

Constitution of: HeartKids Limited

ACN 613 854 336

ABN [inset ABN]

Incorporation Date: 25 July 2016

Effective Date: 4th August 2018

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Constitution of HeartKids Limited

HeartKids Limited
ACN 613 854 336

1. PRELIMINARY

1.1 Type of Company

The Company is a not-for-profit public company limited by guarantee.

1.2 Objects and purposes

- (a) The objects for which the Company is established are to improve the lives and future of those affected by childhood heart disease (**CHD**) and without limitation to:
- (i) provide services and support to those affected by CHD;
 - (ii) establish and maintain a research program into CHD;
 - (iii) promote, develop and advance knowledge and caring understanding of CHD issues;
 - (iv) promote, develop and further the education of those affected by CHD;
 - (v) advocate for recognition and improved resources for those affected by CHD;
 - (vi) promote community awareness of the incidence of CHD and the need for further funding for research into CHD;
 - (vii) collect, research and disseminate information and resource material to families;
 - (viii) raising funds to facilitate the objects set out in this clause 1.2(a); and
 - (ix) collaborate with other entities to further the interests of those affected by CHD.
- (b) The Company can only exercise the powers in section 124(1) of the Corporations Act to:
- (i) carry out the objects of the Company set out in rule 1.2(a); and
 - (ii) do all things incidental or convenient in relation to the exercise of the power under rule 1.2(b)(i).

1.3 Application of income and property

Subject to rules 1.4 and 9.1, the Company must apply its income solely towards promoting the objects of the Company as stated in rule 1.2. No part of the Company's income may be paid or transferred directly or indirectly by way of dividend bonus or otherwise to its members.

1.4 Certain payments allowed

Rule 1.3 does not prevent the payment of reasonable remuneration to any employee of the Company or to any member of the Company or other person in return for services rendered to the Company. In addition, rule 1.3 does not prevent the Company paying to a member:

- (a) interest on money lent by the member to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;

- (b) reasonable remuneration for goods supplied by the member to the Company in the ordinary course of business; and
- (c) reasonable rent for premises lent by the member to the Company.

1.5 Replaceable rules

The replaceable rules referred to in section 141 of the Corporations Act do not apply to the Company and are replaced by the rules set out in this document.

1.6 Definitions

The following definitions apply in this document.

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

Advisory Board means the advisory board established by the Board from time to time.

Associate Member means a person whose name is entered in the Register as an associate member of the Company.

Board means the Directors acting collectively under this document.

Company means the company named at the beginning of this document or whatever its name is for the time being.

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

Director means a person who is, for the time being, a director of the Company.

Government means, as appropriate, the government of one of the states or territories of Australia, or the government of the Commonwealth of Australia.

Heart Angel means a deceased person who had a childhood heart disease, and 'Heart Angels' has the same meaning.

Heart Angel parent means a parent of a Heart Angel.

Heart Kid means a person who has childhood heart disease, and 'Heart Kids' has the same meaning.

Heart Kid parent means a parent of a Heart Kid.

Ordinary Member means a person whose name is entered in the Register as an ordinary member of the Company.

member means a person who is either an Ordinary Member or an Associate Member.

Nominations and Remuneration Committee means the committee whose role is to provide the Board with recommendations and advice on the appointment of Directors, and other management roles from time-to-time, to be established by the Board in accordance with rule 6.

Ordinary Resolution means a resolution passed at a meeting of members by a majority of the votes cast by members entitled to vote on the resolution.

Register means the register of members kept as required by sections 168 and 169 of the Corporations Act.

Secretary means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this document.

Special Resolution means a resolution:

- (a) of which notice has been given in accordance with this Constitution; and
- (b) that has been passed by at least 75% of the votes cast by the members entitled to vote on the resolution.

1.7 Interpretation of this document

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
- (j) A word (other than a word defined in rule 1.6) which is defined by the Corporations Act or the ACNC Act has the same meaning in this document where it relates to the same matters as the matters for which it is defined in the Corporations Act or the ACNC Act.

2. MEMBERSHIP

2.1 Membership

Subject to rule 2.5, the members are:

- (a) the initial members named in the application for the Company's registration; and
- (b) any other person the Board admits to membership.

