

CONSTITUTION OF KOTO International Limited

Australian Company Number (ACN) 127 148 494
Australian Business Number (ABN) 89 937 994 292

A company limited by guarantee

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Preliminary

1. Name of the company

The name of the **company** is KOTO International Limited (the **company**).

2. Type of company

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

3. Limited liability of members

The liability of **members** is limited to the amount of the guarantee in clause 4.

4. The guarantee

Each **member** must contribute an amount not more than \$10 (the guarantee) to the property of the **company** if the **company** is wound up while the **member** is a **member**, or within 12 months after they stop being a **member**, and this contribution is required to pay for the:

- (a) debts and liabilities of the **company** incurred before the **member** stopped being a **member**; or
- (b) costs of winding up.

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 75 and 77.

Charitable purposes and powers

6. Objects

The **company's** object is to provide benevolent relief to persons suffering from poverty, distress, sickness, disability, destitution, suffering, misfortune or helplessness, including by:

- (a) assisting at-risk, impoverished and disadvantaged youth in Vietnam by making available vocational and life skills training, healthcare, clothing, accommodation and food; and
- (b) to do such other things as are incidental or conducive to the attainment of the **company's** objects, including the establishment of a public fund.

7. Powers

Subject to clause 8, the **company** has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:

- (a) the powers of an individual; and
- (b) all the powers of a **company** limited by guarantee under the **Corporations Act**.

8. Not-for-profit

- 8.1 The **company** must not distribute any income or assets directly or indirectly to its **members**, except as provided in clauses 8.3 and 72.
- 8.2 The income and assets of the **company** shall be applied solely to further its purpose(s) in clause 6.
- 8.3 Clause 8.1 does not stop the **company** from doing the following things, provided they are done in good faith:
 - (a) paying a **member** for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**; or
 - (b) making a payment to a **member** in carrying out the **company's** charitable purpose(s).

9. Amending the constitution

- 9.1 Subject to clause 9.2, the **members** may amend this constitution by passing a **special resolution**.
- 9.2 While the **company** is a **registered charity**, the **members** must not pass a **special resolution** that amends this constitution if passing it causes the **company** to no longer be a charity.

Members

10. Membership and register of members

- 10.1 The **members** are:
 - (a) the **members** at the date of adoption of this constitution; and
 - (b) any other person that the directors allow to be a **member**, in accordance with this constitution.
- 10.2 The **company** must establish and maintain a **register of members**. The **register of members** must be kept by the secretary and must contain:

- (a) for each current **member**:
 - i. name;
 - ii. address;
 - iii. any alternative address nominated by the **member** for the service of notices; and
 - iv. date the **member** was entered on to the register.
- (b) for each person who stopped being a **member** in the last 7 years:
 - i. name;
 - ii. address;
 - iii. any alternative address nominated by the **member** for the service of notices; and
 - iv. dates the membership started and ended.

10.3 The **company** must give current **members** access to the **register of members**.

10.4 Information that is accessed from the **register of members** must only be used in a manner relevant to the interests or rights of **members**.

11. Who can be a member

To be eligible to apply to be a member under clause 12, a person must:

- (a) support the purposes of the **company**;
- (b) consent in writing to become a **member**; and
- (c) agree to comply with the **company**'s constitution, including paying the guarantee amount under clause 4 if required.

12. How to apply to become a member

A person may apply to become a **member** by completing an application for membership:

- (a) in such form as the directors may from time to time prescribe, signed by the applicant and returned to the **company** as directed on the form; and
- (b) accompanied by the membership fee (if any) prescribed by the directors.

13. Directors decide whether to approve membership

13.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.

- 13.2 If the directors approve an application, the secretary must as soon as possible:
- (a) enter the new **member** on the **register of members**; and
 - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).
- 13.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.

14. When a person becomes a member

An applicant will become a **member** when they are entered on the **register of members**.

15. Membership terms

- 15.1 From the date of adoption of this constitution, **members** are admitted for a term of 3 years ending on 30 June following the third anniversary of each **member's** date of admission or last renewal as a **member**.
- 15.2 At the end of each term of membership, each **member** may reapply for membership. The renewal process must be made in accordance with the process prescribed by the directors at the relevant time.
- 15.3 The requirement in this clause 15 to renew membership does not apply to a **member** who is a director.

