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Constitution

Down Syndrome Association of Queensland Ltd

1 Preliminary

1.1 Definitions

In this constitution:

Term	Definition
AGM	means an annual general meeting of the company that the Corporations Act requires to be held.
Business Day	means a day that is not a Saturday, Sunday or public holiday in Queensland.
Corporations Act	means <i>Corporations Act 2001</i> (Cth).
Down Syndrome	means the condition of down syndrome as the term is ordinarily used in the medical community of Australia.
Family Member	means the parent, legal guardian, primary carer, or sibling (who is over 18 years of age) of a person with Down Syndrome.

1.2 Interpretation

In this constitution:

- (a) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, or attorney;
- (b) a reference to a person holding or occupying a particular office or position is a reference to any person who occupies or performs the duties of that office or position;
- (c) unless the contrary intention appears:
 - (i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
 - (ii) a reference to a person includes that person's successors, legal personal representatives, permitted substitutes and permitted assigns;
 - (iii) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (iv) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (v) a reference to a rule is a reference to a rule of this constitution;

- (vi) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced; and
 - (vii) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day; and
- (d) headings are for convenience only and do not affect interpretation.

1.3 Application of the Corporations Act

- (a) The replaceable rules in the Corporations Act do not apply to the company.
- (b) Where an expression is used in a manner consistent with a provision of the Corporations Act, the expression has the same meaning as in that provision.

1.4 Exercising powers

- (a) The company may exercise any power, take any action or engage in any conduct which the Corporations Act permits a company limited by guarantee to exercise, take or engage in.
- (b) A power conferred on a person to do a particular act or thing under this constitution includes, unless the contrary intention appears, a power (exercisable in the same way and subject to the same conditions) to repeal, rescind, revoke, amend or vary that act or thing.
- (c) A power conferred under this constitution to do a particular act or thing:
 - (i) may be exercised from time to time and subject to conditions; and
 - (ii) may, where the power concerns particular matters, be exercised for only some of those matters or as to a particular class of those matters, and to make different provision concerning different matters or different classes of matters.
- (d) Where a power to appoint a person to an office or position is conferred under this constitution (except the power to appoint a director under rule 8) the power includes, unless the contrary intention appears, a power to:
 - (i) appoint a person to act in the office or position until a person is appointed to the office or position;
 - (ii) remove or suspend any person appointed (without prejudice to any rights or obligations under any contract between the person and the company); and
 - (iii) appoint another person temporarily in the place of any person removed or suspended or in the place of any sick or absent holder of the office or position.
- (e) Where this constitution gives power to a person to delegate a function or power:
 - (i) the delegation may be concurrent with, or (except in the case of a delegation by the directors) to the exclusion of, the performance or exercise of that function or power by the person;
 - (ii) the delegation may be either general or limited in any way provided in the terms of delegation;

- (iii) the delegation need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position;
 - (iv) the delegation may include the power to delegate; and
 - (v) where performing or exercising that function or power depends on that person's opinion, belief or state of mind about a matter, that function or power may be performed or exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.
- (f) For clarification, nothing restricts the company from exercising a power which in itself is not charitable, for any purpose which is incidental to the charitable objects of the company or which is intended to generate revenue for or otherwise further those objects.

2 Objects

2.1 Objects of company

- (a) The objects of the company are to provide support and services for the relief of persons with Down Syndrome and their families including by:
 - (i) providing services, support and information to people with Down Syndrome and their families;
 - (ii) supporting research related to Down Syndrome; and
 - (iii) raising awareness in the community and the medical profession of the needs and attributes of people with Down Syndrome.
- (b) To achieve these objects, the company may, without limitation:
 - (i) harness the resources of the community in support of the objects in rule 2.1(a);
 - (ii) establish and maintain affiliations and information exchange with other organisations having similar objects to those in rule 2.1(a);
 - (iii) act as trustee of any trust the purpose of which relates to the objects in rule 2.1(a);
 - (iv) promote the objects in rule 2.1(a); and
 - (v) do all other things incidental or conducive to the attainment of the objects in rule 2.1(a).

2.2 Separate objects

Each of the objects in rule 2.1 is a separate object of the company, and must not be construed by reference to any other object.

2.3 Exercise of powers to achieve objects

Nothing restricts the company from exercising a power which in itself is not charitable, for any purpose which is incidental to the charitable objects of the company or which is intended to generate revenue for, or otherwise further, those objects.

3 Not for profit

3.1 Promotion of the objects

The income and property of the company must only be applied towards promoting the company's objects set out in this constitution.

3.2 No income or property to a member

No income or property of the company may be paid or transferred, directly or indirectly, to a member except for payments to a member:

- (a) in return for services rendered by, or goods supplied, by the member to the company in the ordinary and usual course of business;
- (b) for reasonable and proper rent for premises leased by a member to the company; or
- (c) as principal payments on money lent by the member, and interest payments if the interest is at a commercial rate.

3.3 No income or property to a director

- (a) No income or property of the company may be paid or transferred, directly or indirectly, to a director on account of remuneration for services provided by the director in their capacity as a director.
- (b) All payments to directors must be approved by the directors including, but not limited to:
 - (i) out of pocket expenses incurred by a director in performing a duty as a director; and
 - (ii) a service rendered to the company by a director in a professional or technical capacity or as an employee, other than in the capacity as a director 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.