An application for membership may be made to the Board.

2.2 Classes of membership

- (a) There are two distinct classes of membership:
 - (i) Ordinary Members; and
 - (ii) Associate Members.
- (b) To be eligible to be admitted as an Ordinary Member, the applicant must hold office as a director of the Company.
- (c) To be eligible to be admitted as an Associate Member, the applicant must be:
 - (i) a Heart Kid pursuing the objects of the Company;
 - (ii) a parent, family member or carer of a Heart Kid pursuing the objects of the Company;
 - (iii) a parent, family member or carer of a Heart Angel pursuing the objects of the Company; or
 - (iv) a supporter of a Heart Kid or Heart Angel and pursuing the objects of the Company.

2.3 Entitlements

- (a) Ordinary Members:
 - (i) will be entitled to attend and vote at meetings of the Company; and
 - (ii) will be entitled to the other rights attaching to Ordinary Members under this Constitution.
- (b) Associate Members are entitled to attend meetings of the Company but do not have a right to vote.
- (c) The Directors may, from time to time, but subject to rules 2.3(a) and 2.3(b), establish additional classes of membership and may prescribe the qualifications, rights and privileges of persons admitted to membership in, or transferred into, such classes or categories of membership.
- (d) If at any time the Directors exercise the powers under rule 2.3(c), the rights, restrictions or obligations of members or any class or category of members may be varied with either:
 - (i) the written consent of not less than 75% of the existing Ordinary Members; or
 - (ii) the sanction of a special resolution passed at a separate general meeting of the existing Ordinary Members.

- (e) If the Directors establish a new class of membership that has the same rights, restrictions or obligations as an existing class or categories of membership, the establishment of that new class of membership is not treated as a variation of the rights attaching to that class or category.

2.4 Limited liability of members

If the Company is wound up, each member undertakes to contribute to the assets of the Company up to an amount not exceeding \$10.00 for payment of the debts and liabilities of the Company including the costs of the winding up. This undertaking continues for one year after a person ceases to be a member.

2.5 Cessation of membership

A member's membership will cease, on the date:

- (a) the Secretary receives written notice of resignation from that member;
- (b) if the person is an Ordinary Member, the person ceases to hold office as a Director of the Company;
- (c) the member:
 - (i) dies;
 - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
 - (iii) is convicted of an indictable offence, or
- (d) the Ordinary Members in general meeting resolve by a special resolution, to terminate the membership of a member whose conduct or circumstances in the opinion of the Ordinary Members renders it undesirable that the member continue to be a member of the Company. The member must be given at least 21 days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is passed.

3. DIRECTORS

3.1 Transitional Board

There will be a transitional board from the Effective Date until 1 October 2018 consisting of the Directors who hold office on the Effective Date.

3.2 Board

- (a) Unless otherwise agreed by the Members, from 1 October 2018, the Board will consist of at least nine Directors and not more than twelve Directors.
- (b) The Board, taking into consideration the recommendations of the Nominations and Remuneration Committee, may appoint Directors for the term determined by the Board, up to three years, using such process as it determines.
- (c) The Board will appoint a chairperson and deputy chairperson from within their number for the term of 1, 2 or 3 years determined by the Board, using such process as it determines.

3.3 Qualification for membership of the Board

- (a) A person is qualified for appointment as a Director only if the person has qualifications of experience in a least one of the following areas:

- (i) CHD clinical practical;
 - (ii) CHD support or services;
 - (iii) research or education;
 - (iv) fundraising or community engagement;
 - (v) financial management,
 - (vi) advocacy;
 - (vii) corporate governance;
 - (viii) business or law; or
 - (ix) any other skill considered necessary by the Board to add value to the Board.
- (b) Neither the auditor of the Company nor any partner, director or employee of the auditor is eligible to act as a Director.
 - (c) At least three Directors must be Heart Kids, Heart Kid parents or Heart Angel parents, who have attained the age of 18 years.
 - (d) The Board must ensure that the Directors are collectively geographically diverse (in Australia) with a least one director from each of the following regions: NSW | ACT; QLD; SA | NT; VIC | TAS; and WA.

