

Constitution of a public company limited by guarantee

Hearts4heart
ACN 115 852 681

Consolidated based on amendments approved by a special resolution of members at a General Meeting held on 19 December 2015

Middletons
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Constitution of Hearts4heart ACN 115 852 681

A public company limited by guarantee

1. Introduction

1.1 Name of Company

The name of the Company is Hearts4heart.

1.2 Objects

The purposes and objects for which the Company was established are:

- (a) to provide support, counselling and assistance to those persons contemplating or recovering from cardiac surgery or who suffer from heart disease or heart defects;
- (b) to support the spouses and families of such persons;
- (c) the provision of local and national rehabilitation programmes for such persons so that they can achieve their maximum potential;
- (d) to assist in the relief of poverty, distress, sickness, suffering, destitution or helplessness, caused by cardiac surgery, heart disease and heart defects;
- (e) to raise funds in support of the Company and to make available funds for cardiothoracic surgical units, coronary care units, cardiac research, and overseas travel for members of the medical profession engaged in cardiac studies; and
- (f) to do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the Company.

1.3 Non-profit

The assets and income of the Company must be applied solely for the furtherance of the Company's objects as set out in clause 1.2 and no portion will be distributed directly or indirectly to any Members, except as bona fide compensation for services rendered to, or expenses incurred on behalf of, the Company.

2. Definitions and interpretation

2.1 Definitions

In this Constitution, unless the context requires otherwise:

Act means the *Corporations Act 2001 (Cth)* as amended, supplemented or replaced from time to time;

Alternate Director means any person who, for the time being, holds office as an alternate Director duly appointed in accordance with this Constitution;

Annual Subscription means the annual subscription (if any) determined in accordance with clause 4.7;

Application Fee means the application fee (if any) determined in accordance with clause 4.6;

Company means Hearts4heart ACN [*insert*] or as that name is changed from time to time;

Constitution means this constitution of the Company as amended, supplemented or replaced from time to time;

Directors means all or any number of the directors for the time being of the Company appointed in accordance with this Constitution but does not include associate directors;

Foundation Members means the persons who consent to be the first Directors of the Company upon its registration;

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that have the force of law;

Managing Director means any person who, for the time being, holds office as a managing director duly appointed in accordance with this Constitution;

Member means a member of the Company or any person deemed by this Constitution to be such a person;

Office means the registered office for the time being of the Company;

Register means the register of Members of the Company as required to be kept under section 168 of the Act;

Seal means the common seal of the Company (if any) and includes any additional seal of the Company referred to in clause 18.3;

Secretary means any person appointed to perform the duties of a secretary of the Company;

Special Resolution has the same meaning as in section 9 of the Act.

2.2 Interpretation

In this Constitution, unless the contrary intention appears:

- (a) a reference to:

- (i) any statute, rule, regulation, ordinance or other Law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments or a replacement of any of them by any Government Agency;
- (ii) a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Act;
- (iii) any officer of the Company includes any person acting for the time being as such an officer;
- (iv) writing includes any mode of representing or reproducing words in a tangible or visible form, and includes email and facsimile transmission;
- (b) words importing:
 - (i) the singular include the plural and vice versa;
 - (ii) a gender includes the other genders;
 - (iii) natural persons include partnerships, associations and corporations;
- (c) headings are used for convenience only and do not affect the interpretation of this Constitution;
- (d) other grammatical forms of defined words or expressions have corresponding meanings
- (e) references to notices in this Constitution include not only formal notices of meetings but also all documents and other communications from the Company to its Members but do not include cheques; and
- (f) unless the contrary intention appears, an expression used in this Constitution that is given a special meaning in the Act has the same meaning in this Constitution where it relates to the same matter as the matter for which it was defined in the Act.

2.3 Replaceable rules

The replaceable rules contained in the Act are displaced under section 135(2) and do not apply to the Company except to the extent that they are repeated in this Constitution.

3. Company limited by guarantee

3.1 Limited liability

The liability of the Company's Members is limited.

3.2 Guarantee

Each Member undertakes to contribute an amount not exceeding \$1.00 to the assets of the Company if the Company is wound up while the Member is a member of the Company; or within 1 year of the Member ceasing to be a member of the Company, for payment:

- (a) of the debts and liabilities of the Company incurred while the Member was a member of the Company;
- (b) of the costs, charges and expenses of the winding up; and
- (c) for the adjustment of the rights of contributories among themselves.

4. Membership

4.1 Number of Members

The number of Members of the Company is unlimited.

4.2 Membership

The Members of the Company will be:

- (a) the persons who gave consent to become Members in the Company's application for registration; and
- (b) any other persons, corporations or organisations whom or which the Directors admit to membership in accordance with this Constitution.

4.3 Obligation of Members

Every Member undertakes to:

- (a) promote and further the objects, interest, influence and standing of the Company; and
- (b) observe this Constitution and the rules and regulations of the Company in force from time to time,

to the best of their ability.

