

Constitution

MS PLUS LTD

ACN 004 942 287



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MS PLUS LTD

A company limited by guarantee

Constitution

1 Interpretation

1.1 Company's name

The name of the company is MS PLUS LTD.

1.2 Company limited by guarantee

If the company is wound up, the liability of each member or former member in the previous year is limited to a guaranteed amount of \$5, for:

- (a) payment of the company's debts and liabilities contracted before the time they ceased to be a member; and
- (b) the costs, charges and expenses of winding up.

1.3 Altering the constitution

The members may amend the constitution by passing a special resolution, provided the company:

- (a) can comply with the terms pursuant to which any charitable concession, endorsement, licence or authority or approval is held or enjoyed or might be held or enjoyed by the company; and
- (b) obtains all necessary consents and/or issues all required notices under the charitable endorsements and concessions held by the company.

1.4 What parts of the Corporations Act apply

- (a) Unless the contrary intention appears, an expression used in a rule that deals with a matter dealt with by and defined in Corporations Act has the same meaning as in the Corporations Act.
- (b) the constitution takes the place of the replaceable rules.

1.5 What parts of the Charities Act and Tax Act apply

The constitution is to be interpreted subject to the Charities Act and Tax Act and:

- (a) any provision of the Charities Act or Tax Act which must be provided for in the governing documents of the company, forms part of the constitution; and
- (b) any provision which is inconsistent with the Charities Act or Tax Act must be read down to the extent of the inconsistency,

to the extent necessary to maintain the taxation concession, deductible gift recipient endorsement and/or charitable status of the company.

1.6 Definitions

In the constitution, unless the context otherwise requires:

auditor means the auditor of the company;

Charities Act means any law, rule, Act, ordinance, regulation, order or statutory instrument from time to time regulating the registration, reporting or governance obligations of the company as a charity;

Commissioner means a commissioner under the Charities Act or Tax Act having responsibility for the tax or charitable status or registration of the company;

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

directors means the company's board of directors and includes where applicable, an alternate director;

member means a member of the company;

multiple sclerosis means a progressive disease that attacks the central nervous system and affects multiple functions of the body as a consequence of such disease;

Nominations Committee means the nominations committee established under rule 6.6(a);

registered address means a member's address as notified to the company by the member and recorded in the company's records;

regulations means regulations, by-laws and policies and procedures made by the directors under and for the purposes of the constitution; and

Tax Act means any law, rule, Act, ordinance, regulation, order or statutory instrument from time to time regulating the tax, taxation concession or deductible gift recipient status of the company.

1.7 Meaning of words

In the constitution unless the context requires otherwise:

- (a) a reference to any legislation or a provision of any legislation includes any amendment to that legislation or provision, any consolidation or replacement of that legislation or provision and any subordinate legislation made under that legislation;
- (b) a reference to a member present at a general meeting is a reference to a member present in person or by proxy or representative;
- (c) where a director's term is expressed as years or the period between annual general meetings, it means to the end of next annual general meeting in the given year, not a calendar year, or if there is no annual general meeting in a given year, to the end of the period prescribed by the directors;
- (d) words used to refer to persons generally or to refer to a natural person do not include a body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);

- (e) the singular (including defined terms) includes the plural and vice versa;
 - (f) the word "includes" in any form is not a word of limitation; and
 - (g) headings are used for convenience only and do not affect the interpretation of the constitution.
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2 Purpose of Company

2.1 Charitable purposes

- (a) The company has the following public charitable purposes:
 - (1) to provide assistance to people who have been diagnosed with multiple sclerosis, people who have other neurological diseases and other medical conditions and people with disabilities. This assistance will be provided to:
 - (A) people who have been diagnosed with multiple sclerosis, people who have other neurological diseases and other medical conditions and people with disabilities, and their families and carers, to assist people who have been diagnosed with multiple sclerosis, people who have other neurological diseases and other medical conditions and people with disabilities to access and participate in, as far as they are able, all facets of life and to remove barriers that prevent them from enjoying equal access, opportunities and participation within the community; and
 - (B) members and other organisations with similar purposes,and must be provided reasonably across all geographic regions in which the company has operations, with the company's resources committed and applied appropriately and equitably across those regions and operations bearing in mind the needs of the company's clients in all regions;
 - (2) to support research into the cause, cure, effects and treatments of multiple sclerosis, other neurological diseases, other medical conditions and disabilities, including the incidence, prevalence, economic, social and other effects of multiple sclerosis, other neurological diseases, other medical conditions and disabilities on people and their carers affected by these diseases;
 - (3) to provide and engage in education of the public and members of Parliament in the effects of multiple sclerosis, other neurological conditions, other medical conditions and disabilities and advocate on behalf of people affected by multiple sclerosis, other neurological diseases, other medical conditions and disabilities; and
 - (4) to do all such things as are incidental or conducive to the attainment of any or all of the preceding purposes.