16. Membership fees

The **members** must pay such membership fees as prescribed from time to time by the directors.

17. When a person stops being a member

A person immediately stops being a **member** if they:

- (a) die;
- (b) are wound up or otherwise dissolved or deregistered (for an incorporated **member**);
- (c) resign, by writing to the secretary having immediate effect or with effect from a specified date in the notice;
- (d) fail to pay any fee that may be prescribed by the directors from time to time within 12 months after the fee was due and payable;
- (e) do not have **legal capacity**;

- (f) are expelled under clause 19; or
- (g) expire their membership upon the end of the 3 year term of membership, unless the **member** had applied for and been readmitted as a **member** for the following term as contemplated in clauses 12 and 13; or
- (h) cease to be a director.

Dispute resolution and disciplinary procedures

18. Dispute resolution

- 18.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a **member** or director and:
- (a) one or more **members**;
 - (b) one or more directors; or
 - (c) the **company**.
- 18.2 A **member** must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 19 until the disciplinary procedure is completed.
- 18.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 18.4 If those involved in the dispute do not resolve it under clause 18.3, they must within 10 days:
- (a) tell the directors about the dispute in writing;
 - (b) agree or request that a mediator be appointed; and
 - (c) attempt in good faith to settle the dispute by mediation.
- 18.5 The mediator must:
- (a) be chosen by agreement of those involved; or
 - (b) where those involved do not agree:
 - i. for disputes between **members**, a person chosen by the directors; or
 - ii. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **company** has its registered office.

- 18.6 A mediator chosen by the directors under clause 18.5(b)(i):
- (a) may be a **member** or former **member**;
 - (b) must not have a personal interest in the dispute; and
 - (c) must not be biased towards or against anyone involved in the dispute.
- 18.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;
 - (b) allow those involved a reasonable chance to review any written statements;
 - (c) ensure that those involved are given natural justice; and
 - (d) not make a decision on the dispute.

19. Disciplining members

- 19.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a **member** from the **company** if the directors consider that:
- (a) the **member** has breached this constitution; or
 - (b) the **member's** behaviour is causing, has caused, or is likely to cause harm to the **company**.
- 19.2 At least 14 days before the directors' meeting at which a resolution under clause 19.1 will be considered, the secretary must notify the **member** in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the **member**;
 - (b) that this resolution will be considered at a directors' meeting and the date of that meeting;
 - (c) what the **member** is said to have done or not done;
 - (d) the nature of the resolution that has been proposed; and
 - (e) that the **member** may provide an explanation to the directors, and details of how to do so.
- 19.3 Before the directors pass any resolution under clause 19.1, the **member** must be given a chance to explain or defend themselves by:
- (a) sending the directors a written explanation before that directors' meeting; and/or
 - (b) speaking at the meeting.

- 19.4 After considering any explanation under clause 19.3, the directors may:
- (a) take no further action;
 - (b) warn the **member**;
 - (c) suspend the **member's** rights as a **member** for a period of no more than 12 months;
 - (d) expel the **member**;
 - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause); or
 - (f) require the matter to be determined at a **general meeting**.
- 19.5 The directors cannot fine a **member**.
- 19.6 The secretary must give written notice to the **member** of the decision under clause 19.4 as soon as possible.
- 19.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 19.8 There will be no liability for any loss or injury suffered by the **member** as a result of any decision made in good faith under this clause.

General meetings of members

20. General meetings called by directors

- 20.1 The directors may call a **general meeting**.
- 20.2 If **members** with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held, the directors must:
- (a) within 21 days of the **members'** request, give all **members** notice of a **general meeting**; and
 - (b) hold the **general meeting** within 2 months of the **members'** request.
- 20.3 The percentage of votes that **members** have (in clause 20.2) is to be worked out as at midnight before the **members** request the meeting.
- 20.4 The **members** who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting;
 - (b) sign the request; and

(c) give the request to the **company**.

20.5 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.

21. General meetings called by members

21.1 If the directors do not call the meeting within 21 days of being requested under clause 20.2, 50% or more of the **members** who made the request may call and arrange to hold a **general meeting**.

21.2 To call and hold a meeting under clause 21.1, the **members** must:

- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution;
- (b) call the meeting using the list of **members** on the **company's register of members**, which the **company** must provide to the **members** making the request at no cost; and
- (c) hold the **general meeting** within three months after the request was given to the **company**.

