Foundation if in its absolute discretion the Board decides that it is not in the best interests of the Foundation for the person to remain a Member.
- (b) The Board must give the Member written notice of the Board meeting at which the resolution for his or her expulsion is proposed.
  - (i) stating the time, date and place of the meeting;

- (ii) setting out the resolution and the grounds upon which it is based; and
  - (iii) informing the Member that he or she may attend the meeting and may give oral or written submissions before the resolution is put to a vote.
- (c) If the Member is also a Director, the process in **clause 7.4(b)** must be run in conjunction with the process to remove a Director set out in section 203D of the Corporations Act. However, notwithstanding **clause 7.4(a)**, if for whatever reason the Members do not pass a resolution put forward under section 203D of the Corporations Act, that Director shall also be entitled to remain a Member.

## **8 REGISTER OF MEMBERS**

### **8.1 Register**

- (a) The Secretary must keep the Register at the Office and must enter in the Register:
- (i) the full names and addresses of Members;
  - (ii) the date on which each Member becomes a Member; and
  - (iii) in respect of each person who has ceased to be a Member, the date on which that person ceased to be a Member.
- (b) An applicant for membership becomes a Member and is entitled to exercise the rights of membership when his or her name is entered in the Register.
- (c) The Register must not be used for any other purpose and Members may inspect and copy the Register by appointment with the Secretary.

### **8.2 Registered address**

- (a) Each Member must notify the Secretary of an address within Australia to which notices may be served on or delivered to such Member and the Secretary must enter that address in the Register of Members of the Foundation.
- (b) Each Member must notify the Secretary within seven days of any change in the Member's registered address.

## **9 CHAIRPERSON OF MEETINGS**

- (a) The President may preside as Chairperson at every general meeting and every meeting of Directors. If there is no President or if the President is not present within 15 minutes after the time appointed for the meeting or is unable or unwilling or refuses to act as Chairperson of the meeting, then:
- (i) the Vice President shall be appointed to act as Chairperson of the meeting.
  - (ii) if there is no Vice President or if the Vice President is not present within 30 minutes after the time appointed for the meeting or is unable or unwilling or refuses to act as Chairperson of the meeting, then the Directors must choose another Director as Chairperson.
- (b) The Chairperson is responsible for the conduct of the general meeting, and for this purpose must give Members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- (c) The Chairperson of a directors' meeting does not have a casting vote.

## **10 GENERAL MEETINGS**

### **10.1 Annual general meeting**

An annual general meeting of the Foundation must be held in accordance with the Corporations Act.

### **10.2 Holding of general meetings**

General meetings are to be held at the times and places determined by the Board.

### **10.3 Convening of general meetings**

- (a) The Directors may whenever they think fit and must upon a written requisition made by at least two Members and otherwise in accordance with section 249D of the Corporations Act convene a general meeting of the Foundation.
- (b) The written request for a general meeting by the Members must:
  - (i) state the resolution to be proposed at the meeting;
  - (ii) be signed by the Members requesting the meeting; and
  - (iii) be given to the Foundation.
- (c) The Board may 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.
- (d) If a general meeting is called and arranged to be held under section 249D of the Corporations Act, the Directors may not:
  - (i) postpone it beyond the date by which section 249D requires it to be held; or
  - (ii) cancel it without the consent of the requisitioning Members.

### **10.4 Notice of meetings**

Unless otherwise agreed by all Members or the Corporations Act otherwise provides, at least 21 days' notice must be given to all Members, the Directors and the Foundation's auditors of a meeting of Members. The notice must specify the place, date and time of the meeting, the proposed resolutions, the names of any appointed proxies and the right for a Member to appoint a proxy.

### **10.5 Omission to give notice**

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 at the meeting.

### **10.6 Special business**

All business will be special that is transacted at:

- (a) a general meeting not being an annual general meeting; or
- (b) an annual general meeting with the exception of:
  - (i) the confirmation of the minutes of the preceding meeting;
  - (ii) the receipt and consideration of the annual financial report and the reports of the Directors and the auditors;
  - (iii) the appointment of Directors in accordance with **clause 13.3(b)** and re-appointment of Directors in accordance with **clause 13.8**; and

- (iv) the transaction of any business which under the Corporations Act or this Constitution is required to be transacted.

## **10.7 Resolutions evidenced by each Member**

Any written resolution of the Foundation determined without a general meeting (whether in one document or in several copies) and signed by each Member entitled to vote is as valid and effectual as a resolution duly passed at a general meeting of the Foundation, unless the Corporations Act requires a resolution to be passed at a general meeting of the Foundation. Such a resolution is passed when the last Member signs.