2.2 Income and property

- (a) The company's income and property must be applied solely towards promoting the company's purposes as stated in rule 2.1.
- (b) Unless permitted under the Charities Act and the constitution, no part of the income or property may be paid, transferred or distributed, directly or indirectly,

by way of dividend, bonus, or other profit distribution, to any director or to any member or former member or to any person claiming through any member or former member.

- (c) No directors fees may be paid to the directors. Directors may be paid:
 - (1) out-of-pocket expenses incurred by a director in performing a duty as a director of the company; and
 - (2) for a service rendered to the company by a director, a company of which the director is a director or employee or a firm of which a director is a partner, in a professional or technical capacity or as an employee, other than in the capacity as a director of the company, where:
 - (A) the provision of the service has the prior approval of the directors; and
 - (B) the amount payable is not more than an amount which commercially would be reasonable payment for the service,if such payments and amounts have been approved by the directors and are not prohibited under the Charities Act.
- (d) This rule does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any director to the extent permitted by law and the constitution.

3 Members

3.1 Eligibility to be a member

- (a) The members are:
 - (1) each member of the company at the date the constitution is adopted; and
 - (2) each person admitted to membership under the constitution.
- (b) Every applicant for membership of the company must:
 - (1) be over 18 years of age and meet any other eligibility requirement set by the directors;
 - (2) apply in the form and manner decided by the directors; and
 - (3) if admitted as a member, pay any applicable annual subscription fee.
- (c) The directors may decide to create eligibility criteria and categories of membership with the same or differing rights, privileges, obligations and restrictions and the directors may make regulations for that purpose.
- (d) The directors may close the register to new members for up to 60 days each financial year or for any other period set out in regulations.
- (e) The directors or delegate must consider any application for membership submitted by applicants in accordance with the constitution.
- (f) The directors or delegate are not required to give reasons for their decision to accept or reject an application for membership.
- (g) The directors must notify all persons entered on the register of members of the amount and time for payment of any annual subscription fee and of any alteration to that fee. Varying amounts of any annual subscription fee may be applied

between classes of membership or between members within classes of membership, as decided by the directors acting reasonably and made available to the members in a membership regulation.

- (h) Where the annual subscription fee is not received:
 - (1) by 1 September, the directors must issue a written reminder notice to the member; and
 - (2) after one month of the date of the written reminder notice, the member's rights and privileges associated with that membership will be suspended.
- (i) If a member who was suspended pursuant to rule 3.1(g) has not paid an annual subscription fee for more than 2 months after the written reminder notice, the person ceases to be a member and the person's name must be removed from the register of members.

3.2 Membership not transferable

Membership in the company is personal to the member and is not transferable.

3.3 Variation of category rights

- (a) The rights attached to any category of membership may, unless the constitution or their terms state otherwise, be varied:
 - (1) with the written consent of the holders of at least 75% of the members of the category; or
 - (2) by a special resolution passed at a separate meeting of the members of the category.
- (b) The provisions of the constitution relating to general meetings apply, with necessary changes, to separate category meetings as if they were general meetings.

3.4 Disciplining of members and members' grievances

- (a) The directors may by resolution expel a member from the company if, in their absolute discretion, they decide it is not in the interests of the company for the person to remain a member or for any other reason set out in regulations.
- (b) If:
 - (1) the directors intend to propose a resolution under rule 3.4(a), they must give the member written notice of the intended resolution; and
 - (2) there is a dispute between the member and the company regarding the resolution,

the action proposed by the directors and/or any associated dispute must be managed in accordance with the principles of natural justice and in a fair and equitable manner, including as set out in regulations.

3.5 Cessation of membership

A member will cease to be a member of the company and its name will be deleted from the register of members if the member:

- (a) dies;

- (b) resigns as a member by giving written notice to the company;
- (c) fails to renew their membership within 2 months of the company calling on the member to do so;
- (d) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health;
- (e) becomes bankrupt or insolvent or makes any arrangement or composition with their creditors;
- (f) is expelled under the constitution;
- (g) ceases to meet the eligibility requirements for membership; or
- (h) becomes, if the directors so decide in their absolute discretion, an untraceable member because the person has ceased to reside at, attend or otherwise communicate with the member's registered address.

4 General meetings

4.1 Calling general meetings

- (a) The directors may call and arrange to hold a general meeting whenever they think fit.
- (b) A general meeting may also be called and arranged to be held only as provided by the Corporations Act or regulations.
- (c) The directors may change the venue for, postpone or cancel a general meeting, unless the meeting is called and arranged to be held by the members or the court under the Corporations Act, in which case, the meeting must be convened as required to comply with basis upon which the meeting is requisitioned.