21.3 The **company** must pay the **members** who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.

22. Annual general meeting

22.1 A **general meeting**, called the annual **general meeting**, must be held at least once in every calendar year.

22.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:

- (a) a review of the **company's** activities;
- (b) a review of the **company's** finances;
- (c) any auditor's report;
- (d) the election of directors; and
- (e) the appointment and payment of auditors (if any).

22.3 Before or at the annual **general meeting**, the directors must give information to the **members** on the **company's** activities and finances during the period since the last annual **general meeting**.

- 22.4 The chairperson of the annual **general meeting** must give **members** as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

23. Notice of general meetings

- 23.1 Notice of a **general meeting** must be given to:
- (a) each **member** entitled to vote at the meeting;
 - (b) each director; and
 - (c) the auditor (if any).
- 23.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 23.3 Subject to clause 23.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual **general meeting**, all the **members** entitled to attend and vote at the annual **general meeting** agree beforehand; or
 - (b) for any other **general meeting**, **members** with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 23.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director;
 - (b) appoint a director in order to replace a director who was removed; or
 - (c) remove an auditor.
- 23.5 Notice of a **general meeting** must include:
- (a) the place, date and time for the meeting;
 - (b) the details of any **virtual meeting technology** that will be used in holding the meeting (if any);
 - (c) the general nature of the meeting's business;
 - (d) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution;
 - (e) a statement that **members** have the right to appoint proxies and that, if a **member** appoints a proxy:
 - i. the proxy does not need to be a **member**;

- ii. 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
- iii. the proxy form must be delivered to the **company** at least 48 hours before the meeting.

23.6 If a **general meeting** is adjourned (put off) for one month or more, the **members** must be given new notice of the resumed meeting.

24. Quorum at general meetings

24.1 For a **general meeting** to be held, at least **2 members** (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one **member**).

24.2 No business may be conducted at a **general meeting** if a quorum is not present.

24.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:

- (a) if the date is not specified – the same day in the next week;
- (b) if the time is not specified – the same time; and
- (c) if the place is not specified – the same place.

24.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

25. Auditor's right to attend meetings

25.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the **members** on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

25.2 The **company** must give the auditor (if any) any communications relating to the **general meeting** that a **member** is entitled to receive.

26. Representatives of members

26.1 An incorporated **member** may appoint as a representative:

- (a) one individual to represent the **member** at meetings and to sign circular resolutions under clause 33; and

- (b) the same individual or another individual for the purpose of being appointed or elected as a director.

26.2 The appointment of a representative by a **member** must:

- (a) be in writing;
- (b) include the name of the representative;
- (c) be signed on behalf of the **member**; and
- (d) be given to the **company** or, for representation at a meeting, be given to the chairperson before the meeting starts.

26.3 A representative has all the rights of a **member** relevant to the purposes of the appointment as a representative.

26.4 The appointment may be standing (ongoing).

27. Using technology to hold meetings

27.1 The **company** may hold a **general meeting** using any **virtual meeting technology** that gives the **members**, as a whole, a reasonable opportunity to participate without being physically present in the same place.

27.2 Anyone using this **virtual meeting technology** is taken to be present in person at the meeting.

28. Chairperson for general meetings

28.1 The **elected chairperson** is entitled to chair **general meetings**.

28.2 The **members** present and entitled to vote at a **general meeting** may choose a director or **member** to be the chairperson for that meeting if:

- (a) there is no **elected chairperson**; or
- (b) the **elected chairperson** is not present within 30 minutes after the starting time set for the meeting; or
- (c) the **elected chairperson** is present but says they do not wish to act as chairperson of the meeting.

29. Role of the chairperson

29.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give **members** a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).

29.2 The chairperson does not have a casting vote.

30. Adjournment of meetings

- 30.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **members present** direct the chairperson to adjourn it.
- 30.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

31. Members' resolutions and statements

- 31.1 **Members** with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the **company** of a resolution they propose to move at a **general meeting**; and/or
 - (b) a written request to the **company** that the **company** give all of its **members** a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting**.
- 31.2 A notice of a **members' resolution** must set out the wording of the proposed resolution and be signed by the **members** proposing the resolution.
- 31.3 A request to distribute a **members' statement** must set out the statement to be distributed and be signed by the **members** making the request.
- 31.4 Separate copies of a document setting out the notice or request may be signed by **members** if the wording is the same in each copy.
- 31.5 The percentage of votes that **members** have (as described in clause 31.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 31.6 If the **company** has been given notice of a **members' resolution** under clause 31.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 31.7 This clause does not limit any other right that a **member** has to propose a resolution at a **general meeting**.

