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Constitution of Little Miracles for Kids Foundation Limited

A Public Company Limited by Guarantee
Corporations Act 2001

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Constitution

1. Definitions and interpretation

1.1 Definitions

In this Constitution, unless expressed or implied to the contrary:

Board means the board of Directors.

Business Day means a day other than a Saturday, Sunday or public holiday in Victoria.

Chairperson means the Director who is elected to this office under clause 15.8.

Company means the company described in clause 2.

Constitution means this constitution, including any amendments.

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

Directors means the members individually or collectively of the Company.

Law includes:

- (a) any law, regulation, authorisation, ruling, judgment, order or decree of any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity in Australia; and
- (b) any statute, regulation, proclamation, ordinance or by-law in Australia.

Member means a person admitted to membership of the Company in accordance with this Constitution.

Purposes means the purposes of the Company set out in clause 3.

Register means the register of Members kept in accordance with the Corporations Act.

Relevant Law means:

- (a) the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);
- (b) the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth);
- (c) the *Charities Act 2013* (Cth);
- (d) the Corporations Act;
- (e) the *Corporations Regulations 2001* (Cth); or
- (f) a Ruling.

Representative means a person appointed in accordance with clause 8.

Ruling means any:

- (a) class order or regulatory guide issued by the Australian Securities and Investments Commission;
- (b) public or private ruling issued by the Australian Taxation Office; or
- (c) Commissioner's interpretation statement issued by the Australian Charities and Not-for-profits Commission.

Special Resolution means, subject to any Relevant Law, a resolution:

- (a) of which notice has been given in accordance with clause 11; and
- (b) that has been passed by at least 75% of the votes cast by Members present in person or by proxy and entitled to vote on the resolution.

1.2 **Application of the Corporations Act**

1.2.1 The replaceable rules of the Corporations Act do not apply to the Company.

1.2.2 A word or expression that is defined in the Corporations Act or used in that Act and covering the same subject has the same meaning in this Constitution unless it is given a different meaning in this Constitution.

1.3 **Inconsistency with Relevant Law**

The Relevant Law prevails over any inconsistency with this Constitution.

1.4 **Interpretation**

In this Constitution, unless the context requires otherwise:

1.4.1 a person includes a firm, partnership or other unincorporated body, joint venture, association, corporation or other body corporate;

1.4.2 any legislation (including subordinate legislation) includes every amendment, re-enactment or replacement of the legislation and any subordinate legislation made under it;

1.4.3 this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;

1.4.4 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body;

1.4.5 in general terms, a person holding or occupying an office or position includes a reference to any person who occupies or performs the duties of that office or person for the time being;

- 1.4.6 a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Constitution;
- 1.4.7 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 1.4.8 writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 1.4.9 the singular includes the plural and vice versa;
- 1.4.10 a gender includes every other gender;
- 1.4.11 the word **includes** in any form is not a word of limitation; and
- 1.4.12 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution.

2. Name

The name of the Company is Little Miracles for Kids Foundation Limited.

3. Purposes

- 3.1 The Company is established as a charitable institution that has the purpose of preventing, controlling, and curing rare diseases in children, in particular rare genetic disorders.
- 3.2 The Company will pursue its purpose in a number of ways including by:
 - 3.2.1 undertaking research into rare diseases in children, in particular rare genetic disorders, including in relation to causes, treatments and cures;
 - 3.2.2 collaborating with other organisations both in Australia and overseas in relation to projects concerning rare diseases in children, in particular rare genetic disorders;
 - 3.2.3 raising funds to fund research and development of treatment, and clinical trials in relation to rare diseases in children, in particular rare genetic disorders; and
 - 3.2.4 publishing information in relation to rare diseases in children, in particular genetic disorders.

4. Powers

Subject to this Constitution and solely for carrying out the Purposes, the Company has the legal capacity and powers of an individual and all the powers of a body corporate under the Corporations Act other than the power to issue shares.

5. Member liability and guarantee

5.1 The liability of each Member is limited to the amount specified in clause 5.2.

5.2 Each Member undertakes to contribute a maximum of \$10 to the Company if it is wound up:

5.2.1 while the Member is a Member; or

5.2.2 within one year after that Member ceases to be a Member,

for:

5.2.3 the debts and liabilities of the Company contracted before that Member ceases to be a Member; and

5.2.4 the costs, charges and expenses of winding up.

6. Application of income and property

6.1 Promotion of Purposes

6.1.1 The Company must apply all of its income and property solely towards the furtherance and promotion of the Purposes.

6.1.2 Except as provided in clause 6.3, the Company must not pay or transfer directly or indirectly any Company income or property to any of the Members (in their capacity as Members) or Directors.

6.2 No Directors' fees

The Company must not pay a Director any remuneration for services as a Director.

6.3 Payments in good faith

6.3.1 Clauses 6.1 and 6.2 do not prevent payment in good faith to a Member or Director or to a firm of which a Member or Director is a partner:

- (a) of remuneration for services to the Company (other than services as a Director or services on a Board committee);
- (b) of reimbursement for expenses properly incurred on behalf of or for the Purposes at fair and reasonable rates or rates more favourable to the Company;
- (c) for goods supplied to the Company in the ordinary course of business;
- (d) of interest on money borrowed by the Company and rent for premises let to the Company, where:
 - (i) the interest or rent of the service has the prior approval of the Directors; and

- (ii) the amount payable is not more than an amount which commercially would be reasonably paid,

provided that any such payment to a Director must comply with clause 6.3.2.