4.2 Notice of general meetings

- (a) Notice of every general meeting must be given in any manner authorised by rule 11 to each person who is at the date of the notice:
 - (1) a member entitled to vote, except a member who has not supplied the company with an address in Australia for giving notices;
 - (2) a director; and
 - (3) the auditor.
- (b) A notice of a general meeting must:
 - (1) specify the date, time and place of the meeting, including if applicable, the manner in which the meeting will be convened for the purposes of rule 5.3;
 - (2) except as provided by the Corporations Act or the Charities Act, state the general nature of the business to be transacted at the meeting; and
 - (3) specify the requirements for the receipt of proxies.
- (c) A person may waive notice of a general meeting by written notice to the company.
- (d) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive

notice of a general meeting under this rule 4.2 does not invalidate any thing done or resolution passed at the general meeting if:

- (1) the non-receipt or failure occurred by accident or error; or
 - (2) before or after the meeting, the person:
 - (A) has waived or waives notice of that meeting under rule 4.2(c); or
 - (B) has notified or notifies the company of the person's agreement to that thing or resolution by written notice to the company.
- (e) A person's attendance at a general meeting waives any objection that person may have to:
- (1) a failure to give notice, or 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
 - (2) 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.

4.3 Decisions at general meetings

- (a) Except where by law a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the meeting. Such a decision is for all purposes a decision of the members.
- (b) Where the votes on a proposed resolution, whether by show of hands or on a poll, are equal the chair of the meeting is not entitled to a second or casting vote and the resolution is lost.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless, before the vote is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:
 - (1) the chair of the meeting;
 - (2) at least two members present and with the right to vote on the resolution; or
 - (3) a member or members present at the meeting and representing at least 5% of the total voting rights of all the members entitled to vote on the resolution on a poll.
- (d) A demand for a poll does not prevent a general meeting continuing for the transaction of any business except the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried 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.
- (f) If a poll is duly demanded at a general meeting, it must be taken in such manner, and either at once or after an interval or adjournment or otherwise, as the chair

of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded.

- (g) A poll demanded at a general meeting on the election of a chair of the meeting or on a question of adjournment must be taken immediately.

The demand for a poll may be withdrawn.

5 Proceedings at general meetings

5.1 Quorum at general meetings

- (a) Quorum must be present

No business may be transacted at a general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.

- (b) Number required for quorum

A quorum consists of 5 members.

- (c) Determining whether quorum present

In determining whether a quorum is present, the company must count any individuals attending as proxies or representatives once for each member who has appointed that individual as either a proxy or representative.

- (d) No quorum present

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

- (1) where the meeting was convened on the requisition of members, the meeting must be dissolved; or
- (2) in any other case:
 - (A) the meeting stands adjourned to the day, and at the time and place, that the directors decide or, if the directors do not make a decision, to the same day in the next week at the same time and place; and
 - (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

5.2 Chair of general meetings

- (a) The chair of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chair at each general meeting.

- (b) If at a general meeting:

- (1) there is no chair of directors;
- (2) the chair of directors is not present within 15 minutes after the time appointed for the meeting; or
- (3) the chair of directors is present within that time but is not able or willing to act as chair of the meeting,

the following may preside as chair of the meeting (in order of precedence):

- (4) a deputy chair (if any) chosen by a majority of the directors present;
- (5) another director who is present and able and willing to act who is chosen by a majority of the directors present;
- (6) the only director present and able and willing to act; or
- (7) if no director present at the meeting is able and willing to act, a member chosen by a majority of members present who is present and able and willing to act.

5.3 Conducting general meetings

- (a) A question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chair of the meeting, whose decision is final.
- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of the members in person, to constitute a quorum constitutes a meeting of the members, provided each member has a reasonable opportunity to participate at the meeting.
- (c) All the provisions in the constitution relating to meetings of the members apply, so far as they can and with any necessary changes, to meetings of the members by telephone or other electronic means.
- (d) A member who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting unless the member has previously obtained the express permission by the chair of the meeting to leave the meeting or it becomes apparent to the chair of the meeting that the member has been disconnected due to a failure in technology.
- (e) A meeting by telephone or other electronic means is taken as held at the place decided by the chair of the meeting, as long as at least one of the members involved was at that place for the duration of the meeting.

5.4 Adjournment of general meetings

- (a) The chair of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
- (b) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (c) Except as provided by rule 5.4(b), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (d) Where a meeting is adjourned, the directors may change the venue of, or postpone or cancel, the adjourned meeting, unless the meeting was called and arranged to be held by the members or the court under the Corporations Act, in which case, the meeting must be convened as required to comply with basis upon which the meeting is requisitioned.

5.5 Voting rights

- (a) Subject to the constitution and to any rights or restrictions attached to any class of membership, at a general meeting every member present has one vote.

- (b) A proxy or representative is entitled to a separate vote for each member the person represents, in addition to any vote the person may have as a member in their own right.
- (c) An objection to the qualification of a person to vote at a general meeting must be:
 - (1) raised before or at the meeting at which the vote objected to is given or tendered; and
 - (2) referred to the chair of the meeting, whose decision is final.
- (d) A vote not disallowed by the chair of a meeting under rule 5.5(c) is valid for all purposes.

5.6 Method of voting

- (a) Subject to the constitution, each member entitled to vote at a meeting of members may vote:
 - (1) in person; or
 - (2) by proxy or authorised representative.
- (b) Subject to the requirements of the Corporations Act and the Charities Act as to special resolutions, the directors may if they think fit submit any question or resolution to the vote of all members entitled to a vote at a general meeting by circular resolution or ballot.
- (c) A resolution approved by a majority or specific majority of the members has the same force and effect as such a resolution passed in a general meeting.