32. Company must give notice of proposed resolution or distribute statement

- 32.1 If the **company** has been given a notice or request under clause 31:
- (a) in time to send the notice of proposed **members' resolution** or a copy of the **members' statement** to **members** with a notice of meeting, it must do so at the **company's** cost; or
 - (b) too late to send the notice of proposed **members' resolution** or a copy of the **members' statement** to **members** with a notice of meeting, then the **members**

who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving **members** notice of the proposed **members' resolution** or a copy of the **members' statement**. However, at a **general meeting**, the **members** may pass a resolution that the **company** will pay these expenses.

- 32.2 The **company** does not need to send the notice of proposed **members' resolution** or a copy of the **members' statement** to **members** if:
- (a) it is more than 1 000 words long;
 - (b) the directors consider it may be defamatory;
 - (c) clause 32.1(b) applies, and the **members** who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed **members' resolution** or a copy of the **members' statement** to **members**; or
 - (d) in the case of a proposed **members' resolution**, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the **members**.

33. Circular resolutions of members

- 33.1 Subject to clause 33.3, the directors may put a resolution to the **members** to pass a resolution without a **general meeting** being held (a **circular resolution**).
- 33.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to **members**, and set out the wording of the resolution.
- 33.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director under section 203D;
 - (b) for passing a **special resolution**; or
 - (c) where the **Corporations Act** or this constitution requires a meeting to be held.
- 33.4 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 clause 33.5 or clause 33.6.
- 33.5 **Members** may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording is the same in each copy.

- 33.6 The **company** may send a circular resolution by email to **members** and **members** may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at general meetings

34. How many votes a member has

Each **member** has one vote.

35. Challenge to member's right to vote

- 35.1 A **member** or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 35.2 If a challenge is made under clause 35.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

36. How voting is carried out

- 36.1 At any **general meeting**, voting must be conducted and decided by:
- (a) a show of hands; or
 - (b) where the meeting is being conducted by **virtual meeting technology**, another method chosen by the chairperson that is fair and reasonable in the circumstances,
- unless a vote in writing is properly demanded under clause 37 and the demand is not withdrawn.
- 36.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 36.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 36.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

37. When and how a vote in writing must be held

- 37.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five **members present**;
 - (b) **members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or

- (c) the chairperson.
- 37.2 A vote in writing must be taken when and how the chairperson directs, unless clause 37.3 applies.
- 37.3 A vote in writing must be held immediately if it is demanded under clause 37.1:
 - (a) for the election of a chairperson under clause 28.2; or
 - (b) to decide whether to adjourn the meeting.
- 37.4 A demand for a vote in writing may be withdrawn.

38. Appointment of proxy

- 38.1 A **member** may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 38.2 A proxy does not need to be a **member**.
- 38.3 A proxy appointed to attend and vote for a **member** has the same rights as the **member** to:
 - (a) speak at the meeting;
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment); and
 - (c) join in to demand a vote in writing under clause 37.1.
- 38.4 An appointment of proxy (proxy form) must be signed by the **member** appointing the proxy and must contain:
 - (a) the **member's** name and address;
 - (b) the **company's** name;
 - (c) the proxy's name or the name of the office held by the proxy; and
 - (d) the meeting(s) at which the appointment may be used.
- 38.5 A proxy appointment may be standing (ongoing).
- 38.6 Proxy forms must be received by the **company** at:
 - (a) the address stated in the notice under clause 23.5(e);
 - (b) at the **company's** registered address;

- (c) such other place within the state or territory in which the **company** has its registered office, or to an email address, as is specified for that purpose in the notice convening the meeting; or
- (d) any other means provided by the **Corporations Act**, as is specified for that purpose in the notice convening the meeting,

not less than 48 hours before the time for holding the meeting or adjourned meeting or, in the case of a vote in writing, not less than 24 hours before the time appointed for the taking of the vote in writing. Documents received after this time will not be treated as valid.