## **11 PROCEEDINGS AT MEETINGS**

### **11.1 Use of technology**

A general meeting may be held in more than one place. In such circumstances the Foundation must use technology that gives Members a reasonable opportunity to participate in that general meeting.

### **11.2 Quorum**

No business is to be transacted at any general meeting unless a quorum is present at the time the meeting proceeds to business. Five Members personally present and entitled to vote constitute a quorum for the transaction of the business of a general meeting, of which a majority of those Members must be Independent Members.

### **11.3 Lack of quorum**

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

- (a) in the case of a meeting convened upon 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 30 minutes after the time appointed for the meeting, five Members (of which a majority are Independent Members) present in person or by proxy is a quorum and if such quorum is not then present the meeting will be dissolved.

### **11.4 Voting entitlement**

Subject to this Constitution and any rights or restrictions attached to any class of Membership, at a general meeting every Member present in person or represented by proxy or representative has one vote, whether on a show of hands or on a poll.

### **11.5 Decision of resolutions**

- (a) Subject to **clause 11.5(c)**, at a general meeting a resolution put to the vote of the meeting 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 Chairperson or (other than on the election of the Chairperson of a meeting or the adjournment of a meeting) by not less than three Members having the right to vote on that resolution.
- (b) Before a vote is taken, the Chairperson must state whether any proxy votes have been received and if so, how the proxy votes will be cast.
- (c) A question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the Chairperson of the meeting, whose decision is final.

**11.6 Casting vote**

In the case of an equality of votes whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands is taken or at which the poll is demanded, is entitled to a casting vote in addition to any vote to which he or she is entitled as a Member.

**11.7 Minutes as evidence of result**

Unless a poll is duly demanded, a declaration by the Chairperson that a resolution has, on the show of hands, been:

- (a) carried;
- (b) carried unanimously;
- (c) carried by a particular majority; or
- (d) lost or not carried by a particular majority,

and an entry to that effect in the book containing the minutes of the proceedings of the Foundation signed by the Chairperson, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

**11.8 Taking of poll**

- (a) The Chairperson or at least two Members entitled to vote on a resolution may demand a poll be taken in relation to that resolution.
- (b) If a poll is duly demanded it must be taken in the manner and at the time and place, before the close of the meeting, as the Chairperson 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 Chairperson of a meeting or on any question of adjournment must be taken at the meeting and without adjournment.
- (c) 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.
- (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 Chairperson must determine the dispute and the determination made in good faith will be final and conclusive.

**11.9 Adjournment**

The Chairperson of a general meeting may with the consent of a meeting at which a quorum is present (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.

**11.10 Notice of adjourned meeting**

It is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting, unless the meeting is adjourned for 14 days or more, in which case notice of the adjourned meeting is to be given as in the case of an original meeting.

**12 PROXIES****12.1 Appointment of proxy**

Subject to section 249X(3) of the Corporations Act, a Member may appoint one proxy only, who is not required to be another Member, and that proxy is entitled to vote on a show of hands or on a poll.

## 12.2 Instrument of proxy

The instrument appointing a proxy:

- (a) must be in writing signed by the appointor or by his or her attorney duly authorised in writing;
- (b) may direct the manner in which the proxy is to vote in respect of a particular resolution. Where an instrument contains such direction, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument;
- (c) must state:
  - (i) the appointing Member's name and address;
  - (ii) the name of the Foundation;
  - (iii) the name of the proxy; and
  - (iv) the meeting to which the proxy relates (or if the proxy is a standing one).

## 12.3 Proxy to be deposited at office

- (a) The instrument appointing a proxy and the authority (if any) under which it is signed or a certified copy of the authority must be received by the Foundation not less than 24 hours before the general meeting or adjourned meeting or taking of the poll, at which the person named in the instrument proposes to vote. If this **clause 12.3** is not complied with, the instrument of proxy will be treated as invalid.
- (b) An instrument appointing a proxy is received when it is received at any of the following:
  - (i) the Office;
  - (ii) a facsimile number at the Office; or
  - (iii) a place, facsimile number or electronic address specified for the purpose in the notice of meeting.

## 12.4 Revocation of proxy

The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Foundation from the Member at any time before the start or resumption of the relevant general meeting.

## 12.5 Power to demand poll

The instrument appointing a proxy confers authority to demand or join in demanding a poll.