5.7 Proxies

- (a) A proxy or representative must be a member of the company.
- (b) A proxy or representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.

5.8 Appointment of proxy

- (a) Unless otherwise provided in the instrument, an instrument appointing a proxy or representative is to be taken to confer authority:
 - (1) to agree to a meeting being convened by shorter notice than is required by the Corporations Act or by the constitution;
 - (2) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than the period of notice required by the Corporations Act has been given; and
 - (3) even though the instrument may refer to specific resolutions and may direct the proxy or representative how to vote on those resolutions:
 - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (B) to vote on any procedural motion, including any motion to elect the chair, to vacate the chair or to adjourn the meeting; and
 - (C) to act generally at the meeting.

- (b) An instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument so provides, the proxy must vote as directed in the instrument.
- (c) Subject to rule 5.8(d), an instrument appointing a proxy need not be in any particular form as long as it is in writing, legally valid and signed by or on behalf of the appointor or the appointor's attorney.
- (d) A proxy may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy, and the authority under which the instrument is signed or a certified copy of the authority, are received by the company in accordance with the requirements set out in the notice convening the meeting, before the time specified in the notice, or failing any requirement in the notice, at least 24 hours before the time for holding the meeting.
- (e) The directors may waive all or any of the requirements of rules 5.8(c) and 5.8(d) and in particular may, on the production of such other evidence as the directors require to prove the validity of the appointment or a proxy, except:
 - (1) a verbal appointment of a proxy;
 - (2) an appointment of a proxy which is not signed in the manner required by rule 5.8(c); and
 - (3) the deposit, tabling or production of a copy of an instrument appointing a proxy or of the power of attorney or other authority under which the instrument is signed.
- (f) A vote given in accordance with the terms of an instrument appointing a proxy is valid despite the revocation of the instrument or of the authority under which the instrument was executed, if no written notice of the revocation has been received by the company by the time and at one of the places at which the instrument appointing the proxy is required to be deposited, tabled or produced under the constitution.
- (g) The appointment of a proxy is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution, the person acting as proxy for the appointer is not entitled to vote, and must not vote, as the appointer's proxy on the resolution.

6 The Board

6.1 Number of directors

- (a) Subject to rules 6.1(b)(1) and 6.1(b)(2), there must be:
 - (1) at least 7 directors; and
 - (2) not more than 12 directors.
- (b) The:
 - (1) directors may increase or reduce the minimum or maximum number of directors and determine the rotation by which the increased or decreased number is to retire from office;
 - (2) directors may in accordance with rule 6.8 allow the appointment of alternate directors, in addition to the number prescribed in rule 6.1(a) or rule 6.1(b)(1);

- (3) company may by resolution, subject to:
 - (A) rules 6.1(a) and 6.1(b)(2);
 - (B) the candidate for appointment being considered by the Nominations Committee and the Nominations Committee providing a recommendation to the directors under rule 6.6(c)(1) and the directors verifying to the members the recommendation of the Nominations Committee, prior to the candidate's appointment;
 - (C) the candidate signing a consent to act as a director; and
 - (D) at least 7 members (excluding the candidate) having given their written endorsement to the appointment of the candidate,appoint any individual as a director as an addition to the existing directors;
and
- (4) company may by resolution remove a director.

6.2 Appointment of directors

- (a) Subject to rules 6.1(a) and 6.2(c) and either:
 - (1) all of the conditions in rules 6.1(b)(3)(B), 6.1(b)(3)(C) and 6.1(b)(3)(D) being satisfied; or
 - (2) all of the following being satisfied:
 - (A) the candidate for appointment being recommended or election or appointment by the Nominations Committee; and
 - (B) the candidate signing a consent to act as a director, the directors may appoint any individual as a director either:
 - (3) to fill a casual vacancy; or
 - (4) as an addition to the existing directors.
- (b) A director appointed by the directors under rule 6.2(a), holds office only until the conclusion of the next annual general meeting following the director's appointment.
- (c) The directors may not appoint any person as a director under rule 6.2(a) where that person, at any time in the preceding 12 months was removed as a director by the members.

6.3 Rotation of directors

- (a) At each annual general meeting, one-third of the directors (excluding a director appointed by the directors under rule 6.2(a)), or, if their number is not 3 or a multiple of 3, then the number nearest one-third (rounded down), and any other director who has held office for 3 years or more since last being elected, must retire from office.
- (b) The directors to retire under rule 6.3(a) are those directors who wish to retire and not offer themselves for re-election, and so far as is necessary to obtain the number required, those who have been longest in office since their last election or appointment. As between directors who were last elected or appointed on the same day, those to retire must, unless they can agree among themselves, be determined by the directors, or in the absence of a valid determination, by lot.

