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**O** <sup>LAWYERS</sup> **Loughlins**

**Lighthouse Disability Ltd**

NAME: MATTHEW ELLIOT JOHN FERGUSON

DATE: 11 SEPTEMBER 2015

SIGNATURE:   
SOLICITOR

I CERTIFY THAT THIS AND THE FOLLOWING  
27 PAGES REPRESENTS THE CONSTITUTION WHICH I  
HAVE SIGHTED.

**Constitution**

DATE

18 JULY 2015

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## CONSTITUTION

of

### LIGHTHOUSE DISABILITY LTD

A Public Company Limited by Guarantee

#### 1. NAME OF COMPANY

The name of the Company is Lighthouse Disability Ltd (**Company**).

#### 2. NATURE OF COMPANY

The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

#### 3. LIABILITY OF MEMBERS AND GUARANTEE ON WINDING UP

The liability of the Members is limited. Every Member undertakes to contribute \$10 to the assets of the Company if it is wound up while they are a Member, or within one (1) year afterwards.

#### 4. INTERPRETATION

##### 4.1 Definitions

In this Constitution unless inconsistent with the context:

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

**Board** means the Board of Directors of the Company;

**Body Corporate** has the meaning given to that term in the Act;

**Chair** means the chair of Directors;

**Constitution** means this Constitution as amended from time to time;

**Deductible Gift Recipient** has the meaning given to that term in the Tax Act;

**Director** means a person appointed or elected to perform the duties of a director of the Company;

**Financial Year** means the twelve (12) months ending on June 30 each year;

**Initial Directors** means the Directors whose appointment takes effect from registration of the Company, and the term also includes any Director appointed as a replacement for any such Director;

**Initial Members** means the persons who have consented to become Members from the registration of the Company;

**Member** means a member admitted as a member of the Company under this Constitution and who has not ceased to be a member of the Company;

**Membership** means membership of the Company;

**Objects** means the objectives of the Company set out in rule 5;

**Office** means the registered office of the Company;

**Register** means the register of Members kept by the Company under the Act;

**Secretary** means the person holding office under this Constitution as Secretary of the Company;

**Special Resolution** means a resolution passed by the Members of the Company which complies with the Act as a special resolution;

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

#### 4.2 Interpretation

Provisions which apply generally to the interpretation of this Constitution are set out in rule 23.

### 5. OBJECTS

The Objects of the Company are to:

- (a) enable people with disabilities to exercise choice and control in the pursuit of goals and the planning and delivery of supports;
- (b) provide high quality and innovative supports that enable people with disabilities to maximise independent lifestyles and full inclusion in the mainstream community;
- (c) include families, volunteers, the broader community and other key stakeholders in the pursuit of positive outcomes for those to whom the Company provides services;
- (d) work in collaborative relationships with other organisations to further positive outcomes for the people to whom the Company provides services;
- (e) contribute to research in, and the promotion and utilisation of, the best available evidence in practice in relation to the services provided or which may be provided by the Company;
- (f) advise, collaborate with and inform organisations, including government bodies and individuals, about the needs of people with disabilities, their families and carers and advocate for the provision of services necessary to meet those needs; and
- (g) explore other ways of attaining the above objects within the law.

### 6. SCOPE OF POWERS OF THE COMPANY

Subject to the Act and for the purposes of attaining the Objects, the Company has the legal capacity and powers of an individual and all the powers of a company limited by guarantee under the Corporations Act.

## 7. MEMBERSHIP

### 7.1 Membership

Membership shall comprise:

- (a) the Initial Members; and
- (b) such other persons or Bodies Corporate as the Board, at its absolute discretion, admits to Membership in accordance with this Constitution,

and the Board may determine different categories of Membership and the rights, privileges and obligations which apply to each such category.

### 7.2 Register of Members

- (a) A register of the Members of the Company must be kept by the Secretary in accordance with the Act.
- (b) The following must be entered in the Register in respect of each Member:
  - (i) the full name of the Member (including any applicable ABN);
  - (ii) the address, telephone and facsimile numbers and e-mail address of the Member;
  - (iii) the category of Membership held by the Member;
  - (iv) the date of admission to and cessation of Membership;
  - (v) the full name, address, telephone and facsimile numbers and e-mail address of the corporate representative of any Member which is a Body Corporate; and
  - (vi) such other information as the Directors require.
- (c) Each Member must notify the Secretary in writing of any change in that Member's or that Member's corporate representative's name, address, telephone or facsimile numbers or e-mail address, within one (1) month of the change.
- (d) The Member's details will be kept in the register for a period of seven (7) years following the cessation of their membership.
- (e) The Company must give current Members access to the register of Members. Information that is accessed from the register of Members must only be used in a manner relevant to the interests or rights of Members.