4.4 Application for membership

- (a) Applications for membership must be in the form prescribed by the Directors and accompanied by the Application Fee (if any) and Annual Subscription (if any).
- (a) The Directors must determine whether to approve or reject an application for membership in their absolute discretion, without being obliged to provide reasons.
- (b) If the Directors approve an application for membership, the Secretary must, as soon as practicable:
 - (i) notify the applicant in writing of their approval; and
 - (ii) enter the applicant's name in the Register.
- (c) An applicant for membership becomes a Member and is entitled to exercise the rights of membership when its name is entered in the Register.

- (d) If the Directors reject an application for membership, the Directors must, as soon as practicable, notify the applicant in writing that the application has been rejected.

4.5 Class of Membership

The Board may from time to time divide the membership of the Company into different classes of membership and determine the rights and obligations attaching to each class of membership.

4.6 Application Fee

The Directors may determine, in their discretion, whether there is to be an Application Fee and the amount of the Application Fee (if any).

4.7 Annual Subscription

- (a) The Directors may determine, in their discretion, whether there is to be an Annual Subscription and the amount of the Annual Subscription (if any).
- (b) Unless the Directors determine otherwise, all Annual Subscriptions are due on 30 June in each year.
- (c) If a Member fails to pay the Annual Subscription within 2 months of it becoming due and payable, then the Directors may, in their discretion, issue the Member a default notice, in which case the Member will cease to be entitled to any of the rights or privileges of membership.
- (d) Upon payment by a Member of all amounts owing to the Company, including Annual Subscriptions, the Directors may, in their discretion, reinstate any rights or privileges of the Member that were suspended in accordance with clause 4.7(c).

4.8 No transfer of membership

A right, privilege, or obligation of a person by reason of membership of the Company:

- (a) is not capable of being transferred or transmitted to another person or Corporation; and
- (b) terminates upon the cessation of membership whether by death, resignation or otherwise.

4.9 Cessation of membership

A Member will cease to be a Member:

- (a) if the Member resigns from the Company by giving written notice of their resignation, from the date of receipt of that notice by the Secretary;
- (b) where the Member is an individual, if the Member:
 - (i) dies;
 - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health;

- (iii) is an undischarged bankrupt, or has executed a deed of arrangement under Part X of the *Bankruptcy Act 1966* (or a similar law of another country) and the terms of the deed have not been fully complied with, or the person's creditors have accepted a composition under Part X of the *Bankruptcy Act 1966* (or a similar law of another country) and final payment has not been made under the composition; or
- (iv) is convicted of an indictable offence.
- (c) where the Member is a body corporate:
 - (i) a liquidator is appointed in connection with the winding up of the Member; or
 - (ii) an order is made by a court for the winding up or deregistration of the Member.

5. Discipline of Members

5.1 Directors may resolve to fine, suspend or expel

If a Member has refused or neglected to comply with the provisions of this Constitution, or has, in the opinion of the Directors, been guilty of conduct unbecoming a Member or prejudicial to the interests of the Company, the Directors may by resolution:

- (a) suspend the Member from membership for a specified period during which the Member will cease to be entitled to any of the rights or privileges of membership; or
- (b) expel that Member from the Company.

5.2 Notice of decision

Following a resolution of the Directors to discipline a Member in accordance with clause 5.1, the Secretary must, as soon as practicable, cause to be delivered to the Member a written notice (**Discipline Notice**):

- (a) setting out the Directors' resolution and the grounds on which it is based; and
- (b) informing the Member of their right to appeal the Directors' decision by lodging with the Secretary, no later than 10 Business Days after the date on which the Discipline Notice was delivered, a notice in writing setting out the Member's intention to appeal the decision and the grounds on which the appeal is sought (**Appeal Notice**).

5.3 Appeal meeting

- (a) If a Member lodges an Appeal Notice in accordance with clause 5.2(b), the Directors must, no later than 28 days after the Appeal Notice was delivered to the Secretary, hold a meeting of Directors at which the Directors will reconsider the decision to discipline the Member.

- (b) The Directors must provide the Member with at least 10 Business Days' notice of the meeting stating:
 - (i) the date, place and time of that meeting; and
 - (ii) that the Member, or their representative, may attend and address the Directors at the meeting.
- (c) At a Directors meeting held in accordance with this clause 5.3, the Directors must:
 - (i) give the Member, or their representative, an opportunity to be heard;
 - (ii) give due consideration to any written statement submitted by the Member, including the Member's Appeal Notice; and
 - (iii) determine by resolution whether to confirm, vary or revoke the resolution to discipline the Member.

6. General meetings

6.1 Annual general meeting

If required to do so by the Act, the Company must hold an annual general meeting of the Company in accordance with the Act.

6.2 Power to convene general meeting

Any Director may convene a general meeting of the Company's Members.