3.4 Appointment of Directors

- (a) At least two months before the 1 October 2018, the transitional board must submit a request to the Nominations and Remuneration Committee to:
 - (i) call for nominations from the Associate Members; and
 - (ii) notify of the persons recommended for appointment.
- (b) Subject to rule 3.4(c), each member of the transitional board must resign on the appointment of the Directors under rule 3.2(b).
- (c) If a transitional board member has been appointed by the Board under rule 3.2(b) then the member's appointment as Director will continue.
- (d) Where a vacancy arises for one or more Directors:
 - (i) under rule 3.1, the transitional board may appoint a suitably qualified person to fill the vacancy; or
 - (ii) under rule 3.2(b), the Board will submit a request to the Nominations and Remuneration Committee to:
 - (A) call for nominations from the Associate Members; and
 - (B) notify of the persons recommended for appointment
- (e) The Nominations and Remunerations Committee must ensure that the persons recommended under rule 3.4(a)(ii) and 3.4(d)(ii)(B) have the mix of skills and are collectively geographically diverse (in Australia) required to satisfy rule 3.3.

- (f) At the next meeting of Directors held after the provision of details of the candidates under rule 3.4(a)(ii) and 3.4(d)(ii)(B), the Board may appoint the Directors. The Directors appointed will take office at the end of the meeting.

3.5 Retirement of Directors

- (a) Each Director must retire from office at the conclusion of:
 - (i) the term for which they have been appointed under rule 3.2(b); or
 - (ii) the third annual general meeting following his or her appointment as a Director.
- (b) If eligible, any director may be re-appointed for a further term.

3.6 Cessation of Director's appointment

A person automatically ceases to be a Director if the person:

- (a) is not permitted by the Corporations Act or the ACNC Act to be a director;
- (b) becomes disqualified from managing corporations under Part 2D.6 of the Corporations Act and is not given permission or leave to manage the Company under section 206F or 206G of the Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend three (3) consecutive Board meetings (not including meetings of a committee of the Board) without leave of absence from the Board;
- (e) resigns by notice in writing to the Company;
- (f) resigns from membership of the Company;
- (g) is removed from office under rule 3.7;
- (h) ceases to be eligible to act as a Director under rule 3.3; or
- (i) otherwise brings the Company into disrepute.

3.7 Removal from office

The members by ordinary resolution may remove a Director from office. The power to remove a Director under this rule is in addition to section 203D of the Corporations Act.

3.8 Too few Directors

If the number of Directors is reduced below the minimum required by rule **Error! Reference source not found.**, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of members; and
- (c) in emergencies.

4. POWERS OF THE BOARD

4.1 Powers generally

Except as otherwise required by the Corporations Act, any other applicable law or this document, the Board:

- (a) has power to manage the business of the Company; and
- (b) may exercise every right, power or capacity of the Company except those which must be exercised by the Company in general meeting and/or by the members.

4.2 Exercise of powers

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 11; or
- (b) in accordance with a delegation of the power under rule 6.

5. NEGOTIABLE INSTRUMENTS

The Board must decide the manner (including the use of electronic signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept, or endorse negotiable instruments only in the manner decided by the Board.

6. DELEGATION OF BOARD POWERS

6.1 Power to delegate

The Board may delegate, in writing, any of its powers, other than those which by law must be dealt with by the Board to:

- (a) a committee or committees;
- (b) a director;
- (c) an employee of the Company; or
- (d) any other person.

6.2 Power to revoke delegation

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

6.3 Terms of delegation

A delegation of powers under rule 6.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

6.4 Committees

- (a) The Board must establish committees to assist the Board to:
 - (i) fulfil its corporate governance responsibilities; and
 - (ii) demonstrate the diversity of CHD.
- (b) The chair of each committee is appointed by the Board.
- (c) The Board must have a terms of reference setting out its role and composition of any committee.
- (d) Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.

6.5 Deemed limitations

The following limitations and requirements will be deemed imposed by the Board in any delegation of powers:

- (a) The delegate may only make decisions directly related to the matters which have been delegated.
- (b) A resolution of any sub-committee will not become effective until 7 days after the Board has received written notice of the resolution. The resolution will not become effective if the Board resolves to invalidate the resolution before the expiry of the 7 day period.