### 7.3 Application and Subscriptions

- (a) An application for Membership must be in writing addressed to the Company Secretary, meet any requirements determined by the Directors from time to time and be supported by such material as the Directors may require to assess the application.

- (b) The Board is not required to provide any reason for rejecting an application for Membership.
- (c) The Board may determine from time to time an entrance fee payable upon successful application for Membership (and for each category thereof) and may also determine an annual subscription for Members (and for each category thereof) and the dates by which such payments are due (including sanctions for non-payment).

## 8. REMOVAL AND CESSATION OF MEMBERSHIP

### 8.1 Resignation

- (a) A Member may resign from Membership by giving written notice to the Secretary.
- (b) The resignation of a Member will take effect from the date of receipt of the notice of resignation by the Secretary, or such later date as is provided in the notice.

### 8.2 Cessation of Membership

A Member ceases Membership in the event of:

- (a) if the Member is a natural person, that person's death;
- (b) if the Member is a Body Corporate, deregistration or other dissolution;
- (c) resignation under rule 8.1;
- (d) expulsion under rule 8.3.

### 8.3 Removal from Membership by Directors

- (a) The Directors may determine by resolution that a Member is no longer considered suitable for Membership or for the category of Membership then held.
- (b) The Directors will be required to provide written notice of any resolution under rule 8.3(a) to the relevant Member and offer the Member a reasonable opportunity to provide any written representations to the Directors by way of response.
- (c) Where any written representations are made by the Member the Directors will consider the content thereof and may affirm or rescind such resolution for removal and notify the Member thereof as soon as practicable.

## 9. NO PROFITS FOR MEMBERS

The Company's income and property must be applied solely towards promoting the Objects. No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, fee or otherwise, to any of the Members or Directors. However, this rule 9 does not prohibit making a payment which is permitted by the Act and is:

- (a) in accordance with rule 14;

- (b) for out-of-pocket expenses incurred by a Director in performing a duty as a Director of the Company;
- (c) for a service rendered to the Company by a Director in a professional or technical capacity, other than in the capacity as a director of the Company, where the amount payable is not more than an amount which commercially would be reasonable payment for the service;
- (d) for a grant within the Objects of the Company to an organisation in which a Director has a direct or indirect interest or involvement, provided the Director has made full disclosure of the nature and extent of the interest and the organisation also prohibits the distribution of income and property on terms substantially similar to this rule;
- (e) indemnification of, or payment of premiums on contracts of insurance for, any Director to the extent permitted by law and this Constitution; or
- (f) paying a Member for goods they have provided or for expenses they have properly incurred at fair and reasonable rates, or rates more favourable to the Company.

## 10. GENERAL MEETINGS

### 10.1 Convening of General Meetings by Directors or Members

The Directors may convene a general meeting of Members whenever thought fit and Members may convene a general meeting of Members in the circumstances specifically provided for by the Act.

### 10.2 Convening of General Meetings by Law

The Directors must call and arrange to hold a general meeting of Members (including an annual general meeting) if required to do so under the Act, including upon the request of Members as provided for by the Act.

### 10.3 Notice of General Meeting

- (a) Written notice of a general meeting must specify the place, the day and the hour of meeting and if the meeting of Members is to be held in two (2) or more places, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Act.
- (b) A notice of a general meeting of Members may be given by any form of communication permitted by the Act.
- (c) Subject to the provisions of the Act in relation to short notice and otherwise, not less than twenty one (21) days' notice of a general meeting must be given to each Member and Director.
- (d) The accidental omission to give notice of any general meeting of Members to, or the non-receipt of a notice by, a Member or a Director does not invalidate a resolution passed at the general meeting.

#### 10.4 Cancellation of General Meetings

- (a) The Directors may cancel a general meeting of Members, other than a general meeting which is required to be convened and held under the Act.
- (b) A meeting may only be cancelled in accordance with this rule if notice of the cancellation is given to all Members entitled to receive notice of the meeting at least two (2) business days prior to the time of the meeting as specified in the notice of the meeting.

#### 10.5 Quorum at General Meetings

- (a) Business may not be transacted at a general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) At least thirty per cent (30%) of Members present or by proxy is a quorum.
- (c) If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the Chair:
  - (i) if the meeting was convened by or on the requisition of Members, it must be dissolved; or
  - (ii) if the meeting was convened by the Directors, it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Directors.
- (d) If a meeting has been adjourned to another time and place determined by the Directors, not less than seven (7) days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.