- (c) The directors to retire under rule 6.3(a) (both as to number and identity) are to be determined having regard to the composition of the board of directors at the date of the notice calling the annual general meeting. A director is not required to retire and is not relieved from retiring because of a change in the number or identity of the directors after the date of the notice but before the meeting closes.
- (d) Subject to the director being considered by the Nominations Committee and the Nominations Committee providing a recommendation to the directors under rule 6.6(c)(1) prior to the director's retirement from office, a director retiring from office under rule 6.2(b) is eligible for re-election subject to a maximum term of 9 continuous years, unless the maximum term is varied for a particular director by the directors in accordance with regulations or as determined by the directors.
- (e) The retirement of a director from office under the constitution and the re-election or reappointment of the director or the election or appointment of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and election or appointment occur.

6.4 Eligibility to be a director

A person is eligible for election or re-election (as the case may be) to the office of a director at a general meeting only if all of the following are satisfied:

- (a) the person is not an employee of the company or any related body corporate;
- (b) the person is not prohibited or disqualified or otherwise prevented from being a director of a company under the constitution or any applicable law, including the Charities Act or the Tax Act;
- (c) the person has signed a consent to act as a director; and
- (d) the person has been recommended for election or re-election or appointment (as the case may be) by the Nominations Committee or by the directors.

6.5 Vacancy on Board

The office of a director becomes vacant:

- (a) in the circumstances prescribed by applicable laws, including the Charities Act or the Tax Act;
- (b) if the director is an an employee of the company or any related body corporate;
- (c) if the director becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (d) if the director is removed or retires from office under the constitution or is deemed to have vacated office under the constitution by reason of the maximum term of office having been exceeded; or
- (e) if the director resigns by written notice to the company.

6.6 Director nomination process

- (a) So far as practicable and appropriate in the prevailing circumstances, the following principles must always be borne in mind and advanced, in the process of recommending persons for election or appointment, and in the process of persons being elected or appointed under the constitution:

- (1) the directors should be comprised of persons with a broad range of interests, skills, expertise and experience which will assist the directors in carrying on the activities and furthering the purposes of the company;
 - (2) the directors should consist of a mix of sexes; and
 - (3) it may be appropriate that 1 or more directors be a person with multiple sclerosis, or another neurological disease.
- (b) The company will have a Nominations Committee consisting of the chair of directors and at least 1 other director appointed by the directors from time to time.
- (c) The Nominations Committee is responsible for:
- (1) considering each candidate for election or appointment and subject to the assessment of the Nominations Committee providing a report and/or recommendation to the directors in relation to the proposed election or appointment of each such candidate (provided that such reports must not be disclosed to anyone other than the directors);
 - (2) considering each proposed alternate director and subject to the assessment of the Nominations Committee providing a report and/or recommendation to the directors in relation to the proposed appointment of each alternate director (provided that such reports must not be disclosed to anyone other than the directors);
 - (3) succession planning in relation to the directors;
 - (4) determining and implementing processes for the review of the performance of the board of directors as a whole, and individual directors;
 - (5) in the circumstances envisaged in rule 6.3(b), making a recommendation to the directors as to which directors must retire; and
 - (6) other matters determined by the directors from time to time.
- (d) The Nominations Committee may on its own motion source, assess and recommend to the directors a candidate for election or appointment as a director or alternate director.
- (e) The Nominations Committee will meet whenever its members consider necessary to discharge its responsibilities promptly and efficiently.
- (f) The provisions of the constitution that apply to:
- (1) meetings and resolutions of directors apply, so far as they can, subject to this rule 7 and any applicable determinations of the directors, and with any necessary changes, to meetings and resolutions of the Nominations Committee; and
 - (2) committees of directors apply, so far as they can, subject to this rule 7 and any applicable determinations of the directors, to the Nominations Committee.

A quorum of the Nominations Committee is 2 members. Subject to the rule 6.6(f) the chair of directors will chair the Nominations Committee.

6.7 Interested directors

- (a) A director who has a material personal interest in a matter that is being considered at a directors' meeting or a meeting of the Nominations Committee must not:

- (1) be present while the matter is being considered at the meeting; or
 - (2) vote on the matter.
- (b) The directors may make regulations regarding the disclosure and regulation of conflicts.

6.8 Alternate directors

- (a) A director may, with approval of the other directors, appoint an alternate director for a specified period.
- (b) An alternate director:
 - (1) must be the subject of a recommendation of the Nominations Commission and endorsed by the other directors;
 - (2) may, if the appointor does not:
 - (A) attend a meeting of the directors, attend and vote in place of and on behalf of the appointor; or
 - (B) consider a circulatory resolution, consider the circulatory resolution and vote in place of and on behalf of the appointor; and
 - (3) may, in the absence of the appointor, exercise any powers that the appointor may exercise, and is not an agent of the appointor.
- (c) The office of an alternate director is vacated when the appointor ceases to be a director or the specified period of appointment expires.
- (d) A director who appoints an alternate director may terminate that appointment at any time by way of written notice to the appointed alternate director and the company.