## 12.6 Votes of proxies

A vote given in accordance with the terms of an instrument of proxy is valid despite the previous death or unsoundness of mind of the appointor or revocation of the instrument or of the authority under which the instrument was executed unless notice in writing of the death unsoundness of mind or revocation is received by the Foundation before the meeting or adjourned meeting at which the instrument is used. A proxy is not revoked by the appointor attending and taking part in any meeting but if the appointor votes on a resolution either on a show of hands or on a poll the person acting as proxy for that appointor has no vote as proxy on that resolution. A proxy is revoked if the appointor is removed from the Register at any time before the start of the meeting.

## 12.7 Identification of proxy

The Chairperson of a meeting may require a person acting as a proxy to establish to the satisfaction of the Chairperson 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 upon a show of hands or upon a poll.

### **12.8 Power of attorney**

If a Member executes or proposes to execute an instrument or to act by or through an attorney the Member must produce to the Foundation within the time prescribed by **clause 12.3(a)** the instrument appointing the attorney or a certified copy of the instrument.

## **13 DIRECTORS**

### **13.1 Directors must be Members**

Directors must be Members.

### **13.2 Number**

- (a) The number of Directors must not be less than five and not more than 13.
- (b) The Board shall comprise of not more than:
  - (i) nine non-executive Independent Members, one of whom is the President, one of whom is the Vice President; and
  - (ii) four Special Interest Members.

### **13.3 Appointment of Director**

Subject to the composition set out in **clause 13.2**:

- (a) the Board may by resolution appoint a Director in accordance with **clause 13.5**; and
- (b) the Foundation may by resolution at a general meeting appoint a person as a Director.

### **13.4 Qualifications of Directors**

A majority of the Directors at any time must comprise persons who are Australian residents and who at the time of their appointment or re-appointment must be persons who have a degree of responsibility to the community, being persons who:

- (a) perform public functions and are known to a broad section of the community;
- (b) belong to a professional body with a professional code of ethics and rules of conduct; or
- (c) are recognised by others for their services to the community.

### **13.5 Vacancies**

- (a) Subject to **clauses 13.2, 13.8** and **13.9**, if any vacancy occurs in the Board for any reason, that vacancy must be filled within three calendar months (or such longer period as the Directors may otherwise resolve) by a resolution passed by the remaining Directors. The person filling the vacancy will be appointed until the next annual general meeting at which that person must retire and may stand for re-election
- (b) All such appointments must be made by instrument signed by all of the surviving or continuing Directors or the legal personal representatives of the last surviving or continuing Directors.
- (c) If the number of Directors in office at any time falls below the minimum number fixed under this Constitution, the Directors may only act:
  - (i) for the purpose of increasing the number of Directors to the minimum by summoning a general meeting of the Foundation; or

- (ii) in emergencies,  
but for no other purpose.

### 13.6 Term of appointment

Except as provided in **clause 13.5(a)**, the term of appointment of a Director, including a Director who is appointed President or Vice President, is until the conclusion of the third annual general meeting next following such appointment (**Term**).

### 13.7 No remuneration

Except as provided for in **clause 6**, no Director may receive any remuneration for his or her services as a Director.

### 13.8 Directors' retirement by rotation and filling of vacated offices

- (a) Subject to **clause 13.8(b)**, a Director whose Term expires at the conclusion of an annual general meeting may be re-appointed at that annual general meeting for a further Term.
- (b) A Director may be reappointed at the end of his or her Term provided that he or she may not be reappointed if, as a result of that reappointment, his or her Term as a Director will exceed 9 years (including that period for which it is proposed the Director would be reappointed).
- (c) The President may be reappointed at the end of his or her Term provided that he or she may not be reappointed if, as a result of that reappointment, his or her Term as President will exceed 6 years (including that period for which it is proposed that the President be reappointed).
- (d) The Vice President may be reappointed at the end of his or her Term provided that he or she may not be reappointed if, as a result of that reappointment, his or her Term as Vice President (including that period for which it is proposed that the Vice President be reappointed) will exceed 6 years.
- (e) The President is also a Director. For the avoidance of doubt, **clauses 13.8(b)** and **13.8(c)** shall be applied and interpreted so that:
  - (i) a Director may be elected as President, notwithstanding that person has already served their maximum Term as a Director under **clause 13.8(b)**;
  - (ii) time served as a Director (but not also as President) is excluded when determining whether a person has served their maximum Term as President under **clause 13.8(c)**;
  - (iii) time served as President is excluded when determining whether a person has served their maximum Term as a Director under **clause 13.8(b)**;
  - (iv) by way of example, a Director who has served as Director (but not President) for 9 years may still be eligible to act as President (and Director) for a further 6 years.
- (f) The Vice President is also a Director. For the avoidance of doubt, **clauses 13.8(b)** and **13.8(d)** shall be applied and interpreted so that:
  - (i) a Director may not be elected as Vice President, if that person has already served their maximum Term as a Director under **clause 13.8(b)**;