- 6.3.2 The Company must not make any payment to a Director for goods or services rendered by that Director to the Company, unless:
- (a) the provision of those goods or services has the prior consent of the Directors;
 - (b) the amount payable is on reasonable commercial terms or at rates more favourable to the Company; and
 - (c) the payment has the prior approval of the Directors.
- 6.3.3 This clause does not prohibit indemnification of or payment of premiums on contracts of insurance for any Director to the extent permitted by a Relevant Law and this Constitution.

7. Membership

7.1 General

The following persons are Members:

- 7.1.1 the person specified in the application to register the Company lodged under section 117 of the Corporations Act and which has consented to be a Member; and
- 7.1.2 any other person the Directors admit to membership under clause 7.2.

7.2 Applying for membership

- 7.2.1 Each application for membership must be submitted in the form and manner and accompanied by any fee, determined by the Directors from time to time.
- 7.2.2 The Directors must consider each application for membership and determine whether to accept or reject the application.
- 7.2.3 The Directors do not need to give any reason for rejecting an application.
- 7.2.4 If the Directors approve the application, as soon as practicable thereafter, the secretary will notify the applicant and enter their name in the Register. The applicant becomes a Member when their name is entered in the Register.
- 7.2.5 If the Directors reject the application, as soon as practicable thereafter the secretary will notify the applicant. Any moneys tendered with the application will be repaid without interest.

7.3 Register

- 7.3.1 The Company must establish and maintain a Register at its registered office or its principal place of business.

7.3.2 Any dispute that arises in relation to the Register must be referred to the Directors, whose decision will be final and binding on all Members.

7.4 **Member's rights generally**

A Member has the right to receive notices of any general meeting, to attend and be heard at any general meeting and to one vote at any general meeting.

7.5 **Not transferrable**

Membership is not transferrable.

7.6 **Fees**

7.6.1 The Directors may prescribe:

- (a) the costs payable by Members by way of membership fees and such other fees as the Directors think fit; and
- (b) when and in what circumstances these fees are payable.

7.6.2 The Directors must give Members not less than one month's notice of any change to the fees.

7.6.3 Payment of the prescribed fees renders a Member financial. If a Member fails to pay the fees prescribed by the Directors under clause 7.6.1 within 2 months of such fees becoming due and payable and fails to rectify that default within one month of being given notice to do so, then upon the expiration of the period of notice, the Member will cease to be a Member.

8. Representative

8.1 Nomination

Where a Member is not a natural person, it must appoint a natural person as its Representative.

8.2 Entry in Register

The name and address of the Representative will be entered in the Register and all correspondence and notices from the Company will be served on that Representative.

8.3 Powers of Representative

8.3.1 The nomination must set out what the Representative is appointed to do and may set out restrictions on the Representative's powers. If the appointment is made by reference to a position held, the appointment must identify the position.

8.3.2 Unless otherwise specified, the Representative may exercise on the Member's behalf, all the powers that the Member could exercise at a meeting or in voting on a resolution including a resolution to be passed without a meeting.

8.3.3 A Representative appointed with all the powers referred to in clause 8.3.2 does not require separate appointment as a proxy under clause 13 (Proxy).

8.4 **Replacement of Representative**

A Member may remove and replace a Representative by giving written notice to the Company in a form approved by the Directors.

9. **Cessation of Membership**

9.1 **Grounds for cessation**

A Member will cease to be a Member if they:

- 9.1.1 resign in writing to the Company;
- 9.1.2 die;
- 9.1.3 cease to be a Member in accordance with clause 7.6.3 (failure to pay membership fees);
- 9.1.4 are expelled in accordance with clause 9.2;
- 9.1.5 are a corporate entity and become insolvent, become subject to the appointment of a liquidator, are wound up, dissolved, deregistered or otherwise cease to exist; or
- 9.1.6 become, as determined by the Directors in their absolute discretion, an untraceable Member because they have ceased to be located at, attend or otherwise communicate with their address as shown in the Register.

9.2 **Disciplinary action**

- 9.2.1 The Directors, by a resolution passed by at least 75% of those present and voting at a meeting of the Directors, may expel a Member or implement appropriate disciplinary action (including temporary suspension of membership rights and excluding the imposition of any fines) if the Member:
 - (a) has failed to comply with this Constitution;
 - (b) has acted in a way which indicates that the Member will not support the Purposes; or
 - (c) has engaged in conduct detrimental to the interests of the Company.
- 9.2.2 Disciplinary procedures must be completed as soon as reasonably practical.
- 9.2.3 At least one month before the meeting of the Directors at which a resolution referred to in clause 9.2.1 is considered, the Member must be:
 - (a) served notice of the meeting including the particulars of the alleged act, omission or conduct complained of and the intended resolution; and

- (b) given the opportunity to present in writing or orally (or both) at the meeting and before the passage of the resolution any explanation the Member thinks fit,

and the Directors will take the explanation into consideration.

9.2.4 The secretary must serve the Member with notice of any resolution made at the meeting described in clause 9.2.1 as soon as possible after the resolution is passed. If the Directors resolve to expel the Member, that Member will cease to be a Member on the service of such notice.