6.3 Notice period

- (a) Subject to the Act and clause 6.3(b), the Company must give 21 days' notice of general meetings (including annual general meetings).
- (b) Subject to the Act, the Company may call, on shorter notice than that specified in clause 6.3(a):
 - (i) an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree prior to the annual general meeting; and
 - (ii) any other general meeting, if Members holding at least 95% of the votes that may be cast at the general meeting agree prior to the general meeting.

6.4 Notice of general meetings

- (a) Written notice of a general meeting must be given as provided in this Constitution to:
 - (i) every Member;
 - (ii) every Director; and
 - (iii) the auditor (if any).

- (b) Notice to joint Members may be given by sending it to the joint Member named first in the Register.

6.5 Content of notice of general meetings

A notice of a general meeting must:

- (a) specify the place, date and time for the meeting;
- (b) except as provided by clause 6.6, state the general nature of the business to be transacted at the meeting;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
- (d) contain a statement of:
 - (i) each Member's right to appoint a proxy; and
 - (ii) the fact that a proxy need not be a Member of the Company.

6.6 Content of notice of annual general meeting

It is not necessary for the notice of an annual general meeting to state that the business to be transacted at the meeting includes:

- (a) the consideration of the financial statements and the reports of the Directors and auditor (if any);
- (b) the election of Directors and other officers in place of those retiring;
- (c) the appointment and fixing of the remuneration of the auditors; and
- (d) any other business which, under this Constitution or the Act, is required to be transacted at an annual general meeting.

6.7 Nature of business

All business will be special that is transacted at a general meeting, with the exception of:

- (a) the consideration of the accounts, balance sheets, and the reports of the Directors and auditors; and
- (b) the election of the Directors or auditors (if any) or both.

6.8 Notice of adjourned meeting

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 30 days or more.

6.9 Failure to give notice

Any resolution passed at a meeting is not invalidated by:

- (a) the accidental omission to give notice of a meeting to any Member or non-receipt of that notice by a Member; or

- (b) the accidental omission to send out the instrument of proxy to a person entitled to receive notice or non-receipt of that instrument.

7. Proceedings at general meetings

7.1 Circular resolutions

- (a) A resolution may be passed without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. A body corporate's representative may sign such a circular resolution. Each member of a joint membership must sign a circular resolution.
- (b) Identical copies of the document may be distributed for signing by different Members and taken together will constitute one and the same document.
- (c) The resolution is passed when the last Member signs the document, and satisfies any requirement in this Constitution or the Act that the resolution be passed at a general meeting.

7.2 Sole Member resolutions

- (a) If at any time the Company has only one Member, it satisfies any requirement in this Constitution or the Act that a resolution be passed by that sole Member recording the resolution and signing the record.
- (b) A body corporate's representative may sign a resolution referred to in clause 7.2(a).

7.3 Use of technology

The Company may hold a meeting at 2 or more venues using any technology that gives Members a reasonable opportunity to participate.

7.4 Quorum

- (a) Except as otherwise provided in this Constitution, the quorum for a general meeting of the Company is 2 Members present in person or by proxy, attorney or body corporate representative and the quorum must be present at all times during the meeting.
- (b) No business will be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- (c) For the purpose of determining whether a quorum is present:
 - (i) each person attending as a proxy, as a body corporate's representative, or as a validly appointed attorney of a Member, is deemed to be a Member;
 - (ii) if a Member has appointed more than one proxy, attorney or representative, only one may be counted; and
 - (iii) if an individual person is attending both as a Member and as a proxy, attorney or representative, they may be counted only once.

7.5 Effect of no quorum

If a quorum of the Company's Members is not present within half an hour after the time appointed for the meeting in the notice:

- (a) if the meeting was convened on the requisition of Members, the meeting must be dissolved; or
- (b) in any other case:
 - (i) the meeting will be adjourned to the date, time and place that the Directors specify (or if the Directors do not specify such details, the meeting is adjourned to the same day in the next week at the same time and place) except that if the meeting is adjourned for 30 days or more, notice of the resumed meeting must be given; and
 - (ii) if at a meeting resumed under clause 7.5(b)(i) a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

7.6 Chairperson of general meeting

The Directors may elect any person to chair general meetings of the Company.

7.7 Vacancy in chair

Where a general meeting is held and:

- (a) a chairperson has not been elected by the Directors as provided by clause 7.6; or
- (b) the chairperson declines to act or is not present within 15 minutes after the time appointed for the holding of the meeting,

the Members present must elect one of their number to be chairperson of the meeting or part of the meeting (as the case may be).

7.8 Adjournment

The chairperson must adjourn a general meeting if the Members present with a majority of votes at the general meeting agree or direct that the chairperson must do so.

7.9 Adjourned meetings

- (a) Only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (b) A resolution passed at a meeting resumed after an adjournment is passed on the day it was in fact passed.

8. Voting at general meetings

8.1 Voting

- (a) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded.