- (ii) time served as a Director (but not also as Vice President) is excluded when determining whether a person has served their maximum Term as Vice President under **clause 13.8(d)**;
  - (iii) time served as Vice President is included when determining whether a person has served their maximum Term as a Director under **clause 13.8(b)**.
- (g) A Director shall act as a director throughout the annual general meeting at which that Director's appointment or re-appointment expires.
  - (h) A retiring Director shall act as a Director throughout the meeting at which he or she retires.
  - (i) The Foundation at any annual general meeting at which any Director retires may fill the vacated office by re-electing the Director or electing some other person to fill the vacancy in accordance with **clause 13.3(b)**.
  - (j) Subject to **clause 13.2**, no person except a Director retiring by rotation, a Director appointed by virtue of **clause 13.5** or a person recommended by the Directors for election is eligible for election to the office of Director at any meeting unless the person or some Member intending to propose the person has at least 28 clear days before the meeting sent to the Secretary a notice in writing duly signed two Members signifying the nominee's candidature for the office or the intention of such Member to propose. Notice of each and every candidature must be forwarded to all Members not less than 21 clear days (or such lesser period as is from time to time permitted by the Corporations Act) prior to the meeting at which an election is to take place.
  - (k) Subject to the provisions of this **clause 13**, a Director who has resigned, retired or is removed from office may not be re-appointed unless:
    - (i) that Director is immediately re-appointed pursuant to **clause 13.8(a)**; or
    - (ii) three years have passed since that Directors' resignation, retirement or removal.

### **13.9 Removal of Directors**

- (a) A Director may resign from the office of Director by giving notice of resignation to the Foundation at its Office.
- (b) The Foundation may, in accordance with section 203D of the Corporations Act and the composition set out in **clause 13.2**, remove a Director.
- (c) In addition to the circumstances in which the office of Director becomes vacant by virtue of the Corporations Act or elsewhere in this Constitution, a person ceases to be a Director and their office of Director becomes vacant if:
  - (i) the Director becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
  - (ii) the Director becomes bankrupt, an insolvent under administration or makes any composition or arrangement with his or her creditors or any class of them;
  - (iii) the Director is absent from three consecutive meetings of Directors without special leave of absence from the Directors and the Directors do not resolve that the Director should not cease to be a Director;
  - (iv) the Director becomes disqualified from acting as a director under the Corporations Act or ACNC Act;
  - (v) the Director dies; or

- (vi) notwithstanding the procedure to expel Members set out in **clause 7.4**, the Director ceases to be a Member of the Foundation for any reason.
- (d) 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.
- (e) Any Director whose office becomes vacant will be eligible for immediate re-election provided that the disqualifying conditions may be dispensed with, altered, varied or modified by a Special Resolution.

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

### **14.1 Management of the Foundation**

- (a) The management of the business and affairs of the Foundation is vested in the Directors. In addition to the powers and authorities conferred on the Directors by this Constitution or otherwise, the Directors may exercise all the powers and do everything that the Foundation may exercise or do and which is not required to be exercised or done by the Foundation in general meeting. Without limitation, the Directors may exercise all the Foundation's powers to:
  - (i) borrow or otherwise raise money;
  - (ii) charge Foundation property; and
  - (iii) issue debentures or give any other security for a debt, liability or obligation of the Foundation or (subject to **clause 6**) any other person.
- (b) The powers of the Directors are subject to the Corporations Act, this Constitution and to any regulations (not being inconsistent with this Constitution) from time to time made by the Foundation in general meeting. No regulation made by the Foundation in general meeting invalidates any prior act of the Directors which would have been valid if that regulation had not been made.
- (c) The Directors may:
  - (i) appoint or employ a person to be an officer, agent or attorney of the Foundation with powers, discretions and duties, including those vested in or exercisable by the Directors;
  - (ii) authorise an officer to delegate powers and duties vested in that officer; and
  - (iii) dismiss or remove any agent, officer or attorney with or without cause.