9.2.5 There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause 9.2.

9.3 **Removal from the Register**

9.3.1 Where a Member ceases to be a Member, their name must be removed from the Register forthwith.

9.3.2 Upon the removal of a Member's name from the Register:

- (a) the Member will forfeit all rights and privileges attaching to membership and all rights which the Member may have against the Company arising out of the membership; and
- (b) the Company will have no liability to such Member in respect of their removal from the Register.

9.4 **Surviving liability**

9.4.1 Any Member who ceases to be a Member remains liable:

- (a) for any money owing to the Company; and
- (b) if the Company is wound up within one year of the date of cessation of Membership, for the Member's contribution under clause 5.2.

10. **General meetings**

10.1 **Single Member Company resolutions**

If the Company has only one Member, that Member may pass a resolution by recording and signing the record. The Representative may sign such a resolution.

10.2 **General meetings called by the Directors**

10.2.1 The Directors may convene a general meeting at such time and place as the Directors think fit.

10.2.2 If Members with at least 5% of the votes that may be cast at a general meeting make a written request to the Company for a general meeting to be held, the Directors must:

- (a) within 21 days of the Members' request, give all Members notice of a general meeting; and
 - (b) hold the general meeting within 2 months of the Members' request.
- 10.3 For the purposes of clause 10.2.2, the percentage of votes held by Members requesting the general meeting is calculated as at midnight immediately prior to the request being made of the Company.
- 10.4 The Members who make the request for a general meeting must:
 - 10.4.1 state in the request any resolution to be proposed at the meeting;
 - 10.4.2 sign the request; and
 - 10.4.3 give the request to the Company.
- 10.5 Members may sign separate copies of a document setting out the request if the wording of the request is the same in each copy.
- 10.6 **General meetings called by Members**
 - 10.6.1 If the Directors do not call the general meeting within 21 days of being requested under clause 10.2.2, 50% or more of the Members who made the request may call and arrange to hold a general meeting.
 - 10.6.2 To call and hold a general meeting under clause 10.6.1, the Members must:
 - (a) as far as possible, follow the procedures for general meetings set out in this Constitution;
 - (b) call the general meeting using the list of Members on the Register, which the Company must provide to the Members making the request at no cost; and
 - (c) hold the general meeting within 3 months after the request was given to the Company.
 - 10.6.3 The Company must pay the Members who request the general meeting any reasonable expenses they incur because the Directors did not call and hold the general meeting.
- 10.7 **Annual general meeting**
 - 10.7.1 The Company must hold a general meeting called an annual general meeting:
 - (a) within 18 months after registration as a company; and thereafter
 - (b) at least once in every calendar year,at the time and place determined by the Directors.
 - 10.7.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:

- (a) a review of the Company's activities;
 - (b) a review of the Company's finances;
 - (c) any auditor's report;
 - (d) the election of Directors;
 - (e) the appointment and payment of auditor (if any); and
 - (f) any other business which may lawfully be transacted at a general meeting.
- 10.7.3 Before or at the annual general meeting, the Directors must give information to the Members on the Company's activities and finances during the period since the last annual general meeting.
- 10.7.4 The chairperson of the annual general meeting must give Members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

11. Notice of general meetings

11.1 General

The Directors must give not less than 21 days' written notice of a general meeting to the Members, the Directors and the auditor (if any).

11.2 Shorter notice

- 11.2.1 Subject to clause 11.2.2, notice of a general meeting may be provided less than 21 days before the meeting if:
- (a) for an annual general meeting, all the Members entitled to attend and vote at the annual general meeting agree beforehand; or
 - (b) for any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 11.2.2 Notice of a general meeting may not be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a Director;
 - (b) appoint a Director in order to replace a Director who was removed; or
 - (c) remove an auditor.

11.3 **Contents of notice**

The notice of a general meeting must specify the following:

- 11.3.1 the place, the day and the hour of meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- 11.3.2 the general nature of the meeting's business;
- 11.3.3 if applicable, a statement that a Special Resolution is to be proposed and the words of the proposed Special Resolution;
- 11.3.4 that a Member entitled to vote has the right to appoint a proxy and that, if a Member appoints a proxy:
 - (a) the proxy form must be delivered to the Company at the address specified in the notice of the meeting or at the Company's registered office; and
 - (b) the proxy form must be delivered to the Company at least 48 hours before the meeting.

11.4 **Failure to receive notice**

- 11.4.1 The accidental omission to give notice of a general meeting to any Member or the non-receipt of such notice by any Member does not invalidate any resolution passed at, or proceeding of, that meeting.
- 11.4.2 A person's attendance at a general meeting waives any objection that the person may have to:
 - (a) a failure to give notice or to the giving of a defective notice of the meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
 - (b) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

12. **Proceedings at general meetings**

12.1 **Quorum**

- 12.1.1 No business may be transacted at a general meeting, except the adjournment of the general meeting, unless a quorum is present.
- 12.1.2 The quorum for a general meeting is the greater of 2 Members and 20% of Members, rounded up to a whole number present in person or by attorney, proxy or Representative.
- 12.1.3 If a quorum is not present within 30 minutes from the time appointed for a general meeting:

- (a) if convened on the requisition of Members, the general meeting will be dissolved; and
- (b) in any other case, the general meeting will be adjourned to the same day in the next week at the same time and place or at such other place as the chairperson appoints. If at that adjourned general meeting a quorum is not present within 30 minutes from the time appointed for holding the general meeting, the Members present will be a quorum.