4 Membership

4.1 Members

- (a) The members are:
 - (i) the persons named as members with their consent in the application for registration of the company; and
 - (ii) any other persons the directors admit to membership under this constitution.
- (b) The number of members of the company is unlimited.

4.2 Classes

Until otherwise decided by the members in general meeting, the only class of membership is ordinary membership.

4.3 Application

- (a) Any individual who:
 - (i) is not less than 18 years of age at the date of application;
 - (ii) is either a person with Down Syndrome or a Family Member of a person with Down Syndrome; and
 - (iii) in the opinion of the board, is supportive of the objects of the company, may apply to be a member of the company.
- (b) An application for membership must be in a form approved by the board together with:
 - (i) any other documents or evidence as to qualification for membership that the board requires; and
 - (ii) any application fee and membership fee as required by the board.

4.4 Admission to membership

- (a) The board may in its absolute discretion accept or reject an application for membership.
- (b) The board need not give a reason for rejecting an application for membership.
- (c) If an application for membership is rejected, the secretary must:
 - (i) give written notice of the rejection to the applicant; and
 - (ii) refund any application fee and membership fee paid by the applicant, as soon as reasonably possible.
- (d) If an application for membership is accepted, the secretary must:
 - (i) give written notice of the acceptance to the applicant; and
 - (ii) enter the member's name and details in the register of members.

4.5 Notice by members

Each member must promptly notify the secretary in writing of:

- (a) any change in their qualification to be a member of the company; and
- (b) any change in their address or contact details.

4.6 Fees

The application fee and membership fee payable by a member are determined by the board from time to time.

4.7 Resignation and termination of membership

- (a) A member ceases to be a member if the member:
 - (i) no longer meets the qualification requirements;
 - (ii) resigns as a member by giving three months written notice to the company;
 - (iii) dies;
 - (iv) becomes bankrupt; or
 - (v) is terminated by the board under rule 4.7(b).
- (b) The board may terminate a member's membership if the member:
 - (i) fails to notify the Company of a change in address or contact details and is unable to be contacted at the address in the register for a period of two years;
 - (ii) has membership fees in arrears; or
 - (iii) has conducted himself or herself in a way the board considers to be injurious or prejudicial to the character or interests of the company.
- (c) The board must give the member written notice of its intention to terminate the member's membership and the reason for the proposed termination.
- (d) If the reason set out in the notice under rule 4.7(c) remains unresolved, in the opinion of the board, for one month after the date of the notice, the member's membership is terminated.
- (e) The rights or privileges of membership may be reinstated at the absolute discretion of the board.
- (f) Membership is personal to the member and is not transferable.

5 Winding up

5.1 Limited liability on winding up

- (a) If the company is wound up while a person is a member, or within one year after the person ceases to be a member, the person must contribute the guarantee amount to the assets of the company for the:
 - (i) payment of the debts and liabilities of the company contracted before the person ceased to be a member; and
 - (ii) costs of winding up.
- (b) Each member of the company agrees the guarantee amount under rule 5.1(a) is \$10.

5.2 No distribution of profits to members on winding up

- (a) Where property remains after the winding up or dissolution of the company and satisfaction of all its debts and liabilities, it must not be distributed among members.

- (b) If the company is wound up, subject to rule 5.2(c) any surplus assets must be given to another fund, authority or institution:
 - (i) that is charitable;
 - (ii) with objects similar to the objects of the company; and
 - (iii) whose constitution prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the company under this constitution.
- (c) If the company is endorsed as a deductible gift recipient then:
 - (i) upon the revocation of its endorsement as a deductible gift recipient; or
 - (ii) upon its winding up,

any surplus assets must be transferred to another fund, authority or institution that is charitable to which income tax deductible gifts can be made.
- (d) The fund, authority or institution to receive property under rule 5.2(b) or 5.2(c) must be decided by the directors at or before the time of the winding-up or dissolution. If the directors do not wish to decide, or do not decide, the members by ordinary resolution must decide. If the members do not decide, the decision must be referred to the Supreme Court of the state or territory in which the company's registered office is located.

6 Annual General Meeting

6.1 Annual general meeting

A general meeting, to be called the annual general meeting, must be held at least once in every calendar year (after the end of the first financial year).

6.2 Business at annual general meetings

- (a) The business of an annual general meeting is:
 - (i) if required by the Corporations Act, to receive and consider the financial and other reports required by the Corporations Act to be laid before each annual general meeting;
 - (ii) to elect directors;
 - (iii) if required by the Corporations Act, to appoint an auditor or reviewer; and
 - (iv) to transact any other business which, under this document, is required to be transacted at an annual general meeting.
- (b) All other business transacted at an annual general meeting and all business transacted at other general meetings is special business.
- (c) The auditor or reviewer, if any, and its representative may attend and be heard on any part of the business of a meeting concerning the auditor or reviewer. The auditor or reviewer, if any, or its representative, if present at the meeting, may be questioned by the members, as a whole, about the audit or review, if undertaken.

6.3 Provisions about general meetings apply to annual general meeting

The provisions of this constitution about general meetings apply, with necessary changes, to annual general meetings.

7 General meetings

7.1 Calling general meetings

A general meeting may only be called:

- (a) by a directors' resolution; or
- (b) as otherwise provided in the Corporations Act.