### **14.2 Duties of Directors**

The Directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Foundation;
- (b) to act in good faith in the best interests of the Foundation and to further the charitable purpose(s) of the Foundation set out in **clause 5**;
- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;

- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in **clause 15**;
- (f) to ensure that the financial affairs of the Foundation are managed responsibly; and
- (g) not to allow the Foundation to operate while it is insolvent.

#### **14.3 Cheques, etc.**

All cheques and other negotiable instruments and receipts for money paid to the Foundation must be signed, drawn, accepted endorsed or otherwise executed by the persons and in the manner as the Board determines.

### **15 DIRECTOR'S CONFLICTS OF INTEREST**

#### **15.1 Director's interests**

Subject to the Corporations Act and **clause 6**:

- (a) a Director, other than an Independent Member, may hold any other office or position under the Foundation (except that of auditor) in conjunction with the office of Director, on such terms as the Board may approve;
- (b) a Director, other than an Independent Member, may be or become a director of or hold any other office or position under any corporation controlled, associated with, or promoted by the Foundation, or in which the Foundation may be interested;
- (c) nothing in this clause prevents an Independent Member being or becoming a non-executive independent director of any corporation controlled, associated with, or promoted by the Foundation, or in which the Foundation may be interested;
- (d) no contract, agreement or arrangement in which a Director is in any way interested, entered into by or on behalf of the Foundation can be avoided merely because of that Director's interest;
- (e) no Director shall directly or indirectly supply goods or services to the Foundation for valuable consideration where such goods or services can be satisfactorily obtained elsewhere with the Board's prior approval; and
- (f) no Director who:
  - (i) enters into a contract, agreement or arrangement in which the Director has an interest; or
  - (ii) is a director of the other company with which the Foundation has entered into the contract, agreement or arrangement,
 is liable to account to the Foundation 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.

#### **15.2 Declaration of interest**

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 in accordance with the Corporations Act as soon as practicable after the relevant facts have come to his or her knowledge. 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. 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. The Secretary must record in the minutes any declaration made or any general notice given by a Director under this clause.

### 15.3 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:

- (a) must not vote on the matter (or in relation to a proposed resolution under **clause 15.3(b)(ii)** in relation to the matter, whether in relation to that Director or a different Director); and
- (b) must not be present while the matter (or a proposed resolution of that kind) is being considered at the meeting, unless:
  - (i) the matter applies to an interest that the Director has as a Member in common with the other Members; or
  - (ii) the Directors have passed a resolution that identifies the Director, the interest and the matter, and states that the Directors voting for the resolution are satisfied that the interest does not disqualify the Director from considering or voting on the matter; or
  - (iii) the interested Director is entitled to be present and vote as a result of a declaration or order made by the ASIC under section 196 of the Corporations Act; or
  - (iv) the interested Director is otherwise permitted by the Corporations Act to be present and vote.

### 15.4 Conflicts involving property

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.

## 16 PROCEEDINGS OF DIRECTORS

### 16.1 Procedure generally

The Directors must meet together at least four times a year for the dispatch of business and may adjourn and otherwise regulate their meetings as they think fit.

### 16.2 Quorum

- (a) The quorum for a meeting of the Board is the next whole number after one-half of the number of Directors in office, or such other number as determined by the Directors from time to time.
- (b) A Director cannot leave the meeting unless the Director has previously sought and obtained the express consent of the Chairperson of the meeting.
- (c) Subject to **clause 16.2(b)** and **clause 16.2(d)**, no business may be conducted unless a quorum is present throughout the meeting.
- (d) If the number of Directors in office at any time is not sufficient to constitute a quorum at a meeting of Directors, or is less than the minimum number of Directors fixed under this Constitution, the remaining Directors must act as soon as possible to:
  - (i) increase the Directors to a number sufficient to constitute a quorum and to satisfy the minimum number of Directors required under the Constitution;

- (ii) convene a general meeting of the Foundation for that purpose; or
- (iii) appoint additional Directors,

and until that has happened the Directors may only act if and to the extent that there is an emergency requiring them to act.

### **16.3 Calling of meetings**

A Director may at any time convene a meeting of the Board by notice to the other Directors. Notice may be given to a Director either personally or by telephone, fax, or other electronic means (if any) or by posting it in a prepaid envelope or wrapper addressed to the Director at the address within Australia supplied by him or her for that purpose.

### **16.4 Notice of meetings**

- (a) Notice of a meeting of the Board is to be given to all Directors.
- (b) A notice of meeting must:
  - (i) specify the time and place of the meeting;
  - (ii) indicate the general nature of the business to be conducted; and
  - (iii) unless all the Directors entitled be given notice agree otherwise in writing, be given at least ten days before the date of the meeting.
- (c) Non-receipt of notice of meeting of Directors by, or a failure to give notice of meeting of Directors to, a Director does not invalidate any act matter or thing done by or resolution passed at the meeting if non-receipt or failure occurred by accident or error.