12.2 **Chairperson**

- 12.2.1 The Chairperson will be the chairperson at every general meeting.
- 12.2.2 If at any general meeting the Chairperson is not present within 30 minutes after the time appointed for holding the meeting or is not willing to preside, the Members present in person or by attorney, proxy or Representative will choose a Director to preside as chairperson. If no Director is present or if all Directors present decline to preside, then those Members present will choose a Member who is present to preside as chairperson of the meeting.
- 12.2.3 At any time during a general meeting and in respect of any specific item or items of business, the chairperson may elect to vacate the chair in favour of another person nominated by the chairperson (which person must be a Director unless no Director is present or is willing to act). That person is to be taken to be the chairperson of the meeting and will have all the powers of the chairperson (other than the power to adjourn the meeting), during the consideration of that item of business or those items of business.

12.3 **General conduct of proceedings**

- 12.3.1 The chairperson of a general meeting is responsible for the general conduct of the meeting and for deciding the procedures to be adopted at the meeting.
- 12.3.2 In particular, the chairperson of a general meeting may:
 - (a) require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for proper and orderly debate or discussion or for the proper and orderly casting or recording of votes at the meeting; and
 - (b) terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting.
- 12.3.3 A decision of the chairperson on any matter under clause 12.3.2 is final.

12.4 **Adjournment**

- 12.4.1 The chairperson of a general meeting may, with the consent of the Members entitled to vote at any meeting at which a quorum is present, and must, if so directed by a vote at any meeting at which a quorum is present, adjourn the meeting to another time or place (or both).
- 12.4.2 Only unfinished business may be transacted at any meeting resumed after an adjournment of a general meeting.

- 12.4.3 Where a general meeting is adjourned for one month or more, new notice of the adjourned general meeting must be given.
- 12.4.4 A poll cannot be demanded on any resolution concerning the adjournment of a general meeting except by the chairperson.

12.5 **Members' resolutions and statements**

- 12.5.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the Company of a resolution they propose to move at a general meeting (**Members' Resolution**); and/or
 - (b) a written request to the Company that the Company give all of its Members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (**Members' Statement**).
- 12.5.2 A notice of a Members' Resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.
- 12.5.3 A request to distribute a Members' Statement must set out the statement to be distributed and be signed by the Members making the request.
- 12.5.4 Separate copies of a document setting out the notice or request may be signed by Members if the wording is the same in each copy.
- 12.5.5 The percentage of votes that Members have (as described in clause 12.5.1) is to be worked out as at midnight before the request or notice is given to the Company.
- 12.5.6 If the Company has been given notice of a Members' Resolution under clause 12.5.1(a), the resolution must be considered at the next general meeting held more than 2 months after the notice is given.
- 12.5.7 This clause does not limit any other right that a Member has to propose a resolution at a general meeting.

12.6 **Company must give notice of proposed resolution or distribute statement**

- 12.6.1 If the Company has been given a notice or request under clause 12.5:
- (a) in time to send the notice of proposed Members' Resolution or a copy of the Members' Statement to Members with a notice of meeting, it must do so at the Company's cost; or
 - (b) too late to send the notice of proposed Members' Resolution or a copy of the Members' Statement to Members with a notice of meeting, then the Members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving Members notice of the proposed Members' Resolution or a copy of the Members' Statement. However, at a general meeting, the Members may pass a resolution that the Company will pay these expenses.
- 12.6.2 The Company does not need to send the notice of proposed Members' Resolution or a copy of the Members' Statement to Members if:

- (a) it is more than 1,000 words long;
- (b) the Directors consider it may be defamatory;
- (c) clause 12.6.1(b) applies, and the Members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending the notice of the proposed Members' Resolution or a copy of the Members' Statement to Members; or
- (d) in the case of a proposed Members' Resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the Members.

12.7 **Show of hands**

Every item of business submitted to a general meeting will be decided in the first instance by a show of hands. Those entitled to vote on a show of hands are the Members present in person or by attorney, proxy or Representative. The chairperson will not have a casting vote if a vote on a show of hands is tied.

12.8 **Poll**

- 12.8.1 The chairperson or Members with at least 5% of the votes that may be cast on a resolution and who are present in person or by attorney, proxy or Representative may demand a poll before or on the declaration of the result of a show of hands.
- 12.8.2 The poll will be taken in the manner and at the time and place as the chairperson of the meeting directs, and either at once or after an interval or adjournment or otherwise.
- 12.8.3 The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 12.8.4 The demand for a poll may be withdrawn.
- 12.8.5 If there is a dispute as to the admission or rejection of a vote, the chairperson will finally determine that dispute.
- 12.8.6 The chairperson will have a casting vote in addition to any deliberative vote they may have if the vote is tied.

12.9 **Demand for poll**

The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment will be taken at the meeting and without adjournment.

12.10 **Evidence of resolution**

A declaration by the chairperson that a resolution has been passed or lost (having regard to the majority required) and an entry to that effect in the books of the Company, signed by the chairperson of that or the next succeeding meeting, will be conclusive evidence that the resolution has been passed or lost without proof of the number or proportion of the votes recorded in favour of or against the resolution.