7 Powers and duties of the Board

7.1 Powers and duties of directors

- (a) On carrying out the purposes under rule 2.1, the company may exercise any power and carry out any action which the company may exercise under the Corporations Act if authorised by the constitution. The directors may exercise to the exclusion of the company in general meeting all the company's powers which are not required, by the Corporations Act, the Charities Act or by the constitution, to be exercised by the company in general meeting.
- (b) Each director must comply with their duties at law, including under the Corporations Act and the Charities Act.

7.2 Delegation

The directors may delegate their powers and functions to an officer, employee attorney or other person authorised by the directors.

7.3 Regulations

- (a) The directors may make, vary and rescind regulations in relation to the company.

- (b) Regulations, which are not inconsistent with the constitution, are binding on the directors and/or the members, but may be set aside by the directors or the members.

8 Proceedings of the Board

8.1 Frequency of meetings

- (a) The directors may meet together and adjourn and otherwise regulate their meetings as they think fit.

8.2 Use of technology for Board meetings

- (a) The contemporaneous linking together by telephone or other electronic means of a sufficient number of the directors to constitute a quorum constitutes a meeting of the directors. All the provisions in the constitution relating to meetings of the directors apply, so far as they can and with any necessary changes, to meetings of the directors by telephone or other electronic means.
- (b) A director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting unless the director has previously obtained the express permission of the chair of the meeting to leave the meeting or it becomes apparent to the chair of the meeting that the director has been disconnected due to a failure in technology.
- (c) A meeting by telephone or other electronic means is taken as held at the place decided by the chair of the meeting, as long as at least one of the directors involved was at that place for the duration of the meeting.
- (d) If, before or during the meeting, any technical difficulty occurs as a result of which one or more directors cease to participate, the chair may adjourn the meeting until the difficulty is remedied or may, where a quorum of directors remains present, continue with the meeting.

8.3 Convening meetings of directors

- (a) A director may convene a meeting of the directors whenever the director thinks fit.
- (b) A secretary must, on the requisition of a director, convene a meeting of the directors.

8.4 Notice of meetings of directors

- (a) Subject to the constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice a director, other than a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
 - (1) must specify the time and place of the meeting;
 - (2) need not state the nature of the business to be transacted at the meeting;
 - (3) may be given immediately before the meeting; and
 - (4) may be given in person or by post, telephone or other electronic means.

- (c) A director may waive notice of a meeting of directors by notifying the company to that effect in person or by post, telephone or other electronic means.
- (d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any thing done or resolution passed at the meeting if:
 - (1) the non-receipt or failure occurred by accident or error;
 - (2) before or after the meeting, the director:
 - (A) has waived or waives notice of that meeting under rule 8.4(c); or
 - (B) has notified or notifies the company of the director's agreement to that thing or resolution personally or by post, telephone or other electronic means; or
 - (3) the director attended the meeting.
- (e) Attendance by a person at a meeting of directors waives any objection which that person may have to a failure to give notice of the meeting.

8.5 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) A quorum consists of:
 - (1) if the directors have fixed a number for the quorum greater than 4, that number of directors; and
 - (2) in any other case, 4 directors, present at the meeting of directors.
- (c) If there is a vacancy in the office of a director then, subject to rule 8.5(d), the remaining directors may act.
- (d) If the number of directors in office at any time is not sufficient to constitute a quorum at a meeting of directors, or is less than the minimum number of directors fixed under the constitution, the remaining directors must act as soon as possible to:
 - (1) increase the number of directors to a number sufficient to constitute a quorum and to satisfy the minimum number of directors required under the constitution;
 - (2) convene a general meeting of the company for that purpose, or
 - (3) appoint additional directors,
 and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

8.6 Chair of directors

- (a) The directors must elect one of the directors as chair of directors and must decide the period for which that director is to be the chair, which may be set out in regulations.
- (b) The directors may elect up to 2 of the directors as deputy chairs of directors, in which case the directors must decide the period for which each those directors is to be a deputy chair.

- (c) The chair of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chair at each meeting of directors.
- (d) If at a meeting of directors:
 - (1) there is no chair of directors;
 - (2) the chair of directors is not present within 15 minutes after the time appointed for the meeting;
 - (3) the chair of directors is present within that time but is not able and willing to act as chair of the meeting; or
 - (4) the chair of directors has signified an intention not to be present and able and willing to act as chair of the meeting,
 the following may preside (in order of precedence):
 - (5) a deputy chair chosen by a majority of the directors present; or
 - (6) a director chosen by a majority of the directors present.
- (e) The chair or a deputy chair may be removed from that office (but not as a director) by a resolution of the directors of which not less than 14 days' notice has been given to the directors.

8.7 Decisions of directors

- (a) A meeting of directors at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the directors under the constitution.
- (b) Questions arising at a meeting of directors must be decided by a majority of votes cast by the directors present. Such a decision is for all purposes a decision of the directors.
- (c) Where the votes on a proposed resolution are equal, the chair of the meeting does not have a second or casting vote, and the resolution is lost.