### **16.5 Determinations**

Subject to **clause 16.9**, questions arising at any meeting of the Board are to be decided by a majority of votes of Directors present and entitled to vote on the resolution. 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. If there is equality of votes at a meeting at which a quorum is present the Chairperson has a second or casting vote in addition to a deliberative vote.

### **16.6 Delegation to Committees**

The Board may delegate any of its powers to Committees consisting of one or more Directors or other persons as the Board thinks fit. Any Committee formed must comply with the regulations that may be imposed on it by the Board in exercising the Committee's delegated power.

### **16.7 Procedure of Committees**

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.

### **16.8 Validation of irregular acts**

Any act done by any meeting of the Board 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.

### 16.9 Written resolutions

A resolution in writing signed by all the Directors (not being less than a quorum) is as valid and effectual as if it had been passed at a meeting of Directors duly held. That resolution may consist of several copies of a document each signed by one or more Directors. A written resolution is passed when the last Director signs.

### 16.10 Voting authority

Subject to **clause 13.9**, a Director who is unable to attend a meeting of the Board may authorise another Director to vote at that meeting and the Director authorised will have one vote for each Director by whom he or she is so authorised in addition to his or her own vote. Any such authority must be in writing (including by fax) and must be produced at the meeting at which it is to be used and be left with the Secretary for retention with the Foundation's records.

### 16.11 Meetings of Directors by Instantaneous Communication Device

For the purposes of this Constitution, the contemporaneous linking together by Instantaneous Communication Device of a number of consenting 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 meeting of the Directors and all the provisions of this Constitution as to the meetings of the Directors will apply to such meetings held by Instantaneous Communication Device so long as the following conditions are met:

- (a) all the Directors for the time being entitled to receive notice of the meeting of Directors are entitled to notice of a meeting by Instantaneous Communication Device and to be linked by Instantaneous Communication Device for the purposes 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;
- (b) at the commencement of the meeting each of the Directors taking part in the meeting by Instantaneous Communication Device is able to hear each of the other Directors taking part;
- (c) at the commencement of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Directors to all the other Directors taking part;
- (d) a Director must not leave the meeting by disconnecting the Director's Instantaneous Communication Device unless the Director has previously obtained the express consent of the Chairperson of the meeting. A Director is conclusively presumed to have been present and to have formed part of the quorum, for the purpose of **clause 16.2(c)**, at all times during the meeting by Instantaneous Communication Device unless the Director has previously obtained the express consent of the Chairperson of the meeting to leave the meeting; and
- (e) 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 Chairperson.

## 17 MINUTES

The Directors must cause minutes to be kept in accordance with the Corporations Act:

- (a) of the names of the Directors present at each meeting of the Board and of any Committee; and
- (b) of all resolutions and proceedings of general meetings and of meetings of the Board and of Committees.

The minutes must be signed by the Chairperson of the meeting at which the proceedings were held or by the Chairperson of the next meeting.

## **18 PRESIDENT, VICE PRESIDENT AND SECRETARY**

- (a) The Foundation shall have one President and one Vice President.
- (b) The Directors must appoint one or more Secretaries in accordance with the Corporations Act at the remuneration and on the terms and conditions as the Directors think fit. Any Secretary so appointed may be removed by the Directors.
- (c) The election of the President and/or Vice President shall take place in the following manner:
  - (i) A Nomination Member may nominate themselves to serve as a President or Vice President of the Board.
  - (ii) The Nomination Member must lodge the nomination, which must be in writing and signed by the Nomination Member, with the CEO at least 14 days before the meeting at which the election is to take place.
  - (iii) A list of the candidates' names in alphabetical order must be provided to all Directors by the Secretary at least 14 days before the meeting at which the election is to take place.
  - (iv) Each Director present at the meeting is entitled to one vote for each vacancy.
  - (v) In case there is not a sufficient number of candidates nominated, the Board may fill the remaining vacancies by resolution.
- (d) If the Nomination Member who is elected to be the President or the Vice President is a Special Interest Member, then:
  - (i) the Nomination Member is deemed to have ceased to be a Special Interest Member and to have become an Independent Member; and
  - (ii) the Special Interest Member vacancy must be filled by the remaining Directors in accordance with **clause 13.5**.