#### 10.6 Quorum at Adjourned General Meetings

At the adjourned meeting at least twenty per cent (20%) of Members present or by proxy is a quorum but if a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

#### 10.7 Appointment of Meeting Chair

- (a) The Chair is entitled to preside as chair at every general meeting of Members.
- (b) The Directors present at a general meeting must elect one of their number to preside at the meeting if:
  - (i) the position of Chair is not at that time occupied; or
  - (ii) the Chair is not present within 15 minutes after the time appointed for the holding of the meeting or he or she is unwilling to chair the meeting.
- (c) If:
  - (i) there are no Directors present within 15 minutes after the time appointed for the holding of the meeting; or

- (ii) all Directors present decline to preside,

the Meeting will stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Directors provided in such latter case not less than seven (7) days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting at which meeting the Members present may elect a person to preside as chair if there are no Directors present and willing to do so.

#### 10.8 Powers of Meeting Chair

- (a) Subject to the terms of this Constitution dealing with adjournment of meetings, the ruling of the meeting chair on all matters relating to the order of business, procedure and conduct of a general meeting is final and no motion of dissent from a ruling of the meeting chair may be accepted.
- (b) The meeting chair, in his or her discretion, may expel any Member, Member representative or Director from a general meeting if the meeting chair reasonably considers their conduct is inappropriate behaviour. The following conduct may be considered inappropriate in a general meeting:
  - (i) the use of offensive or abusive language which is directed to any person, object or thing; or
  - (ii) attendance at the meeting while under the influence of any kind of drug including but not limited to any alcoholic substance.

#### 10.9 Adjournment of Meetings

- (a) The meeting chair may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and to another place.
- (b) The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (d) Except when a meeting is adjourned for thirty (30) days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

#### 10.10 Voting on Show of Hands

- (a) At a general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded before that vote is taken or before the result is declared or immediately after the result is declared.
- (b) If a poll is not duly demanded, a declaration by the meeting chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof

of the number or proportion of the votes recorded in favour of or against the resolution.

#### 10.11 Demand for a Poll

- (a) A poll may be demanded by:
  - (i) the meeting chair; or
  - (ii) at least two (2) Members entitled to vote on the resolution.
- (b) The demand for a poll may be withdrawn.
- (c) The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.
- (d) If a poll is duly demanded, it must be taken in the manner and, except as to the election of a meeting chair or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the meeting chair directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- (e) A poll demanded on the election of a meeting chair or on a question of adjournment must be taken immediately.
- (f) On a poll, a proxy is entitled to a separate vote for each Member the person represents, in addition to any vote the person may have as a Member.

#### 10.12 Voting Rights of Members

- (a) Subject to rule 11.1(a), on a show of hands every Member entitled to vote present in person (including by its representative in the case of a Body Corporate) or by proxy has one vote.
- (b) On a poll every Member entitled to vote present in person (including by its representative in the case of a Body Corporate) or by proxy has one vote.

#### 10.13 Vote of the Meeting Chair

The chair of a general meeting shall be entitled:

- (a) if a Member, to all of the voting entitlements of a Member;
- (b) to vote in respect of proxies held (whether held personally or as chair of the meeting) and, if applicable, as may be directed by them; and
- (c) in the event of equality of votes, to a casting vote

in respect of any resolution.

#### 10.14 Objections to Voter Qualification

- (a) No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.

- (b) An objection to the qualification of a voter must be referred to the meeting chair, whose decision is final.
- (c) A vote not disallowed according to an objection as provided in this Constitution is valid for all purposes.

#### 10.15 **Mode of Meeting for Members**

A general meeting may be called or held using any technology consented to by all the Members which enables all Members the opportunity to speak and be heard by the other Members. The consent may be a standing one. A Member may only withdraw his or her consent within a reasonable period before the meeting. The Members may otherwise regulate their meetings as they think fit.

#### 10.16 **Resolution in Writing**

A resolution in writing signed by all Members entitled to vote thereon is to be treated as a determination of the Members passed at a meeting of the Members duly convened and held.

#### 10.17 **Form of Resolution in Writing**

- (a) A resolution in writing may consist of several documents in like form, each signed by one or more Members and if so signed it takes effect on the latest date on which a Member signs one of the documents.
- (b) If a resolution in writing is signed by a proxy of a Member, it must not also be signed by the appointing Member and vice versa.
- (c) In relation to a resolution in writing:
  - (i) a document generated by electronic means which purports to be a facsimile of a resolution of Members is to be treated as a resolution in writing; and
  - (ii) a document bearing a facsimile of a signature is to be treated as signed.