7.2 Postponing or cancelling a meeting

- (a) The directors may:
 - (i) postpone a meeting of members;
 - (ii) cancel a meeting of members; or
 - (iii) change the place for a general meeting,

if they consider that the meeting has become unnecessary, or the venue would be unreasonable or impractical or a change is necessary in the interests of conducting the meeting efficiently.

- (b) A meeting which is not called by a directors' resolution and is called under a members' requisition under the Corporations Act may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting.

7.3 Notice of general meetings

- (a) Notice of a general meeting must be given to each person who at the time of giving the notice is a member, director or auditor of the company.
- (b) The directors may decide the content of a notice of a general meeting, but the notice must include the general nature of the business to be transacted at the meeting and any other matters required by the Corporations Act.
- (c) Unless the Corporations Act provides otherwise:
 - (i) no business may be transacted at a general meeting unless the general nature of the business is stated in the notice calling the meeting; and
 - (ii) except with the approval of the directors or the chairman, no person may move any amendment to a proposed resolution the terms of which are set out in the notice calling the meeting or to a document which relates to that resolution and a copy of which has been made available to members to inspect or obtain.
- (d) A person may waive notice of any general meeting by written notice to the company.
- (e) Subject to rule 7.3(f), at least 21 days' notice must be given of a meeting of members.
- (f) The company may call a meeting on shorter notice:

- (i) if an AGM: when all the members entitled to attend and vote at the AGM agree beforehand; and
 - (ii) if any other general meeting: when members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (g) The company cannot call an AGM or other general meeting on shorter notice if it is a meeting at which a resolution will be moved to:
- (i) remove a director under section 203D of the Corporations Act or appoint a director in place of a director removed under that section; or
 - (ii) remove an auditor under section 329 of the Corporations Act.

7.4 Non-receipt of notice

- (a) Subject to the Corporations Act, the:
- (i) non-receipt of a notice of any general meeting by; or
 - (ii) accidental omission to give notice to,
- any person entitled to notice does not invalidate anything done (including the passing of a resolution) at that meeting.
- (b) A person's attendance at a general meeting waives any objection that person may have to:
- (i) a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
 - (ii) 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.

7.5 Admission to general meetings

- (a) The chairman of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:
- (i) in possession of a pictorial-recording or sound-recording device;
 - (ii) in possession of a placard or banner;
 - (iii) in possession of an article considered by the chairman to be dangerous, offensive or liable to cause disruption;
 - (iv) who refuses to produce or permit examination of any article, or the contents of any article, in the person's possession;
 - (v) who behaves or threatens to behave in a dangerous, offensive or disruptive way; or
 - (vi) who is not entitled to receive notice of the meeting.
- (b) The chairman may delegate the powers conferred by rule 7.5(a) to any person.

- (c) A person, whether a member or not, requested by the directors or the chairman to attend a general meeting is entitled to be present and, at the request of the chairman, to speak at the meeting.

7.6 Quorum at general meetings

- (a) No business may be transacted at a general meeting, except the election of a chairman and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum is where the number of members is:
 - (i) one, that member;
 - (ii) ten or less, two or more members present at the meeting and entitled to vote on a resolution at the meeting; and
 - (iii) more than ten, five or more members present at the meeting and entitled to vote on a resolution at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for the general meeting:
 - (i) where the meeting was called at the request of members, the meeting must be dissolved; or
 - (ii) in any other case:
 - (A) the meeting stands adjourned to the day, and at the time and place, the directors present decide; or
 - (B) if they do not make a decision, to the same day in the next week at the same time and place.
- (d) At an adjourned meeting, if a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

7.7 Chairman

- (a) The chairman of the board is entitled to take the chair at every general meeting.
- (b) If at any general meeting:
 - (i) the chairman of the board is not present at the specified time for holding the meeting; or
 - (ii) the chairman of the board is present but is unwilling to act as chairman of the meeting,the deputy chairman of the board is entitled to take the chair at the meeting.
- (c) If at any general meeting:
 - (i) there is no chairman of the board or deputy chairman of the board;
 - (ii) the chairman of the board and deputy chairman of the board are not present at the specified time for holding the meeting; or

- (iii) the chairman of the board and the deputy chairman of the board are present but each is unwilling to act as chairman of the meeting,

the directors present may choose another director as chairman of the meeting and if no director is present or if each of the directors present are unwilling to act as chairman of the meeting, a member chosen by the members present is entitled to take the chair at the meeting.

7.8 Acting Chairman

- (a) A chairman of a general meeting may, for any item of business or discrete part of the meeting, vacate the chair in favour of another person nominated by him or her (**Acting Chairman**).
- (b) Where an instrument of proxy appoints the chairman as proxy for part of the proceedings for which an Acting Chairman has been nominated, the instrument of proxy is taken to be in favour of the Acting Chairman for the relevant part of the proceedings.

7.9 Conduct at general meetings

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this rule is final.