## **19 SEAL**

The Directors must provide for the safe custody of any Seal. The Seal may only be used by the authority of the Directors or of a Committee authorised by the Directors for that purpose. Every instrument to which the Seal is affixed must be signed by a Director and countersigned by the Secretary or by a second Director or by some other person appointed by the Directors for that purpose.

## **20 PATRON**

The Board may from time to time at its discretion appoint one or more Patrons of the Foundation.

## **21 ESTABLISHMENT AND OPERATION OF GIFT FUND**

### **21.1 Establishment and Maintenance of Gift Fund**

- (a) The Board shall cause the Foundation to establish and maintain a Gift Fund for the main Objects or purposes of the Foundation.
- (b) The income and property of the Gift Fund must be used and applied solely in furtherance of the Objects and purposes of the Foundation set out in **clause 5**.

- (c) All Tax Deductible Gifts of money and property and any income derived from such money, property or other investments arising out of such gifts shall be paid into or credited to the Gift Fund, and the Gift Fund shall not receive any other money or property.
- (d) A separate bank account shall be opened and maintained for the Gift Fund and all Tax Deductible Gifts and income derived from such gifts or the investment of such gifts shall be kept separate from the other funds of the Foundation until used or appropriated in accordance with **clause 21.1(e)**.
- (e) Subject to **clause 21.1(b)**, the Board, or any person for the time being appointed by the Board under **clause 21.1(f)**, may authorise the use of, or appropriation of money or property from, the Gift Fund.
- (f) The Board shall appoint one of its members to administer the Gift Fund and may change the appointee from time to time.
- (g) Receipts for donations of Tax Deductible Gifts to the Gift Fund are to be issued in the name of the Foundation, show its Australian Business Number and that the receipt is for a gift.
- (h) Notwithstanding any other provision in this Constitution, if upon the first occurrence of the revocation of the Foundation's endorsement as a deductible gift recipient under subdivision 30-BA of the Tax Act or the winding up of the Gift Fund, there remains, after the satisfaction of all of the debts and liabilities of the Gift Fund, any property or money whatsoever, the surplus assets shall be given or distributed to some other (one or more) funds, authorities or institutions determined by the Foundation and having objects or purposes similar to the Objects or purposes of the Foundation and which is charitable at law and which is a named fund, authority or institution known to have been approved under sub-division 30-B or subdivision 30-BA of the Tax Act or a fund, authority or institution falling under one or more of the items listed in the tables in sub-division 30-B.
- (i) Subject to **clause 21.1(h)** , any property or money whatsoever remaining upon the revocation of the Foundation's endorsement as a deductible gift recipient under subdivision 30-BA of the Tax Act or the winding up of the Gift Fund after the satisfaction of all its debts and liabilities, shall to the extent possible be distributed to one or more funds, authorities or institutions that have as their main objects or purposes the prevention and treatment of stroke and neurological diseases and disorders.

## 22 FINANCIAL RECORDS

### 22.1 Financial and other records

- (a) The Directors must cause proper financial and other records to be kept and provide annual financial reporting to Members as required by the Corporations Act. The Directors must from time to time determine whether and to what extent and at what times and places and under what conditions or regulations any financial or other records of the Foundation are to be open to the inspection of Members who are not Directors. No Member (who is not a Director) has the right to inspect any records of the Foundation except as conferred by statute or authorised by the Directors or by the Foundation in general meeting.
- (b) The Foundation must make and keep written financial records that:
  - (i) correctly record and explain its transactions and financial position and performance; and

- (ii) enable true and fair financial statements to be prepared and to be audited.
- (c) The Foundation must also keep written records that correctly record its operations.
- (d) The Foundation must retain its records for at least 7 years.
- (e) The Directors must take reasonable steps to ensure that the Foundation's records are kept safe.

## **22.2 Time for financial reports**

The interval between the end of a financial year of the Foundation and the annual financial reporting to Members must not exceed the period (if any) prescribed by the Corporations Act.

## **22.3 Financial Year**

- (a) Subject to the Corporations Act, the financial year of the Foundation shall run from 1 January to 31 December each year.
- (b) In accordance with the Corporations Act, the Foundation's books of account shall be examined and audited by the auditors appointed by the Members at the annual general meeting.

## **23 BY-LAWS**

- (a) The Directors may pass a resolution to make by-laws to give effect to this Constitution.
- (b) Members and Directors must comply with by-laws as if they were part of the Constitution.