### 11. **PROXIES AND REPRESENTATIVES**

#### 11.1 **Proxies and Representatives of Members**

- (a) At meetings of Members each Member entitled to vote may vote by proxy:
  - (i) on a show of hands, provided that the proxy appointed shall not be capable of casting more than two (2) votes (including any vote they may cast as a Member in their own right); and
  - (ii) on a poll.
- (b) A Member being a Body Corporate may appoint (by written notice to the Secretary) an individual as a representative to attend and vote on behalf of the Member at meetings of Members and in the absence of any other appointment the corporate representative previously notified to the Company will have such

authority in the case of a Member being a Body Corporate. Subject to the terms of his or her appointment, a person representing a Member being a Body Corporate has all the powers of that Member, except where expressly stated to the contrary.

#### 11.2 Appointment of Proxy

A document appointing the proxy must be in writing, subject to this rule in any form permitted by the Act, signed by the relevant Member and may direct the proxy how to vote on each resolution on which the proxy is authorised to vote.

#### 11.3 Authority of Meeting Chair as Proxy

- (a) If the meeting chair as such is appointed proxy in relation to any resolution on which a vote is to be taken the meeting chair must vote on such resolution as specified in the document appointing him/her as a proxy.
- (b) The provisions of rule 11.1(a)(i) apply to the meeting chair in relation to a vote as a proxy on a show of hands.

#### 11.4 Verification of Proxies

- (a) Before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, the document appointing the proxy must be deposited with the Company.
- (b) A document appointing a proxy must be either:
  - (i) received at the Office, at a fax number at the Office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting not less than twenty four (24) hours before the time for holding the meeting; or
  - (ii) produced to the meeting chair before the meeting.
- (c) If a general meeting has been adjourned, an appointment and any authority received by the Company at least twenty four (24) hours before the resumption of the meeting are effective for the resumed part of the meeting.

#### 11.5 Validity of Proxies

A proxy document is invalid if it is not deposited or produced prior to a meeting or a vote being taken as required by this Constitution.

#### 11.6 Revocation of Appointment of Proxy

A vote given in accordance with the terms of a proxy document or power of attorney is valid despite the revocation of the instrument or of the authority under which the instrument was executed if no intimation in writing of either of those events has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the document is used.

## 12. CHAIR AND SECRETARY

### 12.1 Chair

- (a) The Initial Directors must as soon as practicable following registration of the Company appoint a Chair from among the Initial Directors who will hold office until the close of the first annual general meeting after the registration of the Company.
- (b) At the first meeting of the Directors after each annual general meeting, the Directors must appoint a Chair from among the Directors and the Chair will hold that office until the close of the annual general meeting which next follows the date of his or her appointment.
- (c) The Chair must not be an executive or employee of the Company.
- (d) The Chair may resign from office by notice in writing to the Directors.
- (e) If the Chair ceases to be a Director their term as Chair ends contemporaneously.
- (f) Upon the position of Chair becoming vacant during the term of his or her appointment the Directors must appoint a replacement from among the Directors as soon as practicable for a term which expires at the close of the first annual general meeting which next follows the date of such appointment.

### 12.2 Secretary

- (a) The Directors must appoint a Secretary of the Company.
- (b) The Board may suspend or remove the Secretary of the Company.
- (c) The Secretary of the Company holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Board. The exercise of those powers and authorities and the performance of those duties by the Secretary of the Company are subject at all times to the control of the Board.

## 13. APPOINTMENT AND RETIREMENT OF DIRECTORS

### 13.1 Number of Directors

- (a) There will be not less than seven (7) nor more than nine (9) Initial Directors of the Company who will take office on the day the Company is registered, being the individuals named as the first directors of the Company in the application to register the Company.
- (b) Subject to rule 13.1(a), the number of Directors may be determined by the Board from time to time provided that there must be not less than seven (7) and not more than nine (9).
- (c) The Company may, by Special Resolution, increase or reduce the number of Directors but the number must not be reduced below five (5).

### 13.2 Terms of Office – Initial Directors

- (a) The Initial Directors will hold office for a term which commences on registration of the Company.
- (b) The Initial Directors will retire in the following manner:
  - (i) two (2) of the Initial Directors will retire at the first annual general meeting of the Company;
  - (ii) two (2) of the Initial Directors will retire at the second annual general meeting of the Company; and
  - (iii) the remaining Initial Directors will retire at the third annual general meeting of the Company.
- (c) The Initial Directors who are to retire in accordance with rule 13.2(b) will be as agreed among them or, failing agreement, as determined by lot.
- (d) If an Initial Director vacates office for any reason during his term of office, the Board shall appoint a replacement as soon as practicable provided that the person so appointed:
  - (i) must have been recommended for appointment by the Nominations and Appraisal Committee,
  - (ii) shall be submitted to the next succeeding annual general meeting for confirmation of such appointment; and
  - (iii) shall hold office only for the balance of the term of office of that Initial Director and is subject to the retirement arrangements in rule 13.2(b).