38.7 The **company** receives a document referred to in clause 38.6:

- (a) if the document is given by electronic means in accordance with the **Corporations Act** and as specified for that purpose in the notice convening the meeting, when the document is received by the **company** as prescribed by the regulations to the **Corporations Act**; and
- (b) otherwise, when the document is received at:
 - i. the **company's** registered office; or
 - ii. a place specified for the purpose in the notice of meeting.

38.8 A proxy does not have the authority to speak and vote for a **member** at a meeting while the **member** is at the meeting.

38.9 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing **member**:

- (a) dies;
- (b) is mentally incapacitated;
- (c) revokes the proxy's appointment; or
- (d) revokes the authority of a representative or agent who appointed the proxy.

38.10 A proxy appointment may specify the way the proxy must vote on a particular resolution.

39. Voting by proxy

39.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a **member** appointed as a proxy from voting as a **member** on a show of hands).

39.2 When a vote in writing is held, a proxy:

- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;

- (b) if the way they must vote is specified on the proxy form, must vote that way; and
- (c) if the proxy is also a **member** or holds more than one proxy, may cast the votes held in different ways.

Directors

40. Number of directors

The number of directors must be such number between 3 and 9 as the **members** determine. In the absence of any such determination, the number of directors will be 7.

41. Election and appointment of directors

41.1 The **members** may, at a **general meeting** at which:

- (a) a director retires or otherwise vacates office; or
 - (b) a director vacancy exists by operation of clause 40 or otherwise,
- by resolution fill the vacated office by electing an individual to that office.

41.2 Each of the directors must be appointed by a separate resolution, unless:

- (a) the **members** present have first passed a resolution that the appointments may be voted on together; and
- (b) no votes were cast against that resolution.

41.3 A person is eligible for election as a director of the **company** if they:

- (a) are a **member**, or a representative of a **member** (appointed under clause 26);
- (b) are nominated by two **members** or representatives of **members** entitled to vote (unless the person was previously elected as a director at a **general meeting** and has been a director since that meeting);
- (c) give the **company** their signed consent to act as a director of the **company**; and
- (d) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.

41.4 Where a person is seeking election at a **general meeting** for the first time, the signed consent must be lodged at the **company's** registered office at least 28 days (or such other period as determined by the directors) before the date fixed for the holding of the **general meeting**.

- 41.5 In the event that it is required under a law, regulation or guideline applicable to the **company**¹, the **company** must ensure that a majority of the directors are persons who have the requisite level or degree of responsibility to the general public.
- 41.6 The directors may at any time appoint a person as a director to fill a casual vacancy or as an additional director, provided the total number of directors does not exceed the number of directors determined under clause 40, and if that person:
- (a) is a **member**, or a representative of a **member**;
 - (b) gives the **company** their signed consent to act as a director of the **company**;
and
 - (c) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 41.7 A director appointed under clause 41.6 holds office until the conclusion of the next annual **general meeting** of the **company** but is eligible for election at that meeting.
- 41.8 If the number of directors is reduced to fewer than 3 or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to 3 (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.

42. Election of chairperson

The directors must elect a director as the **company's elected chairperson**.

43. Term of office and retirement of directors

- 43.1 Subject to clauses 43.2, directors are elected for terms of 3 years.
- 43.2 At each annual **general meeting**, any director who has held office for 3 years or more since last being elected, must retire from office but, subject to clause 43.5, is eligible for reappointment. A retiring director holds office until the conclusion of the meeting at which that director retires.
- 43.3 The **members** may by an ordinary resolution increase or decrease the period of time for which a director holds office under clause 43.1.
- 43.4 In addition to the right to remove directors under section 203D of the **Corporations Act**, the **members** may by an ordinary resolution remove any director before the expiration of that director's period of office, and may by an ordinary resolution appoint another person in the place of that director.

¹ Such as where the company or its public fund (if any) is endorsed as a deductible gift recipient and this is a condition for such endorsement.

43.5 A director is entitled to seek reappointment as a director on 2 occasions provided that a director's period of continuous service to the **company** does not exceed a period of 9 years, excluding any period of service under clause 41.6.