7.10 Adjournment and postponement by the chairman

- (a) Despite rules 7.2(a) and 7.2(b), where the chairman considers that:
 - (i) there is not enough room for the number of members who wish to attend the meeting; or
 - (ii) a postponement is necessary in light of the behaviour of persons present or for any other reason so that the business of the meeting can be properly carried out,the chairman may postpone the meeting before it has started, whether or not a quorum is present.
- (b) A postponement under rule 7.10(a) is to another time, which may be on the same day as the meeting, and may be to another place (and the new time and place is taken to be the time and place for the meeting as if specified in the notice which called the meeting originally).
- (c) The chairman may at any time during the course of the meeting:
 - (i) adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting; and

- (ii) for the purpose of allowing any poll to be taken or determined, suspend the proceedings of the meeting for any period or periods he or she decides without effecting an adjournment – no business may be transacted and no discussion may take place during any suspension of proceedings unless the chairman otherwise allows.
- (d) The chairman’s rights under rules 7.10(a) and 7.10(c) are exclusive and, unless the chairman requires otherwise, no vote may be taken or demanded by the members present about any postponement, adjournment or suspension of proceedings.
- (e) Only unfinished business may be transacted at a meeting resumed after an adjournment.
- (f) Where a meeting is postponed or adjourned for 30 days or more, notice of the postponed or adjourned meeting must be given as in the case of the original meeting.

7.11 Decisions at general meetings

- (a) Except where 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. A decision made in this way is for all purposes, a decision of the members.
- (b) If the votes are equal on a proposed resolution, the chairman of the meeting has a casting vote (provided that the chairman is a member), in addition to any deliberative vote.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded:
 - (i) before the show of hands is taken;
 - (ii) before the result of the show of hands is declared; or
 - (iii) immediately after the result of the show of hands is declared.
- (d) Unless a poll is duly demanded, a declaration by the chairman 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 company’s minute book is conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.

7.12 When poll may be demanded

- (a) A poll may be demanded by:
 - (i) the chairman;
 - (ii) at least five members entitled to vote on the resolution; or
 - (iii) by members with at least 5% of the votes that may be cast on the resolution on a poll.
- (b) A demand for a poll does not prevent a general meeting continuing to transact any business except the question on which the poll is demanded.
- (c) If a poll is duly demanded at a general meeting, it must be taken in the way and either at once or after an interval or adjournment as the chairman of the meeting directs. The result of the poll as declared by the chairman is the resolution of the meeting at which the poll was demanded.

7.13 Voting rights

- (a) Subject to this constitution and to any rights or restrictions attached to any class of membership, at a general meeting:
 - (i) on a show of hands, each member present has one vote;
 - (ii) where a person is entitled to vote by virtue of rule 7.17 in more than one capacity, that person is entitled only to one vote on a show of hands;
 - (iii) if the person appointed as proxy has two or more appointments that specify different ways to vote on a resolution, the proxy must not vote on a show of hands; and
 - (iv) on a poll, each member present has one vote.
- (b) Where any of the membership fee or other amount payable to the company has not been duly paid that member is not entitled to vote.
- (c) A member is not entitled to vote on a resolution if, under the Corporations Act the notice which called the meeting specified that:
 - (i) the member must not vote or must abstain from voting on the resolution; or
 - (ii) a vote on the resolution by the member must be disregarded for any purposes.
- (d) If the member referred to in rule 7.13(c) or a person acting as proxy or attorney of that member does tender a vote on that resolution, their vote must not be counted.
- (e) An objection to the validity of a vote tendered at a general meeting must be:
 - (i) raised before or immediately after the result of the vote is declared; and
 - (ii) referred to the chairman of the meeting, whose decision is final.
- (f) A vote tendered, but not disallowed by the chairman of a meeting under rule 7.13(e), is valid for all purposes, even if it would not otherwise have been valid.
- (g) The chairman may decide any difficulty or dispute which arises as to the number of votes which may be cast by or on behalf of any member and the decision of the chairman is final.

7.14 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a general meeting may vote:
 - (i) in person;
 - (ii) by not more than one proxy; or
 - (iii) by not more than one attorney.
- (b) A proxy or attorney may, but need not, be a member of the company.

7.15 Class meetings

The provisions of this constitution about general meetings apply, with necessary changes, to separate class meetings as if they were general meetings.

7.16 Voting where the company has only one member

If the company has only one member, the company may pass a resolution by the member recording it and signing the record.

7.17 Voting where the member is of unsound mind

If a member is:

- (a) of unsound mind;
- (b) a patient under laws relating to mental health; or
- (c) whose estate is administered under the laws about mental health,

their trustee or guardian or other person who has the management of their property, may exercise the rights of the member at a general meeting as if the trustee or guardian or other person were the member. The trustee, guardian or other person must first give the directors the information they reasonably require to establish their entitlement to act on behalf of the member.

7.18 Appointment of proxies

- (a) Any member entitled to vote at a general meeting may appoint one proxy.
- (b) A proxy may be a member who is not entitled in their own right to vote on a particular resolution.
- (c) The document appointing a proxy must:
 - (i) be in the form approved by the board;
 - (ii) be signed by the appointor or his attorney;
 - (iii) set out the name of the person to be appointed as proxy;
 - (iv) allow the member to direct the proxy to vote for or against (or abstain from voting on) any proposed resolution;
 - (v) set out the period of appointment including whether it is valid only for stipulated meetings; and
 - (vi) be received by the Company at least 48 hours (or a lesser period as the board may decide and stipulate in the notice of meeting) before the time for holding the meeting or poll at which the person named in the document proposes to vote.
- (d) Unless otherwise specified or revoked a proxy appointment is valid:
 - (i) for 12 months after the date of its execution; and
 - (ii) for any adjournment of the meeting, as well as for the meeting to which it relates.
- (e) The proxy document is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy.