### 13.3 Term of Office – Other Directors

A Director who is elected as a Director at an annual general meeting of the Company shall hold that office for three (3) years provided that at least two (2) Directors must retire at each annual general meeting, being those longest in office, or in the case of equal lengths of tenure, as determined by lot.

### 13.4 Election of Directors

- (a) Applications for new Directors will be sought using advertising and taking into account the required skill sets of potential Directors.
- (b) Other than appointments referred to in rules 13.2(d) and 13.6(a), a person must be elected by the Members as a Director.
- (c) A person is not eligible to be elected as a Director (including for any further term) unless the person has been:
  - (i) recommended as a candidate for election by the Nominations and Appraisal Committee, and

(ii) nominated by the Board.

(d) The Board is not obliged to nominate a person for election by reason of the Nominations and Appraisal Committee having recommended that person as a candidate.

### 13.5 General

No retiring Director may be appointed or elected to the office of Director if that would have the effect of granting continuous tenure in that office for in excess of a total of nine (9) years without a period of at least twelve (12) months intervening since such period of continuous tenure elapsed.

### 13.6 Casual Vacancies and Additional Directors

(a) The Directors may at any time appoint a person (who has been recommended for appointment by the Nominations and Appraisal Committee) to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors does not exceed the number fixed in accordance with this Constitution.

(b) A Director appointed under rule 13.6(a) holds office only until the close of the next annual general meeting of the Company and is eligible for election at that annual general meeting.

### 13.7 Insufficient Directors

In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act, but if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or convening a general meeting of the Company.

### 13.8 Resignation of Directors

A Director may resign as a Director by giving not less than one (1) month's written notice to the Company at its registered office.

### 13.9 Vacation of Office

In addition to any other circumstances in which the office of a Director becomes vacant by virtue of the Act or another provision of this Constitution, the office of Director becomes vacant if the Director:

- (a) becomes an insolvent under administration;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under an administration order;
- (c) is absent without the consent of the Directors from the meetings of the Directors held during a continuous period of three (3) months and the Directors resolve that the office of that Director be vacated; or

- (d) becomes prohibited from being a Director under the Act or by reason of an order made under the Act.

#### 14. **DIRECTORS' REMUNERATION**

##### 14.1 **Determination of Fees**

The Directors are entitled to be paid, out of the funds of the Company an amount by way of remuneration which:

- (a) does not in any year exceed in aggregate the amount fixed by special resolution of Members;
- (b) is allocated among them on an agreed basis having regard to the proportion of the relevant year for which each Director held office or as otherwise decided by the Board.

##### 14.2 **Payment for Expenses**

The Directors shall be entitled to be paid all travelling, accommodation and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings or otherwise in the execution of their duties as Directors.

#### 15. **POWERS OF DIRECTORS**

The Directors may exercise all those powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Members in general meeting or otherwise.

#### 16. **PROCEEDINGS OF DIRECTORS**

##### 16.1 **Convening of Directors' Meetings**

A Director may at any time, and the Secretary must on the request of a Director, convene a meeting of the Directors.

##### 16.2 **Notice of Directors' Meetings**

- (a) Notice of each meeting of the Directors must be given to each Director at least seven (7) days before the meeting or at another time determined by resolution of the Directors.
- (b) Despite that requirement:
  - (i) all Directors may waive in writing the required period of notice for a particular meeting; and
  - (ii) it is not necessary to give a notice of a meeting of Directors to a Director who is out of Australia or who has been given leave of absence.

**16.3 Mode of Meeting for Directors**

A Directors' Meeting may be called or held using any technology consented to by all the Directors which gives all Directors the opportunity to speak and be heard by the other Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting. The Directors may otherwise regulate their meetings as they think fit.

**16.4 Quorum at Directors' Meetings**

Unless otherwise determined by the Directors, if the number of Directors in office does not exceed seven (7) then four (4) thereof are required to be present in person to constitute a quorum, otherwise the quorum shall be five (5).

**16.5 Voting at Directors' Meetings**

Unless this Constitution provides otherwise, questions arising at a meeting of Directors must be decided by a majority of votes of Directors present in person and voting. A decision of the majority is for all purposes a decision of the Directors.