12.11 Auditor's right to be heard

The auditor (if any) is entitled to:

- 12.11.1 attend any general meeting of the Company;
- 12.11.2 be heard at any general meeting of the Company on any part of the business of the meeting that concerns the auditor in their capacity as auditor, even if:
 - (a) the auditor retires at the general meeting; or
 - (b) the Members pass a resolution to remove the auditor from office; and
- 12.11.3 authorise a person in writing to attend and speak at any general meeting as the auditor's representative.

12.12 Meetings conducted by electronic means

- 12.12.1 The Company may hold a general meeting at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 12.12.2 Where clause 12.12.1 applies:
 - (a) a Member who participates in a such a meeting is taken to be present in person at the meeting;
 - (b) all provisions of this Constitution relating to general meetings apply, as far as they can and with any necessary changes, to such a meeting; and
 - (c) the meeting is taken as held at the place determined by the chairperson of the meeting, as long as at least one of the Members was at that place for the duration of the meeting.
- 12.12.3 If the technology used for a general meeting encounters a technical difficulty, whether before or during the meeting, and as a result a Member is not able to participate in the meeting, the chairperson may:
 - (a) allow the meeting to continue, if a quorum of Members remains able to participate in the meeting; or
 - (b) adjourn the meeting either for a reasonable period to fix the technology or to another time and location that the chairperson decides,

unless otherwise required by the Corporations Act.

12.13 Circular resolutions of Members

- 12.13.1 Subject to clause 12.13.3, the Directors may put a resolution to the Members to pass a resolution without a general meeting being held (**circular resolution**).
- 12.13.2 The Directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to Members and set out the wording of the resolution.

12.13.3 Circular resolutions may not be used:

- (a) for a resolution to remove an auditor, appoint a Director or remove a Director;
- (b) for passing a Special Resolution; or
- (c) where the Corporations Act or this Constitution requires a general meeting to be held.

12.13.4 A circular resolution is passed if a majority of the Members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clauses 12.13.5 or 12.13.6.

12.13.5 Members may sign:

- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
- (b) separate copies of that document, as long as the wording is the same in each copy.

12.13.6 The Company may send a circular resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

12.13.7 The single or several documents constituting the circular resolution under this clause 12.12.3 must be entered in the relevant book of minutes of the Company.

13. Proxy

13.1 General

Any Member may appoint a natural person as their proxy to vote on the Member's behalf at a general meeting. A proxy need not be a Member.

13.2 Instrument appointing proxy

13.2.1 The Company must receive the instrument appointing a proxy (and an original or certified copy of the power of attorney, if any, under which it is signed) at:

- (a) the address specified in the notice of the meeting; or
- (b) the Company's registered office,

not less than 48 hours before the time for holding the general meeting or adjourned meeting or poll at which the person named in the instrument is to vote.

13.2.2 Unless the contrary is stated on it, an instrument appointing a proxy is valid for any adjournment of the general meeting to which it relates.

13.2.3 An appointment of a proxy may be a standing one.

13.3 **Form of proxy**

An instrument appointing a proxy must contain the following information:

- 13.3.1 the Member's name and address;
 - 13.3.2 the Company name;
 - 13.3.3 the type of membership held by the Member;
 - 13.3.4 the proxy's name or the name of the office held by the proxy; and
 - 13.3.5 the meetings at which the appointment may be used,
- and be signed by the appointor.

13.4 **Voting instructions**

An instrument appointing a proxy may specify the way in which the proxy must vote on a particular resolution.

13.5 **Authority**

An instrument appointing a proxy is deemed to confer authority to demand or join in demanding a poll and will (except to the extent to which the proxy is specifically directed to vote for or against any proposal) include the power to act generally at the meeting for the person giving the proxy.

14. **Attorneys**

14.1 **Appointment by Member**

Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all or certain specified meetings of the Company. That power of attorney must be produced for inspection at the Registered Office or any other place the Directors determine, together with evidence of its due execution, as required by the Directors, before the attorney will be entitled to appoint a proxy for the Member granting the power of attorney.

14.2 **Appointment by Directors**

The Directors may, by power of attorney, appoint any person whether nominated directly or indirectly by the Directors to be an attorney or attorneys of the Company. Such appointment may be for any purposes and with powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for periods and subject to any conditions as the Directors think fit. Any power of attorney may contain provisions for the protection and convenience of persons dealing with any attorney as the Directors think fit and may also authorise any attorney to sub-delegate all or any of the powers, authorities and discretions vested in them.

15. Board

15.1 Number and qualifications of Directors

- 15.1.1 The Board will consist of no less than 3 and no more than 10 Directors except for any period resulting from a casual vacancy.
- 15.1.2 The Company may by resolution vary the number of Directors for the purpose of clause 15.1.1. However, the minimum must not be less than 3 directors.
- 15.1.3 The Board will comprise individuals who have the skills and experience determined by the Directors from time to time which are relevant to the pursuit of the Company's Purposes.
- 15.1.4 Each candidate for election or appointment as Director must:
- (a) be eligible under the Relevant Law to be a Director; and
 - (b) give their prior written consent to be a Director.