8.8 Written resolutions of directors

- (a) If:
 - (1) all the directors, other than any director:
 - (A) on leave of absence approved by the directors;
 - (B) who disqualifies themselves from considering the thing or resolution in question on the grounds that they are not entitled at law to do so or has a conflict of interest; or
 - (C) who the directors reasonably believe is not entitled at law to do the thing or to vote on the resolution in question,
 assent to a document containing a statement to the effect that a thing has been done or resolution has been passed; and
 - (2) the directors who assent to the document would have constituted a quorum at a meeting of directors held to consider that thing or resolution,
 then that thing or resolution is to be taken as having been done at or passed by a meeting of the directors.
- (b) For the purposes of rule 8.8(a):

- (1) the meeting is to be taken as having been held:
 - (A) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
 - (B) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
- (2) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be taken as constituting one document; and
- (3) a director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, telephone or other electronic means.
- (c) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the thing or resolution to which the document relates.
- (d) Where a document is assented to in accordance with rule 8.8(a), the document is to be taken as a minute of a meeting of directors.
- (e) For the purposes of this rule 8.8(a), a director may signify their assent by means of electronic communication with a verifiable electronic signature or which is encrypted or which can otherwise be authenticated.

8.9 Minutes of meetings and minutes of resolutions

- (a) The directors must ensure minutes of proceedings and resolutions of general meetings and of meetings of directors (including committees of directors) are recorded in books kept for the purpose, within one month after the relevant meeting is held.
- (b) The directors must ensure minutes of resolutions passed by directors (and committees of directors) without a meeting are recorded in books kept for that purpose within 1 month after the resolution is passed.
- (c) The minutes of a meeting must be signed within a reasonable time by the chair of the meeting or the chair of the next meeting.
- (d) Any books and records of the company may be kept in any electronic form determined by the directors from time to time, and minutes may be signed electronically.

8.10 Committees of directors

- (a) The directors may delegate any of their powers to one or more committees consisting of the number of directors they think fit or establish one or more advisory committees, regulated by terms of reference set by the directors.
- (b) A committee of directors to which any powers have been delegated must exercise the powers delegated in accordance with any directions given by the directors.
- (c) Subject to the rule 6.6, any such committee must:
 - (1) have a majority of non-executive directors;

- (2) have a chair appointed by a majority of the directors;
 - (3) have power to co-opt persons who are not directors, but such co-opted persons are not be entitled to vote on matters to be determined by the committee; and
 - (4) be subject to a review and performance process determined by the directors.
- (d) Subject to rule 6.6 and the terms of reference regulating a committee, the provisions of the constitution that apply to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee consisting of 2 or more directors.

8.11 Delegation to individual director

- (a) The directors may delegate any of their powers to one director.
- (b) A director to whom any powers have been delegated must exercise the powers delegated in accordance with any directions given by the directors.

8.12 Validity of acts

An act done by a person acting as a director, a meeting of directors, or a committee of directors attended by a person acting as a director, is not invalidated merely because of:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified to be a director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person, the directors or the committee (as applicable) when the act was done.

9 Executive officers

9.1 Chief executive officer

- (a) The directors may appoint a chief executive.
- (b) All or any of the powers delegated to a chief executive officer may be given together with or to the exclusion of the powers of the directors.

9.2 Company secretary

The directors must appoint at least one company secretary.

9.3 Provisions that apply to all executive officers

- (a) A reference in this rule 9.3 to an executive officer is a reference to a chief executive officer, company secretary or other executive officers appointed by the directors.
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions that the directors think fit.

- (c) Subject to any contract between the company and the relevant executive officer, an executive officer may be removed or dismissed by the directors at any time, with or without cause.
- (d) The directors may:
 - (1) confer on an executive officer the powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the directors) they think fit;
 - (2) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
 - (3) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on him or her.
- (e) An act done by a person acting as an executive officer is not invalidated merely because of:
 - (1) a defect in the person's appointment as an executive officer; or
 - (2) the person being disqualified to be an executive officer, if that circumstance was not known by the person when the act was done.

10 Audit and accounts

10.1 Appointment of auditor

The company must appoint a properly qualified auditor whose duties will be regulated in accordance with the Corporations Act and Charities Act.

10.2 Preparation of accounts

The directors must cause proper accounting and other records to be kept in accordance with the requirements of the Corporations Act and the Charities Act, and report to the members in relation to those accounts as required by the Corporations Act and the Charities Act.

11 Notice

11.1 Notices by the company to members

The company may give notices, including a notice of general meeting to a member:

- (a) personally;
- (b) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member; or
- (c) by sending it to the electronic address (if any) nominated by the member.

11.2 Notices by the company to directors

Subject to the constitution, a notice may be given by the company to any director either by serving it personally at, or by sending it by post in a prepaid envelope to, the

director's usual residential or business address, or by electronic means to such electronic address, as the director has supplied to the company for giving notices.

11.3 Notices by members or directors to the company

Subject to the constitution, a notice may be given by a member or director to the company by serving it on the company at, or by sending it by post in a prepaid envelope to the registered office of the company or by electronic means to the principal electronic address of the company at its registered office.