**16.6 Chair of Directors' Meetings**

If there is no Chair, or if at any meeting the Chair is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act, the Directors present may choose one of their number to chair the meeting.

**16.7 Chair's Vote at Directors' Meetings**

The chair of the meeting at meetings of Directors will have a second vote in the event of an equal number of votes cast on a resolution.

**16.8 Directors' Contracts**

- (a) If a Director is interested in a contract or proposed contract with the Company and the financial benefit to the Director under the contract is authorised by the Act, then subject to the Director disclosing his/her interest as required by this Constitution and the Act:
  - (i) the Director is not disqualified by holding office as Director from contracting or entering into any arrangement with the Company, whether as vendor, purchaser or otherwise;
  - (ii) a contract or arrangement entered into by or on behalf of the Company in which the Director is in any way, whether directly or indirectly, interested, is not liable to be avoided; and
  - (iii) the Director is not liable to account to the Company for a profit realised from that contract or arrangement by reason of the Director holding that office.

- (b) Subject to the Act:
  - (i) a Director and an organisation in which the Director is interested may act in a professional or technical capacity for the Company; and
  - (ii) the Director and that organisation are entitled to remuneration for such services of an amount which is not more than is commercially reasonable payment.

#### 16.9 Participation Where Directors Interested

- (a) A Director who has a material personal interest in a matter that is being considered at a meeting of Directors must not:
  - (i) be present while the matter is being considered at the meeting; or
  - (ii) vote in respect of that matter or that proposed resolution.
- (b) Despite the preceding rule but subject to the Act, a Director may be present and may vote on a matter if:
  - (i) the other Directors who do not have a material personal interest in the matter have passed a resolution that:
    - A. identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Company; and
    - B. states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present;
  - (ii) the interest does not need to be disclosed to the other Directors under the Act; or
  - (iii) the Director is so entitled under a declaration or order made by the Australian Securities and Investments Commission under the Act.
- (c) If there are not enough Directors to form a quorum as a result of a Director having a material personal interest then one (1) or more of the Directors (including those who have a material personal interest in the matter) may call a general meeting of the Company and the general meeting may pass a resolution to deal with the matter.

#### 16.10 Delegation of Powers to Committee

- (a) The Directors may constitute, and establish terms of reference for, such committees consisting of Directors and/or other persons for such purposes as they determine from time to time and may delegate any of their powers to such committees as they determine from time to time.
- (b) The exercise of a power by a committee in accordance with this Constitution is to be treated as the exercise of that power by the Directors.

- (c) In the exercise of any powers delegated to it, a committee formed by the Directors must conform to the directions of the Directors.

#### 16.11 Nominations and Appraisal Committee

- (a) The Directors will constitute a Nominations and Appraisal Committee (**Committee**) with such terms of reference as they determine but carrying the following responsibilities:
  - (i) assisting the Board achieve its objective of an effective composition with skills, size and commitment to adequately discharge its responsibilities and duties;
  - (ii) advertising for, identifying and recommending to the Board nominees for membership of the Board;
  - (iii) identifying and assessing the necessary and desirable competencies and characteristics for Board membership and regularly assessing the extent to which those competencies and characteristics are represented on the Board;
  - (iv) developing and implementing processes to identify and assess necessary and desirable competencies and characteristics for Board members; and
  - (v) ensuring succession plans are in place to maintain an appropriate balance of skills on the Board, and reviewing those plans.
  - (vi) The membership of the Committee shall be as follows:
    - A. the Chair; and
    - B. the Directors who are from time to time nominated by the Board (on the basis that the Board may resolve at any time to remove any such Director from the Committee).

#### 16.12 Proceedings of Committees

Except as provided in a direction of the Directors, the meetings and proceedings of a committee formed by the Directors must be governed by the provisions of this Constitution, insofar as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the Directors.

#### 16.13 Validity of Acts of Directors

All acts done by a meeting of the Directors or of a committee of Directors or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a member of the committee or that they, or any of them, were disqualified or were not entitled to vote.

#### 16.14 Minutes

- (a) The Directors must cause minutes of all proceedings of general meetings, of meetings of the Directors and of committees formed by the Directors to be

entered, within one (1) month after the relevant meeting is held, in books kept for the purpose.

- (b) The Directors must cause all minutes, except resolutions in writing treated as determinations of the Directors, to be signed by the chair of the meeting at which the proceedings took place or by the chair of the next succeeding meeting.