## **24 NOTICES**

### **24.1 Notices to Members**

The Foundation may give notice to a Member:

- (a) personally;
- (b) by sending it by post to the Member at his or her registered address;
- (c) by sending it to the fax number or electronic mail address (if any) nominated by the Member; or
- (d) in any other way allowed under the Corporations Act.

### **24.2 Deemed service**

- (a) If a notice is sent by post, service of the notice 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) A notice sent by fax is deemed to be received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the recipient if produced before 5.00 pm on a Business Day, otherwise on the next Business Day.
- (c)
  - (i) A notice sent by electronic mail is deemed to be received on the day of transmission, if transmitted before 5.00 pm on a Business Day, otherwise on the next Business Day.
  - (ii) A notice sent by electronic mail is deemed not to be served only if the computer system used to send it reports that delivery failed.

**24.3 Persons entitled to notice of general meeting**

Notice of every general meeting must be given in the manner authorised to:

- (a) every Member; and
- (b) the auditor for the time being (if any) of the Foundation.

No other person is entitled to receive notices of general meetings.

**25 DISPUTES AND MEDIATION****25.1 Application**

- (a) The grievance procedure set out in this clause applies to disputes under this Constitution between:
  - (i) a Member and another Member; or
  - (ii) a Member and the Foundation.
- (b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 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 10 days, hold a meeting in the presence of a mediator.
- (b) The mediator must be:
  - (i) a person chosen by agreement between the parties; or
  - (ii) 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 Foundation, a person who is a mediator appointed or employed by the Dispute Settlement Centre of Victoria (Department of Justice).
- (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) The mediator, in conducting the mediation must:
  - (i) give the parties to the mediation every opportunity to be heard; and
  - (ii) allow due consideration by all parties of any written statement by any party; and
  - (iii) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (f) The mediator must not determine the dispute.
- (g) 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.

**26 WINDING UP**

- (a) If upon the winding up or dissolution of the Foundation there remains, after the satisfaction of all its debts and liabilities, any property or money whatsoever, the remaining assets shall not be paid or distributed to the Members but shall be given or distributed to some other fund, authority or institution determined by the Foundation on the winding up or dissolution of the Foundation or failing which by a Judge of the Supreme Court of Victoria and having objects or purposes similar to the Objects or purpose of the Foundation and which is a named fund, authority or institution known to have been approved under sub-division 30-A, sub-division 30-B or sub-division 30-BA of the Tax Act or a fund, authority or institution falling under one or more of the items listed in the tables in sub-division 30-B of the Tax Act.
- (b) Subject to **clause 26(a)**, any property or money whatsoever remaining upon the winding up or dissolution of the Foundation after the satisfaction of all its debts and liabilities, shall to the extent possible be distributed to one or more funds, authorities or institutions that have as their main objects or purposes the prevention and treatment of stroke and neurological diseases and disorders.

**27 INDEMNITY OF OFFICERS**

- (a) The Foundation must indemnify each Officer out of the assets of the Foundation To The Relevant Extent against any Liability incurred by the Officer in or arising out of the conduct of the business of the Foundation or a subsidiary of the Foundation or in or arising out of the discharge of the Duties Of The Officer.
- (b) Subject to the Corporations Act, where the Board considers it appropriate, the Foundation may execute a documentary indemnity in any form in favour of any Officer.
- (c) Subject to the Corporations Act, where the Board considers it appropriate, the Foundation may:
- (i) 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 Foundation or a subsidiary of the Foundation or in or arising out of the discharge of the Duties Of The Officer; and
  - (ii) bind itself and amend any contract or deed with any Officer to make the payments;
- (d) In this clause:
- (i) "Officer" means:
    - (A) a Director or Secretary or a director or secretary of a subsidiary of the Foundation; or
    - (B) a person:
      - (1) who makes or participates in making decisions that affect the whole, or a substantial part, of the business of the Foundation or a subsidiary of the Foundation;
      - (2) who has the capacity to affect significantly the Foundation's or a subsidiary of the Foundation's financial standing; or

- (3) in accordance with whose instructions or wishes the Directors or the directors of a subsidiary of the Foundation are accustomed to act (excluding advice given by the person in the proper performance of functions attached to the person's professional capacity or their business relationship with the Directors or the directors of a subsidiary of the Foundation or the Foundation or a subsidiary of the Foundation),

and includes a former officer;

- (ii) "Duties Of The Officer" 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 Foundation or, where applicable the subsidiary of the Foundation, to any other corporation;
- (iii) "To The Relevant Extent" means:
- (A) to the extent the Foundation 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 the Duties Of The Officer 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; and
- (iv) "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.