- (b) Before a vote is taken, the chairperson must inform the general meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) On a show of hands, a declaration by the chairperson is conclusive evidence of the result provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.

8.2 Voting rights

Each Member entitled to vote, may vote in person or by proxy, attorney or body corporate representative authorised under the Act, at a meeting of the Members of the Company, and each Member has one vote whether on a show of hands or a poll.

8.3 Voting by poll

- (a) A poll may be demanded by:
 - (i) the chairperson;
 - (ii) at least 3 Members present in person or by proxy, attorney or body corporate representative entitled to vote on the resolution; or
 - (iii) a Member or Members present in person or by proxy, attorney or body corporate representative representing at least 5% of the total votes that may be cast on the resolution on a poll.
- (b) A poll may be demanded:
 - (i) before a vote is taken; or
 - (ii) before or immediately after the voting results on a show of hands are declared.
- (c) The demand for a poll may be withdrawn.
- (d) If a poll is duly demanded, it must be taken in such manner and, subject to clause 8.3(e), either immediately or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (e) A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.
- (f) The demand for a poll does not prevent a meeting continuing for the transaction of any business other than the question on which a poll has been demanded.

8.4 Casting vote of chair

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 takes place or at which the poll is demanded has a casting vote (in addition to any vote that the chairperson may have had as a member).

8.5 Objection to qualification of a voter

- (a) An objection to a person's right to vote at a general meeting:
 - (i) may only be raised at a general meeting or adjourned meeting at which the vote objected to is given or tendered; and
 - (ii) must be determined by the chairperson of the meeting, whose decision is final.
- (b) A vote not disallowed under an objection referred to in clause 8.5(a) is valid for all purposes.

8.6 Votes counted in error

If any vote is counted which ought not to have been counted or might have been rejected, the error will not invalidate the resolution unless the error is:

- (a) detected at the same meeting; and
- (b) of sufficient magnitude, in the opinion of the chairperson, as to invalidate the resolution.

9. Proxies

9.1 Who can appoint a proxy

A Member who is entitled to attend and vote at a general meeting may appoint a person as that Member's proxy to attend and vote for that Member at a meeting of the Company. A proxy need not be a Member of the Company.

9.2 Execution and form of proxies

An instrument appointing a proxy:

- (a) may be contained in a facsimile;
- (b) must be in writing under the hand of the appointer or of an attorney duly authorised in writing or, if the appointer is a body corporate, either under seal or under the hand of an officer or attorney duly authorised;
- (c) may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument;
- (d) is deemed to confer authority to demand or join in demanding a poll; and
- (e) must (except in the case of proxies appointed under power of attorney), as nearly as the circumstances permit, be in the following form or in such other form as the Directors prescribe:

Proxy form
Hearts4heart ACN 115 852 681
General meeting
[date]

I,

of

being a member of the Company appoint:

of

or if no person is named, the Chairperson of the general meeting as my proxy to vote and act for me and on my behalf at the general meeting of members of the Company to be held on *[date]* and any other day to which that general meeting is adjourned or postponed.

I direct my proxy to vote in the following manner:

| No | Resolution <i>[list in sequence of ordinary and special business]</i> | For | Against | Abstain |
|-----------|--|------------|----------------|----------------|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |

If you have appointed the Chairperson as your proxy and you do not wish to direct the Chairperson how to vote, please place a mark in the box (below).

☐ By marking this box, you acknowledge that the Chairperson may exercise your proxy even if they have an interest in the outcome of the resolution and votes cast by the Chairperson other than as proxy holder will be disregarded because of that interest.

The Chairperson intends to vote in favour of/against the resolutions *[insert details]*.

Dated

Signed

Signature of member/s (note if the member is a company, the proxy form should be signed in accordance with the member company's constitution and with the *Corporations Act 2001 (Cth)*).

9.3 Member's attorney

A Member may appoint an attorney to act, or to appoint a proxy to act, at a general meeting. If the appointor is an individual, the power of attorney must be signed in the presence of at least 1 witness.

9.4 Life of proxy

An instrument appointing a proxy will not be valid after 12 months from the date of its execution, unless it is expressly stated to be a standing appointment or to extend for a longer period.

9.5 Lodgement of proxies and powers of attorney

- (a) If a Member appoints a proxy or an attorney, the following documents must be given to the Company at the Office or at the place specified for the purpose in the notice calling the general meeting:
 - (i) the proxy's appointment; and
 - (ii) if the appointment is signed by the appointor's attorney, the authority under which the form was signed or a certified copy of the authority; and
 - (iii) in the case of an attorney, the power of attorney or a certified copy of it.
- (b) The appointment of a proxy or an attorney is valid for a meeting if the appointment and any authority are given to the Company at least 24 hours before the general meeting at which the proxy is to be used.

9.6 Corporate representative

A Member that is a body corporate may appoint an individual to act as its representative at general meetings as permitted by the Act.