44. When a director stops being a director

A director stops being a director if they:

- (a) cease to be eligible under clauses 41.3 and 41.6;
- (b) give written notice of resignation as a director to the **company** having immediate effect or with effect from a specified date in the notice;
- (c) die;
- (d) are removed as a director by a resolution of the **members**;
- (e) do not have **legal capacity**;
- (f) stop being a **member**;
- (g) are a representative of a **member**, and that **member** stops being a **member**;
- (h) are a representative of a **member**, and the **member** notifies the **company** that the representative is no longer a representative;
- (i) are absent for 3 consecutive directors' meetings without approval from the directors; or
- (j) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**.

Powers of directors

45. Powers of directors

- 45.1 The directors are responsible for managing and directing the activities of the **company** to achieve the purposes set out in clause 6.
- 45.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be used by **members**.
- 45.3 The directors must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 46; and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

- 45.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a **members' resolution** at a **general meeting**.

46. Delegation of directors' powers

- 46.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 46.2 The delegation must be recorded in the **company's** minute book.

47. Committees

- 47.1 The directors may delegate any of their powers and functions to a committee consisting of two or more directors and such other persons as they think fit and may revoke the delegation at any time.
- 47.2 A committee to which any powers or functions have been delegated under clause 47.1 must exercise these powers or functions:
- (a) in accordance with the terms and subject to any restrictions and any directions of the directors; and
 - (b) so as to be concurrent with, or to the exclusion of, the powers of the directors, and a power so exercised is taken to have been exercised by the directors.

48. Payments to directors

- 48.1 The **company** must not pay fees to a director for acting as a director.
- 48.2 The **company** may:
- (a) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done; or
 - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company**.
- 48.3 Any payment made under clause 48.2 must be approved by the directors.
- 48.4 The **company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

49. Execution of documents

The **company** may execute a document without using a common seal if the document is signed by:

- (a) two directors of the **company**;

- (b) a director and the secretary; or
- (c) by any other means provided by the **Corporations Act**.

Duties of directors

50. Duties of directors

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **company**;
- (b) to act in good faith in the best interests of the **company** and to further the charitable purpose(s) of the **company** set out in clause 6;
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 51;
- (f) to ensure that the financial affairs of the **company** are managed responsibly; and
- (g) not to allow the **company** to operate while it is insolvent.

51. Conflicts of interest

51.1 A 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 directors (or that is proposed in a circular resolution):

- (a) to the other directors; or
- (b) if all of the directors have the same conflict of interest, to the **members** at the next **general meeting**, or at an earlier time if reasonable to do so.

51.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

51.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 51.4:

- (a) be present at the meeting while the matter is being discussed; or

(b) vote on the matter.

51.4 A director may still be present and vote if:

- (a) their interest arises because they are a **member**, and the other **members** have the same interest;
- (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **company** (see clause 70);
- (c) their interest relates to a payment by the **company** under clause 69 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**;
- (d) the Australian Securities and Investments Commission makes an order allowing the director to vote on the matter; or
- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - i. identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the **company**; and
 - ii. says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

52. When the directors meet

The directors may decide how often, where and when they meet.

53. Calling directors' meetings

53.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.

53.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

54. Chairperson for directors' meetings

54.1 The **elected chairperson** is entitled to chair directors' meetings.

54.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the **elected chairperson** is:

- (a) not present within 30 minutes after the starting time set for the meeting; or

- (b) present but does not want to act as chairperson of the meeting.

55. Quorum at directors' meetings

- 55.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors holding office.
- 55.2 A quorum must be present for the whole directors' meeting.

56. Using technology to hold directors' meetings

- 56.1 The directors may hold their meetings by using any technology (such as **virtual meeting technology**, video or teleconferencing) that is agreed to by all of the directors.
- 56.2 The directors' agreement may be a standing (ongoing) one.
- 56.3 A director may only withdraw their consent within a reasonable period before the meeting.

57. Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

58. Circular resolutions of directors

- 58.1 The directors may pass a circular resolution without a directors' meeting being held.
- 58.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 58.3 or clause 58.4.
- 58.3 Each director may sign:
 - (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 58.4 The **company** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 58.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 58.3 or clause 58.4.

Secretary

59. Appointment and role of secretary

- 59.1 The **company** must have at least one secretary, who may also be a director.
- 59.2 A secretary must be appointed by the directors (after giving the **company** their signed consent to act as secretary of the **company**) and may be removed by the directors.
- 59.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 59.4 The role of the secretary includes:
- (a) maintaining a register of the **company's members**; and
 - (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), directors' meetings and circular resolutions.