7. ADVISORY BOARD

7.1 Power to establish

The Board may establish one or more advisory boards:

- (a) for a specified period or without specifying a period; and
- (b) on the terms and subject to any restrictions the Board decides.

7.2 Proceedings of advisory boards

Subject to the terms on which the Board has implemented, the meetings and proceedings of the advisory boards are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.

8. DIRECTORS' DUTIES AND INTERESTS

8.1 Compliance with duties under the Act and general law

Each Director must comply with his or her duties described in governance standard 5 of the regulations made under the ACNC Act and under the general law.

8.2 Director can hold other offices etc

A Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any, partner, director or employee of the auditor;

- (b) be a member of any corporation (including the Company) or partnership other than the Company's auditor; or
- (c) be a creditor of any corporation (including the Company) or partnership; or
- (d) enter into any agreement with the Company.

8.3 Disclosure of interests

Each Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of the Board (or that is proposed in a circular resolution) to the other Directors.

8.4 Director interested in a matter

- (a) Each Director who has a material personal interest in a matter that is being considered at a meeting of the Board (or that proposed in a circular resolution) must not, except as provided under rule 8.4(b):
 - (i) be present at the meeting while the matter is being discussed; or
 - (ii) vote on the matter.
- (b) A Director may be counted in a quorum at a Board meeting that considers, and votes on, any matter in which that Director has an interest.
- (c) The Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company.
- (d) The Director may retain benefits under the transaction even though the Director has the interest.
- (e) The Company cannot avoid the transaction merely because of the existence of the interest.

8.5 Agreements with third parties

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

8.6 Obligation of secrecy

Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:

- (a) in the course of duties as an officer of the Company;
- (b) by the Board or the Company in general meeting; or
- (c) by law.

The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

9. DIRECTORS' REMUNERATION

9.1 Payments to Directors

With the approval of the Board the Company may pay to a Director:

- (a) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director;
- (b) reasonable remuneration where the Director is an employee of the Company and the terms of employment have been approved by the Board;
- (c) interest on money lent by the Director to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (d) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business; and
- (e) reasonable rent for premises leased by the Director to the Company.

10. OFFICERS' INDEMNITY AND INSURANCE

10.1 Indemnity

Subject to and so far as permitted by Corporations Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law:

- (a) the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company and its wholly-owned subsidiaries and may indemnify its auditor against a Liability incurred as such an officer or auditor to a person (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

10.2 Insurance

Subject to the Corporations Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

10.3 Former officers

The indemnity in favour of officers under rule 10.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly-owned subsidiaries even though the person is not an officer at the time the claim is made.

10.4 Deeds

Subject to the Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law, the Company may, without limiting a person's rights under this rule 10, enter into an agreement with a

person who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this rule 10 on any terms and conditions that the Board thinks fit.

10.5 Directors' access to documents

- (a) A Director has a right of access to the financial records of the company at all reasonable times.
- (b) If the Board agree, the Company must give a Director or former director access to:
 - (i) certain documents, including documents provided for or available to the Board, and
 - (ii) any other documents referred to in those documents.

11. BOARD MEETINGS

11.1 Convening Board meetings

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

11.2 Notice of Board meeting

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director who is in Australia; and
- (b) may give that notice orally (including by telephone) or in writing,

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

11.3 Use of technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D of the Act. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the chairperson of the meeting is located.

11.4 Chairing Board meetings

The chairperson will chair Board meetings. If the chairperson is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the deputy chairperson will chair the Board meeting. If the deputy chairperson is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

11.5 Quorum

Unless the Board decides otherwise, the quorum for a Board meeting is a majority of Directors and a quorum must be present for the whole meeting. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D of the Corporations Act, the Board must resolve the basis on which Directors are treated as present.

11.6 Majority decisions

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. The chairperson of a Board meeting has a deliberative vote and a casting vote.

11.7 Procedural rules

The Board may adjourn and, subject to this document, otherwise regulate its meetings as it decides.