15.2 First Directors

- 15.2.1 Despite any other provision in this Constitution, the first Directors are:
- (a) the persons specified in the application to register the Company lodged under section 117 of the Corporations Act and who have consented to become Directors; and
 - (b) any other person appointed by resolution of the Members prior to the first annual general meeting of the Company.
- 15.2.2 The term of office of a first Director commences on the date of appointment as a Director and continues until they retire in accordance with clause 15.3 or vacate office in accordance with clause 15.7.

15.3 Initial rotational retirement of first Directors

- 15.3.1 At the end of the fourth, and fifth annual general meetings of the Company, one third of the first Directors will retire from office. Unless they agree otherwise among themselves, the Directors to retire will be:
- (a) first, those who wish to retire;
 - (b) secondly, those who have been longest in office since their appointment; and
 - (c) thirdly, as between those persons who became Directors on the same day, determined by lot.
- 15.3.2 At the end of the sixth annual general meeting of the Company, the balance of first Directors will retire from office.

15.4 **Term of office generally**

Except as provided in clauses 15.2 (first Directors), 15.3 (initial rotational retirement of first Directors) and 15.6 (casual vacancies, and additional Directors), a Director will hold office from the end of the annual general meeting at which they are appointed until the end of the third annual general meeting following that appointment when they must retire (3 year term).

15.5 **Election of Directors**

15.5.1 Apart from the first Directors and Directors appointed under clause 15.6, the Members will elect a Director by resolution passed at a general meeting.

15.5.2 The Director may determine the method of nomination and election of candidates, provided that:

- (a) each Member is entitled to vote for any number of candidates not exceeding the number of vacancies;
- (b) the chairperson of the annual general meeting will declare elected as Directors those candidates matching the number of vacancies who have received the greatest number of votes.

15.5.3 If there are no more candidates nominated than there are vacancies, the chairperson of the annual general meeting will declare those candidates to be elected as Directors.

15.6 **Casual vacancies and additional Directors**

15.6.1 The Directors may appoint a Director to fill a casual vacancy in the office of Director and may appoint additional Directors, subject to the maximum number of Directors.

15.6.2 Any Director so appointed will hold office until the end of the next annual general meeting.

15.7 **Vacation of office of Director**

A person ceases to be a Director if they:

15.7.1 by notice in writing to the Company resign from office;

15.7.2 die;

15.7.3 are removed as a Director by a resolution of the Members;

15.7.4 are absent from 3 consecutive Directors' meetings without the approval of the Directors;

15.7.5 become ineligible to be a Director under a Relevant Law; or

15.7.6 cease to hold office by reason of any order made under a Relevant Law.

15.8 **Officers of the Board**

15.8.1 The first Chairperson will hold office from the date of incorporation of the Company until the end of the third annual general meeting at which time they will retire.

- 15.8.2 If the office of Chairperson is vacant at the end of an annual general meeting, then at the first meeting of the Directors after that annual general meeting, the Directors will elect from among their number a Chairperson who will hold office for the duration of their term as Director after which the Chairperson will retire.
- 15.8.3 A retiring Chairperson will be eligible for re-election to that office.
- 15.8.4 The Directors may from time to time determine other offices of the Board. The Directors may elect from among their number such other office bearers of the Board for an annual term of office.

16. Powers of the Directors

The Directors are responsible for managing the business of the Company. The Directors may exercise all the powers of the Company's power which are not required by the Corporations Act or this Constitution to be exercised by the Company in a general meeting.

17. Proceedings of the Directors

- 17.1 The Directors may meet together to attend to business and adjourn and regulate their meetings as they decide.
- 17.2 A meeting of the Directors may be held using any technology consented to by all of the participating Directors (**Approved Technology**). The consent may be a standing one.⁷
- 17.3 Where a meeting of Directors is held at two or more venues using Approved Technology:
- 17.3.1 a Director participating in the meeting is taken to be present in person at the meeting;
 - 17.3.2 all the provisions in this Constitution relating to meetings of Directors apply, so far as they can and with such changes as are necessary, to meetings using Approved Technology; and
 - 17.3.3 the meeting is taken to be held at the place decided by the chairperson of the meeting, if at least one of the Directors was at that place for the duration of the meeting.
- 17.4 If the technology used for a meeting of Directors encounters a technical difficulty before or during the meeting, and as a result a Director is not being able to participate in the meeting, the chairperson may:
- 17.4.1 allow the meeting to continue, if a quorum of Directors remains able to participate in the meeting; or
 - 17.4.2 adjourn the meeting either for a reasonable period to fix the technology or to another time and location as the chairperson decides, unless required to do otherwise by the Corporations Act.
- 17.5 **Calling meetings of Directors**
- 17.5.1 The Chairperson may convene a meeting of the Directors whenever he or she thinks fit.

17.5.2 The secretary must, on the request of at least 2 Directors, convene a meeting of the Directors.

17.6 **Notice of Directors' meetings**

17.6.1 Notice of a Directors' meeting must be given to each person who is a Director, except a Director on leave of absence approved by the Directors.

17.6.2 Notice of a Directors' meeting:

- (a) must specify the time and place of the meeting;
- (b) need not state the nature of the business to be transacted at the meeting; and
- (c) may be given in person or by post, telephone, fax or other electronic means.

17.6.3 The accidental omission to give notice of a meeting to, or the non-receipt of a notice of meeting by, a Director will not invalidate proceedings at a Directors' meeting.