8 Directors

8.1 First directors

The names of the first directors are those persons named as directors in the application for registration of the company.

8.2 Directors

The board will consist of at least three and not more than nine directors:

- (a) at least three but not more than five directors, to be elected under rule 8.3;
- (b) up to two directors, appointed by the board for the term determined by the board, for their particular skills and experience; and
- (c) up to two directors, appointed by the board under rule 8.3A

8.3 Election of directors

The election of directors will occur as follows:

- (a) any ordinary member may nominate any qualified person to serve as a director;
- (b) no person is eligible for election as a director unless the nominee gives written consent;
- (c) the nomination and consent must be left at the Office at least 25 days, and at most 35 days, before the meeting;
- (d) the candidate's name (in alphabetical order) and the proposer's name must be forwarded to members with the notice of annual general meeting;
- (e) at the annual general meeting each member present and entitled to vote is entitled to cast a vote 'for' or 'against' the appointment of a named candidate for a vacant position for which they have nominated;
- (f) where the number of candidates is equal to or less than the number of available positions, no vote is necessary, and the candidates are automatically appointed to the positions for which they have nominated;
- (g) where the number of candidates exceeds the number of available positions, members are entitled to cast a vote 'for' or 'against' the appointment of each named candidate and the candidates receiving the highest number of votes 'for' are elected, in progressive order, until all vacant positions are filled; and
- (h) if there are insufficient nominations for available positions, the chairman may seek the nomination of candidates at the annual general meeting.

8.3A Appointment of Independent Directors

- (a) Subject to this Constitution, the Board may by resolution at a Board meeting appoint a natural person as an Independent Director.
- (b) An Independent Director is exempt from satisfying clause 4.3 (a) (ii) for Membership of the company.

- (c) The total number of Independent Directors (at all times) must not exceed 50% of the total number of Directors. In any event the maximum number of Independent Directors is 2.
- (d) That person holds office of a Director until the end of the next annual general meeting following their appointment and is eligible for election at that meeting.
- (e) All other clauses of this Constitution apply to Independent Directors as they would apply to Directors

8.4 Qualification for membership of the board

A director must be:

- (a) member of the company; and
- (b) in the opinion of the board, supportive of the objects of the company.

8.5 Retirement of directors

- (a) Each director must retire from office at the conclusion of the third year following his or her appointment as a director and, if eligible and nominated, may be re-elected.
- (b) Notwithstanding rule 8.5(a), the board may determine which of the directors, are to retire from time to time and, to the extent the law permits, the date of their retirement.

8.6 Term of appointment of Directors

- (a) A person must not hold the office of a Director for more than 3 consecutive periods of three (3) years, provided that where the Board determines that there are exceptional circumstances, a person may be re-appointed by the Company for a further period of up to three (3) years beyond that maximum period.
- (b) A person having held office as a Director for the maximum period specified above, is eligible to be appointed again once a period of three (3) years has expired since that person last held office as a Director.
- (c) A person must not hold the office of an Independent Director for more than 9 consecutive periods of one (1) year, provided that where the Board determines that there are exceptional circumstances, a person may be re-appointed by the Company for a further period of one (1) years beyond that maximum period.
- (d) A person having held office as an Independent Director for the maximum period specified above, is eligible to be appointed again once a period of three (3) years has expired since that person last held office as an Independent Director.

8.7 Resignation

A director may resign from the board by written notice delivered to the secretary. The resignation takes effect when the notice is received by the secretary, or on a later date specified in the notice.

8.8 Removal

- (a) A director may be removed from office by resolution of the members present and entitled to vote at a general meeting of the company convened for that purpose. At the meeting the director must be given the opportunity to present his or her case orally or in writing.
- (b) A director removed under rule 8.8(a) retains office until the dissolution or adjournment of the general meeting at which he or she is removed.

8.9 Vacating office

In addition to the circumstances prescribed by the Corporations Act and this constitution, the office of a director becomes vacant if the director:

- (a) becomes an insolvent under administration, suspends payment generally to creditors or compounds with or assigns the director's estate for the benefit of creditors;
- (b) is absent from meetings of the directors during a period of three consecutive calendar months without leave of absence from the directors where the directors have not, within 14 days of having been served by the secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
- (c) resigns office by written notice to the company;
- (d) is removed from office under the Corporations Act or any other relevant legislation;
- (e) is prohibited from being a director by reason of the operation of the Corporations Act or any other relevant legislation; or
- (f) is convicted on indictment of an offence and the directors do not within one month after that conviction resolve to confirm the director's appointment or election (as the case may be) to the office of director.

8.10 Casual vacancies

- (a) In addition to its power to appoint directors under rule 8.2(b), the board has power to appoint a qualified person as a director to fill a casual vacancy among the board.
- (b) Any person appointed under this rule holds office until the next general meeting.

8.11 Directors who are employees of the company

A director who is an employee of the company or any of its subsidiaries, ceases to be a director of the company upon the director ceasing to be employed (so that they are no longer employed by the company or any subsidiary of the company) but the person concerned is eligible for reappointment or re-election as a director of the company.