9.7 Validity of proxy vote

A vote cast in accordance with the terms of an instrument of proxy or of a power of attorney is valid if no notice in writing of:

- (a) the previous death of the appointing Member;
- (b) the mental incapacity of the appointing Member;
- (c) the revocation of the proxy's appointment;
- (d) the revocation of the authority under which the proxy was appointed; or
- (e) the transfer of the share in respect of which the proxy was given,

has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the proxy is used or exercised.

10. Appointment and removal of Directors

10.1 Number

- (a) The number of the Directors will not be less than 3 or more than 15.
- (b) The Company in general meeting may by ordinary resolution of the Company increase or reduce the number of Directors referred to in clause 10.1(b), provided that the number of Directors is not reduced below 3.

10.2 Appointment by Directors

The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided that the total number of Directors does not at any time exceed the maximum number of Directors permitted under this Constitution.

10.3 Appointment by Company

The Company may by ordinary resolution passed in general meeting appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors.

10.4 Removal by Company

The Company may by ordinary resolution:

- (a) remove any Director from office; and
- (b) appoint another person as a Director instead.

10.5 Term of office

Each of the Directors will hold office until the Director vacates office or is removed under this Constitution.

10.6 Member qualification

A Director need not be a Member of the Company.

10.7 Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director:

- (a) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (b) is prohibited from being a Director by reason of any order made under the Act;
- (c) becomes physically or mentally incapable of performing the Director's duties;
- (d) resigns by written notice to the Company;
- (e) is absent from Directors' meetings (without appointing an Alternate Director) without the consent of the other Directors for a period of more than 6 months; or

- (f) without the prior or subsequent consent of the other Directors, is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the Director's interest as required by the Act.

11. Remuneration of Directors

11.1 No remuneration of Directors

No Director may receive any remuneration for his or her services in his or her capacity as a director of the Company.

11.2 Payments to Directors

- (a) Without limiting clauses 11.1 or 11.2(b), no payment will be made to any Director of the Company other than payment:
 - (i) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
 - (ia) to a Director in respect of that Director acting as the chief executive officer or other senior executive or manager of the Company (and not in consideration of that person acting as a Director of the Company), provided that the amount payable to each individual Director is approved by a majority of the Directors of the Company;
 - (ii) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service; and
 - (iii) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B.
- (b) Despite anything to the contrary in this Constitution, the Company must not make any payments to a Director without the approval of the Directors.

12. Powers and duties of Directors

12.1 General management power

Subject to the Act, this Constitution and any resolution of the Company, the Directors:

- (a) will manage the business of the Company;
- (b) may exercise all such powers of the Company that are not, by the Act or this Constitution, required to be exercised by the Company in general meeting, provided that:
 - (i) no resolution of the Company in general meeting will invalidate any prior act of the Directors which would have been valid if such a resolution had not been made; and

- (ii) any sale or disposal by the Directors of the Company's main undertaking or a substantial proportion of its assets will be subject to ratification by the Company in general meeting; and
- (c) may pay all expenses incurred in promoting and forming the Company.

12.2 Attorneys

- (a) The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- (b) Any such power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

12.3 Power to borrow and give security

- (a) Without limiting the generality of clause 12.1, the Directors may for the purposes of the Company:
 - (i) borrow money, with or without giving security for it; and
 - (ii) guarantee the performance of any obligation of the Company or of any other person.
- (b) The Directors may borrow or provide security as they think fit and in particular by the issue of bonds, debentures or debenture stock or any mortgage, charge or other security on the undertaking of the whole or part of the property of the Company (both present and future) including its uncalled capital.
- (c) Debentures, debenture stock, bonds or other securities may be:
 - (i) made assignable free from any equities between the Company and the person to whom the same has been issued; or
 - (ii) issued at a discount, premium or otherwise and with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of Directors and otherwise, and any debentures may be re-issued notwithstanding that they may have been made paid off or satisfied.

12.4 Register of mortgages and charges

The Directors must:

- (a) cause a proper register to be kept in accordance with the Act of all mortgages and charges affecting the property of the Company; and
- (b) comply with the Act in regard to the registration of mortgages and charges.

12.5 Indemnity

Subject to clause 25 and to the extent permitted by the Act, if any of the Directors or any other person becomes personally liable for the payment of any sum primarily due from the Company, the Directors may execute a mortgage, charge or security over the whole or any part of the assets of the Company by way of indemnity to secure the Directors or persons so becoming liable from any loss in respect of the liability.

12.6 Other offices of Directors

Subject to the Act, a Director may hold any other office or offices under the Company (except that of auditor) in conjunction with the office of Director and on such terms as the Directors may arrange.

12.7 Director may act in professional capacity

- (a) Subject to the Act and clause 12.7(b), any Director (or the Director's firm) may act in a professional capacity for the Company and the Director (or the Director's firm) is entitled to remuneration for professional services as if the Director were not a Director.
- (b) A Director (or the Director's firm) must not act as the Company's auditor.