17.6.4 A Director's attendance at a Directors' meeting waives any objection that Director may have to a failure to be given notice of the meeting.

17.7 **Quorum**

17.7.1 No business may be transacted at a Directors' meeting unless a quorum is present at the time the business is considered.

17.7.2 A quorum for a Directors' meeting is number nearest to and greater than half of the Directors.

17.7.3 If the number of Directors in office at any time is less than the minimum number fixed under this Constitution, then the remaining Directors:

- (a) must act as soon as possible to procure the appointment of additional Directors to satisfy the minimum number required under this Constitution; and
- (b) until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

17.8 **Chairperson and voting**

17.8.1 The Chairperson will be the chairperson of the Directors' meetings.

17.8.2 If the Chairperson is not present at any Directors' meeting within 10 minutes after the time appointed for the meeting to begin or is present but is unwilling to act, the Directors present must elect another Director to be chairperson of the meeting.

17.8.3 Except as provided by the Corporations Act and by clause 9.2.1, questions arising at any Directors' meeting will be decided by a majority of votes and each Director present will be entitled to one vote.

17.8.4 The chairperson of a Directors' meeting will have a casting vote in addition to any deliberative vote.

17.9 **Circular resolutions of the Directors**

- 17.9.1 The Directors may pass a circular resolution without a Directors' meeting being held.
- 17.9.2 A circular resolution is passed if a majority of the Directors (other than a Director on leave of absence approved by the Directors) entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clauses 17.9.3 or 17.9.4.
- 17.9.3 Each Director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 17.9.4 The Company may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 17.9.5 A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clauses 17.9.3 or 17.9.4.

17.10 **Delegation by the Directors**

- 17.10.1 The Directors may delegate any of their powers to:
- (a) individual Directors;
 - (b) employees;
 - (c) Members;
 - (d) any other person, including as attorney or agent; or
 - (e) committees consisting of such Directors, Members, employees or such other individuals as the Directors think fit.
- 17.10.2 Any such delegations must be specified in writing and maintained in a register of delegated authorities.
- 17.10.3 The delegate must exercise the powers delegated in accordance with any directions of the Directors.
- 17.10.4 The exercise of a power by a delegate is as effective as if the Directors had exercised it.
- 17.10.5 The meetings and proceedings of any committee will be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Directors so far as applicable and so far as those provisions are not superseded by any other direction given by the Directors.

17.11 **Validity of acts**

An act done in good faith by any Directors' meeting, of any committee formed by the Directors or by any person acting as a Director is valid despite:

- 17.11.1 any defect in the election, appointment or tenure of a Director or person acting on any such committee;
- 17.11.2 the disqualification of any of them; or
- 17.11.3 the person not being entitled to vote.

18. **Secretary**

- 18.1 The Directors will appoint at least one secretary and may at any time suspend or remove a person from that office.
- 18.2 The secretary holds office on such terms and conditions (including as to remuneration) and with the powers, duties and authorities as determined by the Directors.

19. **Minutes and records**

19.1 **Minutes to be kept**

- 19.1.1 The Company must keep minute books in which it records with one month proceedings and resolutions of all meetings of the Company, the Directors and committees formed by the Directors.
- 19.1.2 The Company must ensure the minutes are signed within a reasonable time by the chairperson of the meeting or by the chairperson of the next meeting.

19.2 **Evidence of proceedings and resolutions**

A minute that is recorded and signed in accordance with clause 19.1 is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

20. **Accounts**

20.1 **Books of account to be kept**

The Directors will cause to be kept proper books of account in which will be kept true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.

20.2 **Location of books of account**

The books of account will be kept at the registered office or place or places as the Directors think fit and will be open to the inspection of the Directors during usual business hours.

21. Auditor

The Company will observe the provisions of the Relevant Laws in relation to the appointment, removal and resignation of an auditor.

22. Amendments to this Constitution

Subject to any provision in any Relevant Law to the contrary, the Company may vary, amend or repeal this Constitution by passing a Special Resolution.

23. Indemnity and access to records

23.1 Definitions

For the purposes of this clause 23:

Indemnified Loss means, in relation to any fact, matter or circumstance:

- (a) all Loss arising out of or in connection with that fact, matter or circumstance; and
- (b) all legal and other professional expenses on a solicitor-client basis incurred in defending or resisting (or otherwise in connection with) proceedings, whether criminal, civil, administrative or investigatory in nature arising out of or connected with the fact, matter or circumstance.

Loss means damage, liability, action, loss, charge, cost or expense.

Officer means:

- (a) a Director;
- (b) a secretary; or
- (c) any other officer of the Company, and includes former officers, but does not include any auditor or agent of the Company.

23.2 Indemnity

23.2.1 Subject to clause 23.2.2, the Company must pay to a person who is or has been an Officer on demand an amount equal to all Indemnified Loss of the Officer as a result of or in connection with that person's role as an Officer.

23.2.2 To the extent permitted by Law, the Company may make a payment (whether by way of advance, loan or otherwise) to an Officer for the Officer's legal costs.

23.2.3 The obligation of the Company in clause 23.2.1:

- (a) is enforceable without the Officer having to first incur any expense or make any payment;

- (b) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer of the Company;
- (c) applies to Loss incurred both before and after the date of the adoption of this Constitution; and
- (d) does not operate in respect of any liability of the Officer to the extent that liability is covered by insurance.