8.12 Directors who are unable to fulfil their duties due to illness or incapacity

- (a) A director may be removed from office by the board if the board resolves under its policy that the director is unable to fulfil their duties due to physical or mental illness or other incapacity.
- (b) The board will implement a policy about directors who are unable to fulfil their duties due to physical or mental illness or other incapacity for the purpose of making a determination under rule 8.12(a).

8.13 Directors interests

- (a) A director is not disqualified by reason only of being a director (or the fiduciary obligations arising from that office) from:
 - (i) holding an office (except auditor) or place of profit or employment in the company or a related body corporate of the company;
 - (ii) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the company or in which it has interest;
 - (iii) being a member, creditor or otherwise being interested in any body corporate (including the company), partnership or entity, except as auditor of the company;
 - (iv) entering into any agreement or arrangement with the company; or
 - (v) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the company, except as auditor of the company.
- (b) Each director must comply with the Corporations Act on the disclosure of the director's interests.
- (c) The directors may make regulations requiring the disclosure of interests that a director, and any person taken by the directors to be related to or associated with the director, may have in any matter concerning the company or a related body corporate. Any regulations made under this constitution bind all directors.
- (d) No act, transaction, agreement, instrument, resolution or other thing is invalid or voidable only because a person fails to comply with any regulation made under rule 8.13(c).
- (e) A director who has a material personal interest in a matter that is being considered by the directors must not be present at a meeting while the matter is being considered nor vote on the matter, except where permitted by the Corporations Act.
- (f) If a director has an interest in a matter, then subject to rules 8.13(c), 8.13(g) and the constitution:
 - (i) that director may not be counted in a quorum at the board meeting that considers the matter that relates to the interest;
 - (ii) that director may not participate in and vote on matters that relate to the interest;
 - (iii) the company can 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;
 - (iv) the director may retain the benefits under the transaction that relates to the interest even though the director has the interest; and
 - (v) the company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (g) If an interest of a director is required to be disclosed under rule 8.13(b), rule 8.13(f)(iv) applies only if the interest is disclosed before the transaction is entered into.

- (h) A contract or arrangement entered into by or on behalf of the company in which a director is in any way interested is not invalid or voidable merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (i) A director who is interested in any arrangement involving the company is not liable to account to the company for any profit realised under the arrangement merely because the director holds office as a director or because of the fiduciary obligations arising from that office, if the director complies with the disclosure requirements applicable to the director under rule 8.13(a) and under the Corporations Act about that interest.
- (j) A director who is interested in any contract or arrangement may, despite that interest, witness the fixing of the company seal to any document evidencing or otherwise connected with that contract or arrangement.

9 Powers and duties of directors

9.1 General powers

- (a) The directors are responsible for managing the business of the company and may exercise all powers and do all things that are within the company's power and are not expressly required by the Corporations Act or this constitution to be exercised by the company in a general meeting.
- (b) The board may make regulations, by-laws and policies consistent with the constitution, which in the opinion of the board are necessary or desirable for the proper control, administration and management of the company's finances, affairs and property, or are necessary for the convenience, comfort and well-being of the members (including the terms of entry of members to the company's premises and any event or function sponsored, promoted, facilitated or conducted by the company) and amend or rescind any regulations and by-laws.
- (c) A regulation, policy or by-law of the company made by the board may be disallowed by the company in a later general meeting. A resolution or regulation made by the company in general meeting cannot invalidate prior acts of the board which would have been valid if that resolution or regulation had not been passed or made.
- (d) A director is entitled to attend and speak at general meetings and at meetings of a class of members, even if he or she is not a member or a member of the relevant class.

9.2 Reservation of power

Despite rule 9.1, the company may not do the following without first passing a special resolution at a meeting of members (or circulating resolution) for approval beforehand:

- (a) enter into any partnership or joint venture with any other person or merge or amalgamate with any person; or
- (b) undertake any material financial restructuring of the company.

9.3 Power to borrow and give security

- (a) The directors may exercise all the powers of the company to:
 - (i) borrow or raise money in any other way;
 - (ii) charge mortgage or otherwise encumber any of the company's property or business or any of its property; and

- (iii) issue debentures or give any security for a debt, liability or obligation of the company or of any other person.
- (b) The directors may decide how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as applicable, by or on behalf of the company.

9.4 Powers of appointment

The directors may:

- (a) appoint or employ any person as an officer, agent or attorney of the company for the purposes, with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for any period and on any other conditions they decide;
- (b) authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney; and
- (c) remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.

10 Proceedings of directors meetings

10.1 Meetings of directors

- (a) The directors may meet together to attend to business and adjourn and otherwise regulate their meetings as they decide.
- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of directors to constitute a quorum, constitutes a meeting of the directors. All the provisions in this constitution relating to meetings of the directors apply, as far as they can and with any necessary changes, to meetings of the directors by telephone or other electronic means.
- (c) A meeting by telephone or other electronic means is to be taken to be held at the place where the chairman of the meeting is or at any other place the chairman of the meeting decides on, if at least one of the directors involved was at that place for the duration of the meeting.
- (d) A director taking part in a meeting by telephone or other electronic means is to be taken to be present in person at the meeting.
- (e) If, before or during the meeting, any technical difficulty occurs where one or more directors cease to participate, the chairman may adjourn the meeting until the difficulty is remedied or may, where a quorum of directors remains present, continue with the meeting.