11.8 Written resolution

If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

11.9 Additional provisions concerning written resolutions

For the purpose of rule 11.8:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and
- (b) an electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

11.10 Valid proceedings

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

12. MEETINGS OF MEMBERS

12.1 Annual general meeting

- (a) The Company must hold an annual general meeting at least once in every calendar year.
- (b) Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
 - (i) a review of the Company's activities;
 - (ii) a review of the Company's finances;
 - (iii) any auditor's report; and
 - (iv) the appointment and payment of auditors, if any.
- (c) Before or at the annual general meeting, the Board must give information to the members, entitled to attend and vote at the meeting, on the company's activities and finances during the period since the last annual general meeting.

- (d) 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.

12.2 General meetings called by the Board

- (a) A general meeting may be convened at any time by the Board.
- (b) 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 Board must:
 - (i) within 21 days of the members' request, give all members notice of a general meeting; and
 - (ii) hold the general meeting within 2 months of the members' request.
- (c) The percentage of votes that members have is to be worked out as at midnight before the members request the meeting.
- (d) The members who make the request for a general meeting must:
 - (i) state in the request any resolution to be proposed at the meeting;
 - (ii) sign the request; and
 - (iii) give the request to the Company.
- (e) Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

12.3 General meetings called by members

- (a) If the Board do not call the meeting within 21 days of being requested under rule 12.2(b), 5% or more of the members who made the request may call and arrange to hold a general meeting.
- (b) To call and hold a meeting under rule 12.3(a) the members must:
 - (i) as far as possible, follow the procedures for general meetings set out in this document;
 - (ii) call the meeting using the list of members on the Company's member register, which the Company must provide to the members making the request at no cost; and
 - (iii) hold the general meeting within three months after the request was given to the Company.
- (c) 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 meeting.

12.4 Notice of meeting

Subject to rule 12.5, at least 21 days' written notice of a meeting of members must be given individually to:

- (a) each member (whether or not the member is entitled to vote at the meeting);
- (b) each Director; and
- (c) the auditor.

12.5 Short notice

- (a) Subject to rule 12.5(b), notice of a meeting may be provided less than 21 days before the meeting if:
 - (i) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand; or
 - (ii) for any other general meeting, members with at least 5% of the votes that may be cast at the meeting agree beforehand.
- (b) Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
 - (i) remove a director;
 - (ii) appoint a director in order to replace a director who was removed; or
 - (iii) remove an auditor.
- (c) Notice of a general meeting must include:
 - (i) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (ii) the general nature of the meeting's business;
 - (iii) if applicable, that a special resolution is to be proposed and the words of the proposed resolution;
 - (iv) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - (A) the proxy does not need to be a member of the Company;
 - (B) the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
 - (C) the proxy form must be delivered to the Company at least 48 hours before the meeting.

12.6 Postponement or cancellation

The Board may:

- (a) postpone a meeting of members;
- (b) cancel a meeting of members; or
- (c) change the place for a general meeting,

by written notice given individually to each person entitled to be given notice of the meeting.

12.7 Fresh notice

If a meeting of members is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

12.8 Technology

The Company may hold a meeting of members at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

12.9 Accidental omission

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of members.

13. PROCEEDINGS AT MEETINGS OF MEMBERS

13.1 Member present at meeting

If a member has appointed a proxy to act at a meeting of members, that member is taken to be present at a meeting at which the proxy is present.

13.2 Quorum

The quorum for a meeting of members is a simple majority of members entitled to attend and vote at the general meeting. Each individual member present may only be counted once toward a quorum. If a member has appointed more than one proxy only one of them may be counted towards a quorum.

13.3 Quorum not present

If a quorum is not present within 15 minutes after the time for which a meeting of members is called:

- (a) the meeting is adjourned to the day, time and place that the Board decides and notifies to members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
- (b) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

13.4 Chairing meetings of members

The chairperson will chair meetings of members. If the chairperson is not present within 15 minutes after the time for which a meeting is called or is unwilling to act, the deputy chairperson will chair the meeting. If the deputy chairperson is not present within 15 minutes after the time for which a meeting is called or is unwilling to act, the members present must elect a member or Director present to chair the meeting.

Attendance at general meetings

- (a) Every member has the right to attend all meetings of members.
- (b) Every Director has the right to attend and speak at all meetings of members.
- (c) The auditor has the right to attend any meeting of members and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

13.5 Adjournment

Subject to rule 12.7, the chairperson of a meeting of members at which a quorum is present:

- (a) may; and
- (b) must, if directed by ordinary resolution of the meeting,

adjourn it to another time and place.