13. Proceedings of Directors

13.1 Calling and holding Directors' meetings

A Director may call a Directors' meeting by giving reasonable notice to each Director.

13.2 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Identical copies of the document may be distributed for signing by different Directors and taken together will constitute one and the same document.
- (c) The resolution is passed when the last Director signs the document.

13.3 Telephone and other meetings

Without limiting the power of the Directors to regulate their meetings as they think fit, a meeting of Directors or committee of Directors may be held where one or more of the Directors is not physically present at the meeting, provided that:

- (a) all Directors consent to the calling and the holding of the meeting by means of telephone or other form of communication;
- (b) all Directors participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously by means of the agreed form of communication;
- (c) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed on or laid down from time to time by the

Directors and such notice does not specify that Directors are required to be present in person;

- (d) in the event that a failure in communications prevents clause 13.3(b) from being satisfied by that number of Directors which constitutes a quorum, then the meeting will be suspended until clause 13.3(b) is satisfied again. If clause 13.3(b) is not satisfied within 15 minutes from the time the meeting was interrupted, the meeting will be deemed to have terminated; and
- (e) any meeting held where one or more of the Directors is not physically present will be deemed to be held at the location specified in the notice of meeting provided a Director is present at that location. If no Director is present at the location specified, the meeting will be deemed to be held at the location where the chairperson of the meeting is located.

13.4 Directors' resolutions

- (a) Subject to this Constitution, a resolution of the Directors must be passed by a majority of the votes of Directors present and entitled to vote on the resolution.
- (b) In case of an equality of votes, the chairperson of the meeting, in addition to his or her deliberative vote (if any), has a casting vote.

13.5 Minutes

- (a) The Directors must cause minutes to be made of:
 - (i) all appointments of Directors, Alternate Directors and officers;
 - (ii) the names of the Directors present at each meeting of the Directors;
 - (iii) all orders made by the Directors;
 - (iv) all declarations made or notices given by any Director (either generally or specifically) of his or her interest in any contract or proposed contract or of his or her holding of any office or property whereby any conflict of duty or interest may arise; and
 - (v) all resolutions and proceedings of meetings of Members and classes of Members and of the Directors,

and retain the minutes in a minute book for a period of at least 10 years or such other period as may be required under the Act.

- (b) The minutes of a meeting must be signed by the chairperson of the meeting or the chairperson of the next meeting.
- (c) In the absence of evidence to the contrary, contents of the minute book that is recorded and signed in accordance with this clause 13.5 is evidence of the matters shown in the minute.

13.6 Quorum

- (a) At a meeting of Directors properly convened, the number of Directors whose presence is necessary to constitute a quorum is such number as is determined by the Directors and, unless so determined, is 2.
- (b) If the office of a Director becomes vacant, the remaining Directors may act but, if the total number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, the Directors may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or for the purpose of convening a general meeting of the Company.

13.7 Chairperson

- (a) The Directors must elect a Director to chair their meetings and may determine the period for which the Director is to be the chairperson.
- (b) Where a meeting of the Directors is held and:
 - (i) a Director has not already been elected to chair that meeting under clause 13.7(a); or
 - (ii) the previously elected chairperson declines to act or is not present within 15 minutes after the time appointed for the holding of the meeting,

the Directors present must elect one of their number to chair the meeting or part of the Meeting (as the case may be).

13.8 Delegation to Committees

- (a) The Directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.
- (b) A committee must exercise the powers delegated to it in accordance with any directions of the Directors. The effect of the committee exercising a power in this way is the same as if it had been exercised by the Directors.
- (c) The members of a committee may elect one of their number as chairperson of their meetings.
- (d) Where a meeting of a committee is held and:
 - (i) a chairperson has not already been elected to chair that meeting under clause 13.8(c); or
 - (ii) the previously elected chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the members present may elect one of their number to be chairperson of the meeting.

- (e) A committee may meet and adjourn as it thinks fit unless otherwise directed by the Directors.

- (f) Questions arising at a meeting of a committee must be determined by a majority of votes of the members present and voting.
- (g) In the case of an equality of votes, the chairperson has a casting vote, in addition to any vote the chairperson has in the chairperson's capacity as a member of the committee (if any).

13.9 By laws

The Directors have the power to make by-laws regulating the conduct of the Company.

13.10 Acts of Directors valid despite defective appointment

Any act done at any meeting of the Directors or of a committee of Directors by any person acting as a Director is, although it is later discovered that there was some defect in the appointment of any such Director or that the Director was disqualified, is valid as if the Director had been duly appointed and was qualified to be a Director or to be a member of the committee.

14. Managing Director

14.1 Appointment and tenure

- (a) The Directors may appoint one or more Directors to be Managing Director of the Company. The appointment of Managing Director will be for such period and on such terms as the Directors think appropriate.
- (b) The Directors may, subject to the terms of any agreement entered into in a particular case, revoke any appointment of Managing Director.