10.2 Calling meetings of directors

- (a) A director may, whenever the director thinks fit, call a meeting of the directors.
- (b) A secretary must, if requested by a director, call a meeting of the directors.

10.3 Notice of meetings of directors

- (a) Notice of a meeting of directors must be given to each person who is, at the time the notice is given a director, except a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
 - (i) must specify the time and place of the meeting;
 - (ii) need not state the nature of the business to be transacted at the meeting;
 - (iii) may, if necessary, be given immediately before the meeting; and
 - (iv) may be given in person or by post or by telephone, fax or other electronic means.
- (c) A director may waive notice of a meeting of directors by giving notice to that effect in person or by post or by telephone, fax or other electronic means.
- (d) Failure to give a director notice of a meeting of directors does not invalidate anything done or any resolution passed at the meeting if:
 - (i) the failure occurred by accident or inadvertent error; or
 - (ii) the director attended the meeting or waived notice of the meeting (whether before or after the meeting).
- (e) A person who attends a meeting of directors waives any objection that person may have to a failure to give notice of the meeting.

10.4 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) Unless the directors decide otherwise, more than half of the directors constitute a quorum.
- (c) If there is a vacancy in the office of a director, the remaining directors may act. But, if their number is not sufficient to constitute a quorum, they may act only in an emergency or to increase the number of directors to a number sufficient to constitute a quorum or to call a general meeting of the company.

10.5 Chairman and deputy chairman of directors

- (a) The directors may elect, for any period they decide:
 - (i) a director to the office of chairman of directors; and
 - (ii) may elect one or more directors to the office of deputy chairman of directors.
- (b) The chairman of directors is entitled (if present within ten minutes after the time appointed for the meeting and willing to act) to preside as chairman at a meeting of directors.

- (c) If at a meeting of directors:
 - (i) there is no chairman of directors;
 - (ii) the chairman of directors is not present within ten minutes after the time appointed for the holding of the meeting; or
 - (iii) the chairman of directors is present within that time but is not willing or declines to act as chairman of the meeting,

the deputy chairman if any, if then present and willing to act, is entitled to be chairman of the meeting or if the deputy chairman is not present or is unwilling or declines to act as chairman of the meeting, the directors present must elect one of themselves to chair the meeting.

10.6 Decisions of directors

- (a) The directors, at a meeting at which a quorum is present, may exercise any authorities, powers and discretions vested in or exercisable by the directors under this constitution.
- (b) Questions arising at a meeting of directors must be decided by a majority of votes cast by the directors present and entitled to vote on the matter.
- (c) Subject to rule 10.6(d), if the votes are equal on a proposed resolution, the chairman of the meeting has a casting vote, in addition to his or her deliberative vote.
- (d) Where only two directors are present or entitled to vote at a meeting of directors and the votes are equal on a proposed resolution:
 - (i) the chairman of the meeting does not have a second or casting vote; and
 - (ii) the proposed resolution is taken as lost.

10.7 Written resolutions

- (a) A resolution in writing of which notice has been given to all directors and which is signed or consented to by all of the directors entitled to vote on the resolution is as valid and effectual as if it had been passed at a meeting of the directors duly called and constituted and may consist of several documents in the same form, each signed or consented to by one or more of the directors.
- (b) A director may consent to a resolution by:
 - (i) signing the document containing the resolution (or a copy of that document);
 - (ii) giving to the company a written notice (including by fax or other electronic means) addressed to the secretary or to the chairman of directors signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
 - (iii) telephoning the secretary or the chairman of directors and signifying assent to the resolution and clearly identifying its terms.

10.8 Committees of directors

- (a) The directors may delegate their powers to a committee of directors.

- (b) The committee must exercise the powers delegated in accordance with any directions of the directors.
- (c) The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of directors, except to the extent they are contrary to any direction given under rule 10.8(b).

10.9 Appointment of advisory group

- (a) The directors may establish an advisory group. The directors may appoint and remove members of the advisory group and terminate an advisory group at any time.
- (b) The functions of the advisory group will be decided by the directors.
- (c) The directors may specify:
 - (i) the manner in which proceedings of an advisory group are conducted;
 - (ii) the matters which the advisory group must consider in carrying out its functions; and
 - (iii) any other matters concerning the advisory group or its functions that the directors decide.
- (d) For the avoidance of doubt, an advisory group established under rule 10.9(a) will not be delegated with any power of the board.

10.10 Delegation to a director

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

10.11 Validity of acts

All acts done at any meeting of the directors or by a committee or by any person acting as a director are, notwithstanding that it is afterwards discovered:

- (a) that there was some defect in the appointment of any of the directors; or
- (b) the committee or the person acting as a director or that any of them were disqualified,

valid as if every person had been duly appointed and was qualified and continued to be a director or a member of the committee (as the case may be).

11 Secretary and Executive officer

11.1 Secretary

- (a) The company must have at least one secretary appointed by the directors.
- (b) The directors may suspend or remove a secretary from that office.