13.6 Business at adjourned meetings

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

14. MEMBERS' RESOLUTIONS AND STATEMENTS

14.1 Members resolutions and statements

- (a) Members with at least 5% of the votes that may be cast on a resolution may give:
 - (i) written notice to the Company of a resolution they propose to move at a general meeting (**members' resolution**), and/or
 - (ii) 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**).
- (b) A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- (c) A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- (d) 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.
- (e) The percentage of votes that members have is to be worked out as at midnight before the request or notice is given to the company.
- (f) If the Company has been given notice of a members' resolution, the resolution must be considered at the next general meeting held more than two months after the notice is given.
- (g) This rule does not limit any other right that a member has to propose a resolution at a general meeting.

14.2 Company must give notice of proposed resolution or distribute statement

- (a) If the Company has been given a notice or request under rule 14.1:
 - (i) 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
 - (ii) 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.
- (b) The Company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
 - (i) it is more than 1,000 words long;
 - (ii) the directors consider it may be defamatory;

- (iii) rule 14.2(a)(ii) 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
- (iv) 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.

14.3 Circular resolutions of members

- (a) Subject to rule 14.3(b), the Directors may put a resolution to the members, entitled to vote, to pass a resolution without a general meeting being held (a circular resolution).
- (b) Circular resolutions cannot be used:
 - (i) for a resolution to remove an auditor, appoint a Director or remove a Director;
 - (ii) for passing a special resolution; or
 - (iii) where the Corporations Act or this document requires a meeting to be held.
- (c) A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in rule 14.3(d) or rule 14.3(e).
- (d) Members may sign:
 - (i) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - (ii) separate copies of that document, as long as the wording is the same in each copy.
- (e) 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.

15. ENTITLEMENT TO VOTE

15.1 Number of votes

Each member entitled to vote has one vote.

15.2 Casting vote of chairperson

If an equal number of votes is cast for and against a resolution at a meeting of members, the chairperson has a casting vote whether or not the chairperson is a member.

15.3 Decision on right to vote

A member or Director may challenge a person's right to vote at a meeting of members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairperson, whose decision is final.

16. HOW VOTING IS CARRIED OUT

16.1 Method of voting

A resolution put to the vote at a meeting of members must be decided on a show of hands unless a poll is demanded under rule 16.2 either before or on declaration of the result of the vote on a show

of hands. Unless a poll is demanded, the chairperson's declaration of a decision on a show of hands is final.

16.2 Demand for a poll

A poll may be demanded on any resolution (except a resolution concerning the election of the chairperson of a meeting) by:

- (a) at least a simple majority of the members entitled to vote on the resolution; or
- (b) the chairperson.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

16.3 When and how polls must be taken

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and in the manner that the chairperson of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place in the manner that the chairperson of the meeting directs;
- (c) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (d) the result of the poll is the resolution of the meeting at which the poll was demanded.

17. PROXIES

17.1 Appointment of proxies

- (a) A member entitled to vote at a general meeting may appoint a proxy to attend and act for the member at a meeting of members. An appointment of proxy must be made by written notice to the Company.
- (b) An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
 - (i) the member's name and address;
 - (ii) the Company's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the meeting(s) at which the appointment may be used.

17.2 Deposit of proxy appointment forms and proxy appointment authorities

An appointment of a proxy is not effective for a particular meeting of members unless the proxy appointment form is received by the Company at its registered office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the meeting is resumed.

17.3 Appointment for particular meeting, standing appointment and revocation

A member may appoint a proxy to act at a particular meeting of members or make a standing appointment and may revoke any appointment. A proxy may, but need not, be a member.

17.4 Position of proxy if member present

The appointment of a proxy is not revoked by the member attending and taking part in the general meeting, but if the member votes on a resolution, the proxy is not entitled to vote, and must not vote, as the member's proxy on the resolution.

17.5 More than one current proxy appointments

An appointment of proxy by a member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that member which would result in there being more than one proxy of that member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

17.6 Continuing authority

An act done at a meeting of members by a proxy is valid even if, before the act is done, the appointing member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up; or
- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

18. SECRETARY

18.1 Appointment of Secretary

The Board:

- (a) must appoint at least one individual; and
- (b) may appoint more than one individual,

to be a Secretary either for a specified term or without specifying a term.