14.2 Ceasing to hold office

A Managing Director:

- (a) is subject to the same provisions as to resignation and removal as the other Directors of the Company; and
- (b) immediately ceases to be a Managing Director if he or she ceases to be a Director.

14.3 Powers

- (a) The Directors may on such terms and conditions and with such restrictions as they think appropriate, confer on a Managing Director any of the powers exercisable by the Directors.
- (b) Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors.
- (c) The Directors may at any time withdraw or vary any of the powers so conferred on a Managing Director.

15. Alternate Directors

15.1 Power to appoint an Alternate Director

- (a) With the other Directors' prior written approval, a Director (**Appointing Director**) may appoint an Alternate Director to exercise some or all of the Appointing Director's powers either indefinitely or for a specified period. An Alternate Director need not be a Director or Member.
- (b) A Managing Director must not appoint an Alternate Director to act as Managing Director.

15.2 Appointment

The appointment of an Alternate Director must be in writing and a copy given to the Company.

15.3 Rights and powers

- (a) An Alternate Director:
 - (i) is entitled to notice of each Directors' meeting and if the Appointing Director is not present at any such meeting, the Alternate Director may attend and vote at that meeting in the Appointing Director's place; and
 - (ii) is otherwise entitled to exercise all the powers of the Appointing Director in the Appointing Director's place (unless the appointment was limited to some only of the Appointing Director's powers, in which case the Alternate Director may only exercise those powers).
- (b) When an Alternate Director exercises the Appointing Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Appointing Director.

15.4 Alternate Director is not agent of appointor

An Alternate Director is responsible to the Company for his or her own acts and defaults as if the Alternate Director were an ordinary Director and is not deemed to be an agent of the appointing Director.

15.5 Termination of appointment

- (a) The Appointing Director may terminate the Alternate Director's appointment at any time.
- (b) The termination of an Alternate Director must be in writing and is not effective until a copy is given to the Company.
- (c) In any case, the appointment of an Alternate Director terminates when the Appointing Director ceases to hold office as Director.

16. Gift Fund

- (a) If the Company obtains deductible gift recipient status from the Australian Taxation Office, the Company must maintain for the principal purpose of the

Company a fund, called the Gift Fund, to which gifts of money or property for that purpose will be made and to which any money received by the Company because of such gifts is to be credited and the Gift Fund will not receive any other money or property.

- (b) The Company will use gifts made to the Gift Fund and any money received because of such gifts for the principal purpose of the Company only.
- (c) At the first occurrence of either the winding up of the Gift Fund or the revocation of the Company's endorsement under sub-division 30-BA of the *Income Tax Assessment Act 1997 (Cth)*, the Company will transfer any surplus assets of the Gift Fund to such fund, authority or institution to which to which income tax deductible gifts can be made under Division 30 of the *Income Tax Assessment Act 1997 (Cth)* as nominated by the Directors.
- (d) Any other provisions which from time to time are required in order to maintain the status of the Company as a Company to which to which income tax deductible gifts can be made under the *Income Tax Assessment Act 1997 (Cth)* are deemed to form part of this Constitution.

17. Secretary

A Secretary of the Company holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine.

18. Seal

18.1 Safe custody

Where the Company has a Seal, the Directors must provide for its safe custody.

18.2 Authority to use

Where the Company has a Seal, the Seal must only be used by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal.

18.3 Additional Seal

Where the Company has a Seal, the Company may have for use outside the state or territory in which the Office is located, one or more Seals each of which must only be used in accordance with the provisions of this clause 18.

19. Execution of documents

19.1 Use of Seal optional

Except where required by the Act, the Company need not have or use the Seal to execute documents or deeds. The Directors may resolve whether or not the Company is to have or use a Seal.

19.2 Execution without the Seal

The Company may validly execute a document (including a deed) without using the Seal if the document is signed by:

- (a) 2 Directors of the Company; or
- (b) a Director and a company secretary of the Company.

19.3 Execution using the Seal

The Company may validly execute a document (including a deed) by fixing the Seal to the document and the fixing being witnessed by:

- (a) 2 Directors of the Company; or
- (b) a Director and a company secretary of the Company.

19.4 Execution by authorised persons

Clauses 19.2 and 19.3 do not limit the ability of the Directors to authorise a person who is not an officer of the Company to execute a document for and on behalf of the Company.

19.5 Seal register

- (a) The Secretary must record details of every document to which the Seal, if any, is fixed in a Seal register.
- (b) Where the Company has a Seal, the Seal register must be produced at each Directors' meeting for the purpose of the Directors approving the fixing of the Seal to each document recorded in the Seal register since the last Directors' meeting.

20. Inspection of records

- (a) The Directors must determine whether and on what terms the accounting records and other documents of the Company or any of them will be open to the inspection of Members other than Directors.
- (b) A Member other than a Director does not have the right to inspect any document of the Company except as provided by the Act or authorised by the Directors or by the Company in general meeting.