23.2.4 The obligation of the Company in clause 23.2 will not apply to the extent that:

- (a) the Company is not allowed by Law to indemnify an Officer against the Indemnified Loss;
- (b) an indemnity by the Company of the Officer against Indemnified Loss would, if given, be legally ineffective under any Law; or
- (c) the Company is not allowed by Law to make a payment for legal costs.

23.3 **Insurance**

To the extent allowed by Law, the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer against a Loss incurred by the person as an Officer. Any premium will be paid in addition to any remuneration paid to a Director by the Company under this Constitution.

23.4 **Access to documents**

23.4.1 A person who is not a Director does not have the right to inspect any of the board papers, books, records or documents of the Company, except as:

- (a) allowed or required by any Law or as permitted pursuant to clause 23.4.2; or
- (b) as authorised by the Directors or by resolution of the Members.

23.4.2 The Company may agree to provide continuing access for a specified period after a person ceases to be an Officer to board papers, books, records or documents of the Company and any relevant related bodies corporate which relate to the period during which the person was an Officer.

23.5 **Agreement**

The Company may enter into an agreement or deed with a person who is or has been an Officer about the matters referred to in this clause 23.

24. **By-laws**

24.1 The Directors may by resolution make, revoke and amend by-laws to give effect to this Constitution.

24.2 Members and Directors must comply with the by-laws as if they were part of this Constitution.

25. Notices

- 25.1 Anything written to or from the Company under any clause of this Constitution is a written notice and is subject to clauses 25.3 and 25.4, unless specified otherwise.
- 25.2 Clauses 25.3 and 25.4 do not apply to the delivery of proxy notices under clause 13.2.
- 25.3 A notice under this Constitution to the Company or the secretary must be in writing and may be delivered:
- 25.3.1 personally to the Company's registered office;
 - 25.3.2 by posting it by prepaid post to the Company's registered office or to another address chosen by the Company for the provision of notices;
 - 25.3.3 by facsimile to the facsimile number notified by the Company to the Members as the Company's facsimile address; or
 - 25.3.4 by electronic mail to the Company's email address notified by the Company to the Members as the Company's email address.
- 25.4 A notice under this Constitution to a Member must be in writing and may be delivered:
- 25.4.1 personally;
 - 25.4.2 by leaving it at the Member's address in the Register;
 - 25.4.3 by posting it by prepaid post to the Member's address in the Register;
 - 25.4.4 by facsimile to the Member's facsimile number (if any) in the Register; or
 - 25.4.5 by electronic mail to the Member's email address (if any) in the Register.
- 25.5 If the Member receiving the notice is a company, the notice or other communication may be delivered to the company's registered office.
- 25.6 A Member may change their address, facsimile number or email address by giving notice to the Company.
- 25.7 A notice or other communication is deemed delivered:
- 25.7.1 if delivered personally or left at the person's address, upon delivery;
 - 25.7.2 if posted within Australia to an Australian address using:
 - (a) express post, 2 Business Days after posting; or
 - (b) if using any other prepaid post, 6 Business Days after posting;
 - 25.7.3 if posted from a place to an address in a different country, 10 Business Days after posting;

- 25.7.4 if delivered by facsimile, subject to clause 25.7.6, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- 25.7.5 if delivered by electronic mail, subject to clause 25.7.6, at the time the email containing the notice left the sender's email system unless the sender receives notification that the email containing the notice was not received by the recipient; and
- 25.7.6 if received after 5.00pm in the place it is received or on a day which is not a Business Day in the place it is received, at 9.00am on the next Business Day.

26. Distribution of property on winding-up for a deductible gift recipient (DGR) or revocation

- 26.1 If the Company is wound up and the assets of the Company are more than sufficient:
 - 26.1.1 to pay all of the debts and liabilities of the Company; and
 - 26.1.2 to pay the costs, charges and expenses of the winding up,the surplus assets must not be distributed to a Member or former Member unless that Member or former Member is a charity described in clause 26.2.
- 26.2 Instead, the surplus assets must be distributed to one or more charities:
 - 26.2.1 with charitable purpose(s) similar to, or inclusive of, the Purposes; and
 - 26.2.2 which prohibits the distribution of its assets to its members to at least the same extent as this Constitution.
- 26.3 If the Company is endorsed as a deductible gift recipient under subdivision 30BA of the *Income Tax Assessment Act 1997* (Cth) at the time it is wound up, then in addition to the requirements under clause 26.2, the charity or charities to which the surplus assets are distributed must also be endorsed as a deductible gift recipient at the time the distribution is made.
- 26.4 The charity or charities to be given the surplus assets must be determined:
 - 26.4.1 by a Special Resolution at or before the time of winding up; or
 - 26.4.2 if no such Special Resolution is passed, by a judge of the Supreme Court or such other court of competent jurisdiction.
- 26.5 If the Company's deductible gift recipient endorsement is revoked (whether or not the Company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of clauses 26.2 and 26.3, as decided by the Directors.
- 26.6 For the purpose of this clause 26:
 - 26.6.1 **gift funds** means:
 - (a) gifts of money or property for the Purposes;

- (b) contributions made in relation to a fund-raising event held for the Purposes; and
- (c) money received by the Company because of such gifts and contributions; and

26.6.2 **contributions** and **fund-raising event** have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).]