18.2 Terms and conditions of office

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

18.3 Cessation of Secretary's appointment

The person automatically ceases to be a Secretary if the person:

- (a) is not permitted by Corporations Act to be a secretary of a company;

- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G of the Corporations Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 18.4.

18.4 Removal from office

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

19. MINUTES

19.1 Minutes must be kept

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 6);
- (d) resolutions passed by Directors without a meeting; and
- (e) disclosures and notices of Directors' interests.

19.2 Minutes as evidence

A minute recorded and signed in accordance with section 251A of the Act is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

19.3 Inspection of minute books

The Company must allow members to inspect, and provide copies of, the minute books for the meetings of members in accordance with section 251B of the Act.

20. COMPANY SEALS

20.1 Common seal

Unless and until decided otherwise, the Board has decided that the Company will not have a common seal. If the Board does decide a common seal is needed, the Board is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2) of the Corporations Act.

20.2 Use of seals

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123 of the Corporations Act.

20.3 Fixing seals to documents

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by two Directors; or
- (b) by one Director and one Secretary; or
- (c) by any other signatories or in any other way (including the use of electronic signatures) authorised by the Board.

21. FINANCIAL REPORTS AND AUDIT

21.1 Company must keep financial records

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

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
 - (b) would enable true and fair financial statements to be prepared and audited,
- and must allow a Director and the auditor to inspect those records at all reasonable times.

22. FINANCIAL YEAR

22.1 Company's financial year

The Company's financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

23. REGISTER OF MEMBERS

The Company must set up and maintain a register of members.

In accordance with section 169 of the Corporations Act, the Register must contain the following information:

- (a) the name and address of each member;
- (b) the date on which the entry of the member's name in the Register is made;
- (c) the name and details of each person who stopped being a member within the last seven years;
- (d) the date on which the person stopped being a member; and
- (e) an index of members' names if the Company has more than 50 members and the Register itself is not kept in a form that operates effectively as an index.

24. WINDING UP

24.1 Surplus assets not to be distributed to members

If the Company is wound up, any surplus assets must not be distributed to a member or a former member of the Company, unless that member or former member is a charity described in rule 24.2(a).

24.2 Distribution of surplus assets

- (a) Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets (including 'gift funds' defined in rule 24.2(d)) that remain after the Company is wound up must be distributed to one or more charities:
 - (i) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in rule 1.2;
 - (ii) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company, and
 - (iii) that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth).
- (b) The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the Company may apply to the Supreme Court to make this decision.
- (c) 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 24.2(a)(i), (ii) and (iii) as decided by the Board.
- (d) For the purpose of this rule:
 - (i) 'gift funds' means:
 - (A) gifts of money or property for the principal purpose of the Company;
 - (B) contributions made in relation to a fund-raising event held for the principal purpose of the Company; and
 - (C) money received by the Company because of such gifts and contributions.
 - (ii) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).

25. NOTICES

25.1 Notices by Company

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;

- (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address; or
- (iii) sent by electronic message to the electronic address (if any) nominated by that person.

25.2 Overseas members

A member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

25.3 When notice is given

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally:
 - (i) by 5.00 pm (local time in the place of receipt) on a business day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day;
- (b) if it is sent by electronic message:
 - (i) by 5.00 pm (local time in the place from which it is sent or given) on a business day – on that day; or
 - (ii) after 5.00 pm (local time in the place from which it is sent or given) on a business day, or on a day that is not a business day – on the next business day; and
- (c) if it is sent by mail:
 - (i) within Australia - three business day after posting; or
 - (ii) to a place outside Australia - five business days after posting.

A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

25.4 Business days

For the purposes of rule 25.3, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

25.5 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

25.6 Notices to "lost" members

If:

- (a) on two or more consecutive occasions a notice served on a member in accordance with this rule is returned unclaimed or with an indication that the member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a member is not at the address shown in the Register or notified to the Company under rule 25.2,

the Company may give effective notice to that member by exhibiting the notice at the Company's registered office for at least 48 hours.

This rule ceases to apply if the member gives the Company notice of a new address.