21. Notices

21.1 Notices in writing

Any notice given by the Company to any Member must be:

- (a) in writing, legible and in English; and
- (b) signed by an officer of the Company or in any way authorised by clause 19.

21.2 Service

The Company must give a notice to any Member by:

- (a) serving it on the Member personally;
- (b) sending it by post to the Member's address as shown in the Register or an alternative address (if any) supplied by the Member to the Company for the purpose of giving notices;
- (c) sending it by facsimile to the facsimile number (if any) nominated by the Member; or
- (d) sending it to the email address (if any) nominated by the Member.

21.3 Deemed receipt

A notice is deemed to be duly given or made in the case of:

- (a) delivery in person, when delivered;
- (b) delivery by post:
 - (i) in Australia to an Australian address, on the third day after posting; or
 - (ii) in any other case, on the tenth day after posting; or
- (c) delivery by facsimile, on a transmission report being printed by the Company's facsimile machine stating that the document has been sent to the Member's facsimile number
- (d) delivery to an email address, on the Company's email server showing that the email has been sent to the Member's email address,

but if delivery is not made before 4.00 pm on a day it will be deemed to be received at 9.00 am on the next day.

21.4 Notice to joint holders

A notice may be given by the Company to joint Members by sending the notice to the joint Member first named in the Register or to an alternative address (if any) nominated by that Member.

21.5 Notice in case of death or bankruptcy

A notice may be given by the Company to a person entitled to a share in consequence of the death, mental incapacity, bankruptcy or insolvency of a Member by:

- (a) serving it on that person personally; or
- (b) sending it by post addressed to that person by name or title.

and at the address (if any) supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death, mental incapacity, bankruptcy or insolvency had not occurred.

22. Audit and accounts

22.1 Company must keep accounts

The Directors must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director and the auditor (if any) to inspect those records at all reasonable times.

22.2 Audit

If required by the Act, the Directors must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, removal, remuneration, rights and duties of the auditor are regulated by the Corporations Act.

22.3 Financial reporting

The Directors must cause the Company to prepare a financial report and a Director's report that comply with the Act and must report to the Members in accordance with the Act no later than the deadline set by the Act.

22.4 Conclusive reports

Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within 3 months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

23. Winding up

If the Company is wound up or dissolved, any surplus assets remaining after the payment of the Company's liabilities must not be paid or distributed to Members, but must be transferred to another organisation in Australia with similar objects to the Company's objects (as set out in clause 1.2) and to which income tax deductible gifts can be made.

24. Revocation

If the endorsement of the Company as a deductible gift recipient is revoked, any surplus:

- (a) gifts of money or property for the principal objects of the Company;
- (b) contributions made in relation to an eligible fundraising event held for the principal objects of the Company; and
- (c) money received by the Company because of such gifts and contributions,

must be transferred to another organisation in Australia with similar objects to the Company's objects (as set out in clause 1.2) and to which income tax deductible gifts can be made.

25. Indemnity

25.1 Interpretation

In this clause 25:

- (a) **proceedings** means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act in their capacity as an officer of the Company (including proceedings alleging that they were guilty of negligence, default, breach of trust or breach of duty in relation to the Company); and
- (b) **officer** has the meaning given to that term in section 9 of the Act.

25.2 Scope of indemnity

In addition to any other indemnity provided to an officer of the Company in accordance with the Act, and to the extent permitted by the Act and any applicable Law:

- (a) every officer of the Company will be indemnified out of the assets of the Company against any liability incurred by them in relation to the execution of their office;
- (b) no officer of the Company is liable for any loss or damage incurred by the Company in relation to the execution of his or her office;
- (c) every officer of the Company will be indemnified out of the assets of the Company against any liability which he or she incurs:
 - (i) in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the officer or in which the officer is acquitted;
 - (ii) in connection with any application, in relation to any such proceedings, in which relief is granted under the Act to the officer by the Court; and
- (d) every officer of the Company will be indemnified out of the assets of the Company against any liability to another person (other than the Company or a related body corporate of the Company) where the liability is incurred by the officer in their capacity as an officer of the Company, provided that this indemnity will not apply where the liability arises out of conduct involving a lack of good faith.

25.3 Insurance

- (a) In addition to the payment of any other insurance premium by the Company in accordance with the Act, and to the extent permitted by the Act and any applicable Law, the Company may pay the premium in respect of a contract insuring an officer of the Company against a liability:
 - (i) incurred by the officer of the Company in his or her capacity as officer, provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Act; or
 - (ii) for costs and expenses incurred by that officer of the Company in defending proceedings, whatever their outcome.

- (b) In the case of a Director, any premium paid under clause 25.3(a) is not remuneration for the purposes of clause 11.1.

26. Variation or amendment of Constitution

This Constitution may be varied or amended from time to time in accordance with the Act.