11.2 Executive officers

- (a) The directors may appoint an executive officer for a period, at the remuneration and on the conditions the directors decide.
- (b) The remuneration payable by the company to an executive officer must not include a commission on, or percentage of, operating revenue.
- (c) The directors may:
 - (i) delegate to an executive officer any powers, discretions and duties they decide;
 - (ii) withdraw, suspend or vary any of the powers, discretions and duties given to an executive officer; and
 - (iii) authorise the executive officer to delegate any of the powers, discretions and duties given to the executive officer.
- (d) An act done by a person acting as an executive officer is not invalidated by:
 - (i) a defect in the person's appointment as an executive officer;
 - (ii) the person being disqualified to be an executive officer; or
 - (iii) the person having vacated office,if the person did not know that circumstance when the act was done.

12 Indemnity and insurance

12.1 Officer's right of indemnity

Rules 12.2 and 12.4 apply:

- (a) to each person who is or has been a director, secretary or executive officer of the company;
- (b) to any other officers or former officers of the company or of its related bodies corporate as the directors in each case determine; and
- (c) if the directors so determine, to any auditor or former auditor of the company or of its related bodies corporate,

each an **Officer** for the purposes of this rule.

12.2 Indemnity

The company must indemnify each Officer on a full indemnity basis and to the full extent permitted by law against all losses, liabilities, costs, charges and expenses (**Liabilities**) incurred by the Officer as an officer of the company or of a related body corporate.

12.3 Scope of indemnity

The indemnity in rule 12.2:

- (a) does not operate in respect of any Liability of the Officer to the extent that Liability is covered by insurance;

- (b) is enforceable without the Officer having to first incur any expense or make any payment; and
- (c) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer or auditor of the company or its related bodies corporate.

12.4 Insurance

The company may, to the extent the law permits:

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

for each Officer against any Liability incurred by the Officer as an officer or auditor of the company or of a related body corporate including, but not limited to:

- (c) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (d) a Liability arising from negligence or other conduct.

12.5 Savings

Nothing in rule 12.2 or 12.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any Liability referred to in those rules;
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom those rules do not apply; or
- (c) limits or diminishes the terms of any indemnity conferred or agreement to indemnify entered into before the adoption of this constitution.

12.6 Contract

The company may enter into an agreement with any Officer to give effect to the rights conferred by this rule or the exercise of a discretion under this rule on any terms as the directors think fit which are not inconsistent with this rule.

13 Minutes

13.1 Contents of minutes

The board must ensure that minutes are duly recorded in any manner it thinks fit and include:

- (a) the names of the directors present at each meeting of the company, the board and of committees; and
- (b) details of all resolutions and proceedings of general meetings of the company and of meetings of the board and committees.

13.2 Signing of minutes

The minutes of a meeting of the board or of a committee or of the company, if signed by the chairman of the meeting or by the chairman of the next meeting, are prima facie evidence of the matters stated in the minutes.

14 Inspection of records

14.1 Inspection by member

Except as provided by law, this constitution or as authorised by a directors' resolution, a person who is not a director does not have the right to inspect any of the board papers, books, records or documents of the company.

14.2 Access by director

The company may enter into contracts, and procure that its subsidiaries enter into contracts, on any terms the directors think fit, to grant a director or former director continuing access for a specified period after the director ceases to be a director to board papers, books, records and documents of the company which relate to the period during which the director or former director was a director of the company.

15 Seal

15.1 Safe custody of seal

The company may have a common seal, in which case the directors must provide for the safe custody of the seal and any duplicate common seal.

15.2 Use of seal

If the company has a common seal or duplicate common seal:

- (a) it may only be used with the authority of the directors; and
- (b) every document to which it is affixed must be signed by a director and countersigned by:
 - (i) a second director;
 - (ii) the secretary; or
 - (iii) by a person appointed by the directors for the purpose.

16 Notices

16.1 Method of service

- (a) The company may give a notice to a member by:
 - (i) delivering it personally;
 - (ii) sending it by prepaid post to the member's address in the register of members or any other address the member gives the company for notices; or

- (iii) sending it by fax or other electronic means to the fax number or electronic address the member gives the company for notices.
- (b) Where a member does not have a registered address or where the company believes that member is not known at the member's registered address, all notices are taken to be:
 - (i) given to the member if the notice is exhibited in the company's registered office for a period of 48 hours; and
 - (ii) served at the commencement of that period,unless and until the member informs the company of the member's address.

16.2 Time of service

- (a) A notice from the company properly addressed and posted is taken to be given and received on the day after the day of its posting.
- (b) A notice sent or given by fax or other electronic transmission:
 - (i) is taken to be effected by properly addressing and transmitting the fax or other electronic transmission; and
 - (ii) is taken to have been given and received on the day of its transmission.
- (c) Where a given number of days notice or notice extending over any other period must be given, the day of service is not to be counted in the number of days or other period.

16.3 Evidence of service

A certificate signed by a director or secretary stating that a notice has been given under this constitution is conclusive evidence of that fact.

16.4 Other communications and documents

Rules 16.1 to 16.3 (inclusive) apply, so far as they can and with any necessary changes, to serving any communication or document.

17 General

17.1 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the state or territory in which the company is taken to be registered for the purposes of the Corporations Act, the Federal Court of Australia and the courts which may hear appeals from those courts.

17.2 Prohibition and enforceability

Any part of this constitution which is prohibited or unenforceable in any place is, in that place, ineffective only to the extent of that prohibition or unenforceability.

17.3 Amendment to the constitution

Any amendment to this constitution must be approved by a special resolution of the members.