#### 16.15 Resolution in Writing

A resolution in writing signed by at least 50% of the Directors, excluding Directors who have been given leave of absence, is to be treated as a decision of the Directors passed at a meeting of the Directors duly convened and held.

#### 16.16 Form of Resolution in Writing

- (a) A resolution in writing may consist of several documents in like form, each signed by one (1) or more Directors and if so signed it takes effect on the latest date on which a Director signs one of the documents.
- (b) In relation to a resolution writing:
  - (i) a document generated by electronic means which purports to be a facsimile of a resolution of Directors is to be treated as a resolution in writing; and
  - (ii) a document bearing a facsimile of a signature is to be treated as signed.

### 17. DIRECTORS' PROXIES

Directors will not be entitled to appoint a proxy to attend any meeting of Directors or to vote on any resolution of Directors.

### 18. INDEMNITY AND INSURANCE

#### 18.1 Indemnity

Except as otherwise prohibited under this Constitution, every officer and past officer of the Company is indemnified by the Company, to the fullest extent permitted by law, against a liability incurred by that person as an officer of the Company or a related Body Corporate of the Company, including without limitation legal costs and expenses incurred in defending an action except to the extent that the person is otherwise entitled to be indemnified and is actually indemnified by another person (including, without limitation, an insurer under any insurance policy).

#### 18.2 Insurance Premiums

The Company must pay the premium on a contract insuring a person who is or has been an officer of the Company to the fullest extent permitted by law.

#### 18.3 Director Voting on Contract of Indemnity or Insurance

Despite anything in this Constitution, a Director is not precluded from voting in respect of any contract or proposed contract of indemnity or insurance, merely because the contract

indemnifies or insures or would indemnify or insure the Director against a liability incurred by the Director as an officer of the Company or of a related Body Corporate.

#### 18.4 **Liability**

No officer of the Company is liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

#### 18.5 **Meaning of “Officer”**

For the purposes of this rule 18, “**officer**” means a Director, Secretary or senior manager.

### 19. **EXECUTION OF DOCUMENTS**

Provided that the execution of a document has been validly approved by the Directors in accordance with rule 16, the Company may execute a document if the document is signed by:

- (a) two (2) Directors; or
- (b) a Director and a Secretary.

### 20. **SURPLUS ON WINDING UP OR REVOCATION OF ENDORSEMENT**

#### 20.1 **Winding Up**

Upon the winding up or dissolution of the Company, any remaining property after satisfaction of all debts and liabilities will not be paid to or distributed among the Members, but will be given or transferred to another institution or company which has objects or activities of a similar nature to the Company and is an entity to which income tax deductible gifts can be made.

#### 20.2 **Revocation of Endorsement**

If the endorsement of the Company as a deductible gift recipient under the Tax Act is revoked, the following shall be transferred to another organisation to which income tax deductible gifts can be made – any surplus:

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

### 21. **ACCOUNTS, AUDIT, RECORDS AND REPORTING**

#### 21.1 **Accounting and Other Records**

- (a) The Directors shall cause:
  - (i) the Company to keep accounting records and to prepare the financial statements required by the Act; and

(ii) the accounts to be sent to Members and laid before general meetings of the Company as required by the Act.

(b) The Directors shall from time to time determine whether and to what extent and at what time and places and under what conditions or regulations the accounting and other records or any of them of the Company shall be open to the inspection of Members and no Member shall have any right of inspecting any account or book or paper of the Company except as conferred by statute or authorised by the Directors or by the Company in general meeting.

## 21.2 Audit

(a) The Directors must cause the accounts of the Company to be audited by one or more auditors as required by the Act.

(b) Subject to the Act, the Company shall appoint an auditor or auditors and their appointment, remuneration, rights and duties shall be regulated in accordance with the Act.

(c) If any casual vacancy occurs in the office of auditor the Directors shall appoint an auditor to fill the vacancy in accordance with the Act.

(d) The Company shall give the auditor or auditors for the time being notice of any general meeting of Members and any other communications relating to general meetings that a Member is entitled to receive.

## 22. NOTICES

### 22.1 Persons Authorised to Give Notices

(a) A notice by either the Company or a Member in connection with this Constitution may be given on behalf of the Company or Member (as the case may be) by a solicitor, director or company secretary of the Company or Member respectively.

(b) The signature of a person on a notice given by the Company may be written, printed or stamped.

### 22.2 Method of Giving Notices

In addition to the method for giving notices permitted by statute, a notice by the Company or a Member in connection with this Constitution may be given to the addressee by:

(a) delivering it to a street address of the addressee;

(b) sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the addressee; or

(c) sending it by facsimile or e-mail to the facsimile number or e-mail address of the addressee.