11.4 Time of service

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
 - (1) in the case of a notice of a general meeting, on the third day after the date of its posting; or
 - (2) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by electronic means, service of the notice is to be taken to be effected:
 - (1) in the case of an electronic messaging system that contains a delivery verification function, on the generation by the electronic messaging system of a delivery verification notice or log entry, or other confirmation; or
 - (2) in the case of electronic mail or other electronic messaging system (other than those referred to in rule 11.4(b)(1)), on the delivery to:
 - (A) where the addressee is a natural person, the addressee's electronic mail or electronic messaging system account; or
 - (B) where the addressee is a corporation, the corporation's computer systems.
- (c) If service under rule 11.4(b) is on a day which is not a business day or is after 4.00pm (addressee's time), the notice is regarded as having been received at 9.00am on the next following business day.
- (d) For the purposes of rule 11.4(c), business day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in the place concerned.

11.5 Other communications and documents

Rules 11.1 to 11.4 (inclusive) apply, so far as they can and with any necessary changes, to the service of any communication or document.

11.6 Notices in writing

A reference in the constitution to a written notice includes a notice given by electronic transmission or any other form of written communication.

12 Deductible gift recipient status and winding up

12.1 Revocation of deductible gift recipient status

If the company is registered with or recognised by the Commissioner as being entitled to receive deductible gifts, and that endorsement is revoked prior to a winding-up or dissolution of the company, surplus gifts and deductible contributions must be distributed in accordance with rule 12.2.

12.2 Winding up

On the winding up of the company, any surplus assets that remain after the satisfaction of all its debts and liabilities, the company:

- (a) must not be paid or given to the members;
- (b) must be paid to a fund, authority or institution:
 - (1) which has charitable and benevolent purposes, similar to the purposes of the company;
 - (2) registered with or recognised by the Commissioner as being income tax exempt if the company had been;
 - (3) registered with or recognised by the Commissioner as being entitled to receive deductible gifts if the company could; and
 - (4) whose constitution or governing document prohibits distribution or payments to its members and directors (if any) to an extent at least as great as outlined in rule 2.2.

The identity of the institution referred to in this rule 12.2 must be decided by the directors.

13 Indemnity and insurance

13.1 Persons to whom the indemnity and insurance apply

The indemnity and insurance referred to in this rule apply to the following individuals (referred to as 'indemnified officers' in this rule):

- (a) each person who is or has been a director or executive officer (within the meaning of rule 9.3(a)) of the company; and
- (b) any other officers or former officers of the company as the directors in each case decide to indemnify under a deed of indemnity referred to in rule 13.2 or cover under insurance maintained pursuant to rule 13.3.

13.2 Indemnity

- (a) Subject to rule 13.2(c), the company must indemnify, on a full indemnity basis and to the full extent permitted by law, each indemnified officer against:
 - (1) all losses or liabilities (including costs and expenses) incurred by the person as an officer of the company in the course of performing their duties as an officer of the company; and

- (2) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the indemnified officer becomes involved because of that person's capacity as an officer of the company.
- (b) The indemnity under rule 13.2(a):
 - (1) is a continuing obligation and is enforceable by an indemnified officer even though that person has ceased to be an officer of the company; and
 - (2) operates only to the extent that the loss or liability in question is not covered by insurance.
- (c) The indemnity under rule 13.2(a) does not extend to or apply to a liability:
 - (1) which arises out of misconduct under the indemnified officers' terms and conditions of engagement by the company or a breach of those terms and conditions;
 - (2) which arises from conduct of the indemnified officer involving a lack of good faith;
 - (3) which cannot be recovered under a policy of insurance maintained by the company by reason of the acts or omissions of the indemnified officer having voided that cover or prejudiced the company's right or entitlement to make a claim in respect of that liability;
 - (4) attributable to proceedings against the indemnified officer in which the indemnified officer is found guilty;
 - (5) attributable to a claim for relief by the indemnified officer which is denied by a court or tribunal;
 - (6) attributable to a pecuniary penalty order against the indemnified officer for non-compliance with the indemnified officer's duties under an applicable law;
 - (7) attributable to action taken by the company to remove the indemnified officer from office or terminate their engagement by the company; or
 - (8) excluded under a deed entered into pursuant to rule 13.5.

13.3 Insurance

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any indemnified officer against any liability incurred by the person as an officer of the company where the directors consider it appropriate to do so.

13.4 Savings

Nothing in this rule 13:

- (a) affects any other right or remedy under an applicable law that an indemnified officer may have in respect of any loss or liability referred to in this indemnity or insurance; or

- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom this rule does not apply.

13.5 Deed

The company may enter into a deed with any indemnified officer to give effect to the rights conferred by rules 13.1 to 13.4, or the exercise of a discretion under rules 13.1 to 13.4 on such terms as the directors think fit which are not inconsistent with rules 13.1 to 13.4.

14 Inspection of records

14.1 Inspection by members

Subject to the Corporations Act and Charities Act, the directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the company or any of them will be open to inspection by the members (other than directors).

14.2 Right of a member to inspect

A member of the company (other than a director) does not have the right to inspect any document of the company except as provided by law or authorised by the directors.