**22.3 Addresses for Giving Notices to Members**

- (a) The street address or postal address of a Member is the street or postal address of the Member shown in the Register.
- (b) The facsimile number or e-mail address of a Member is the number which the Member may specify by written notice to the Company as the facsimile number or e-mail address to which notices may be sent to the Member.

**22.4 Address for Giving Notices to the Company**

- (a) The street and postal address of the Company is the Office.
- (b) The facsimile number or e-mail address of the Company is the number or e-mail address which the Company may specify by written notice to the Members as the facsimile number or e-mail address to which notices may be sent to the Company.

**22.5 Time Notice of Meeting is Given**

A notice of meeting given in accordance with this Constitution is to be taken as given, served and received:

- (a) if delivered in writing to the street address of the addressee, at the time of delivery;
- (b) if it is sent by post to the street or postal address of the addressee, on the 5<sup>th</sup> business day after posting; or
- (c) if sent by facsimile or e-mail to the facsimile number or e-mail address of the addressee, at the time transmission is completed.

**22.6 Time Other Notices Are Given**

A notice given in accordance with this Constitution is to be taken as given, served and received:

- (a) if delivered in writing to the street address of the addressee, at the time of delivery;
- (b) if it is sent by post to the street or postal address of the addressee, on the 5<sup>th</sup> business day after posting; or
- (c) if sent by facsimile or e-mail to the facsimile number or e-mail address of the addressee, at the time transmission is completed.

**22.7 Proof of Giving Notices**

The sending of a notice by facsimile or e-mail and the time of completion of transmission may be proved conclusively by production of:

- (a) a transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee; or

- (b) a print-out of an acknowledgment of receipt of the e-mail.

#### 22.8 **Persons Entitled to Notice of General Meeting**

- (a) Notice of every general meeting must be given by a method authorised by this Constitution to:
  - (i) every Member;
  - (ii) every Director; and
  - (iii) the auditor for the time being of the Company.
- (b) No other person is entitled to receive notices of general meetings.

### 23. **INTERPRETATION**

#### 23.1 **References to Law and the Constitution**

A reference to:

- (a) any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation; and
- (b) this Constitution, where amended, means this Constitution as so amended.

#### 23.2 **Presumptions of Interpretation**

- (a) Unless the context otherwise requires a word which denotes:
  - (i) the singular denotes the plural and vice versa;
  - (ii) any gender denotes the other gender; and
  - (iii) a person denotes an individual and a Body Corporate.
- (b) Where a word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

#### 23.3 **Replaceable Rules**

Each of the provisions of the Act which would but for this rule apply to the Company as a replaceable rule within the meaning of the Act is displaced and does not apply to the Company.

#### 23.4 **Application of the Act**

Division 8 of Part 1.2 of the Act applies in relation to this Constitution as if it was an instrument made under the Act as in force on the day when this Constitution became the Constitution of the Company.

### 23.5 Exercise of Powers

(a) Except as specifically contemplated to the contrary in this Constitution, the Company may, in any manner permitted by the Act:

- (i) exercise any power;
- (ii) take any action; or
- (iii) engage in any conduct or procedure,

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

(b) The Company may only exercise its powers to further its Objects.

### 23.6 Headings and Table of Contents

Headings and any table of contents must be ignored in the interpretation of this Constitution.

### 23.7 References To and Calculations of Time

(a) Unless the context otherwise requires a reference to a time of day means that time of day in the State or Territory in which the Office is situated.

(b) For the purposes of determining the length of a period (but not its commencement) a reference to:

- (i) a day means a period of time commencing at midnight and ending twenty four (24) hours later; and
- (ii) a month means a calendar month which is a period commencing at the beginning of a day of one of the twelve (12) months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of that next month.

(c) Where a period of time is specified and is to be calculated before or after a given day, act or event it must be calculated without counting that day or the day of that act or event.

(d) A provision of this Constitution, except that specifying the time for deposit of proxies with the Company, which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

### 23.8 Business Day

A reference to a business day means a day during which banks are open for general banking business in the State or Territory in which the Office is situated.

24. **AMENDMENT OF CONSTITUTION**

24.1 **Special Resolution**

This Constitution may only be amended by Special Resolution.

24.2 **Change of Charity Status**

The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.

24.3 **Notification to ASIC**

Within fourteen (14) days after passing a Special Resolution to amend this Constitution, the Company must lodge with the Australian Securities and Investments Commission copies of:

- (a) the Special Resolution; and
- (b) the amendment,

as required by the Act.

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