Minutes and records

60. Minutes and records

- 60.1 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**;
 - (b) minutes of circular resolutions of **members**;
 - (c) a copy of a notice of each **general meeting**; and
 - (d) a copy of a **members' statement** distributed to **members** under clause 32.
- 60.2 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
 - (b) minutes of circular resolutions of directors.
- 60.3 To allow **members** to inspect the **company's** records:
- (a) the **company** must give a **member** access to the records set out in clause 60.1; and
 - (b) the directors may authorise a **member** to inspect other records of the **company**, including records referred to in clause 60.2 and clause 61.1.
- 60.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:

- (a) the chairperson of the meeting; or
- (b) the chairperson of the next meeting.

60.5 The directors must ensure that minutes of the passing of a circular resolution (of **members** or directors) are signed by a director within a reasonable time after the resolution is passed.

61. Financial and related records

61.1 The **company** must make and keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) enable true and fair financial statements to be prepared and to be audited.

61.2 The **company** must also keep written records that correctly record its operations.

61.3 The **company** must retain its records for at least 7 years.

61.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.

62. Gift fund

62.1 Without limiting clause 61, the **company** may maintain a **gift fund**:

- (a) to identify and record gifts of money or property for the principal purpose of the **company** or of a fund or institution it operates;
- (b) to identify and record contributions of money or property as described in item 7 or item 8 of the table in section 30-15 of the **Tax Act** in relation to a fundraising event held for the principal purpose of the **company** or of a fund or institution it operates; and
- (c) to identify and record money received by the **company** because of such gifts or contributions; and
- (d) that does not identify and record any other money or property.

62.2 The **gift fund** forms part of the accounts of the **company**.

62.3 Where the **company** operates more than one fund or institution for which it is endorsed as a deductible gift recipient, the **company** must maintain a separate **gift fund** for the principal purpose of each fund or institution for which it is endorsed as a deductible gift recipient.

By-laws

63. By-laws

- 63.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 63.2 **Members** and directors must comply with by-laws as if they were part of this constitution.

Notice

64. What is notice

- 64.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 65 to 67, unless specified otherwise.
- 64.2 Clauses 65 to 67 do not apply to a notice of proxy under clause 38.6.

65. Notice to the company

Written notice or any communication under this constitution may be given to the **company**, the directors or the secretary by:

- (a) delivering it to the **company's** registered office;
- (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided;
- (c) sending it to an email address or other electronic address notified by the **company** to the **members** as the **company's** email address or other electronic address;
- (d) sending it to the fax number notified by the **company** to the **members** as the **company's** fax number; or
- (e) any other means provided by the **Corporations Act**.

66. Notice to members

- 66.1 Written notice or any communication under this constitution may be given to a **member**:
- (a) in person;
 - (b) by posting it to, or leaving it at the address of the **member** in the **register of members** or an alternative address (if any) nominated by the **member** for service of notices;
 - (c) sending it to the email or other electronic address nominated by the **member** as an alternative address for service of notices (if any);

- (d) sending it to the fax number nominated by the **member** as an alternative address for service of notices (if any);
- (e) by notifying the **member** at an email or other electronic address nominated by the **member**, that the notice is available at a specified place or address (including an electronic address); or
- (f) by any other means provided by the **Corporations Act**.

66.2 If the **company** does not have an address for the **member**, the **company** is not required to give notice in person.

67. When notice is taken to be given

Except in relation to service of a document referred to in clause 38.6, a notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method:
 - i. is taken to have been given by properly addressing and transmitting the electronic transmission; and
 - ii. is taken to have been given on the business day after it is sent;
- (d) given under clause 66.1(e) is taken to be given on the business day after the notification that the notice is available is sent; and
- (e) given in any other way permitted under the Corporations Act is taken to have been given under the Corporations Act.

Financial year

68. 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.

Indemnity, insurance and access

69. Indemnity

- 69.1 The **company** must indemnify each officer of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company**.
- 69.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 69.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so; and
 - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 69.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

70. Insurance

To the extent permitted by law (including the **Corporations Act**), and if the directors consider it appropriate, the **company** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **company** against any liability incurred by the person as an officer of the **company**.

71. Directors' access to documents

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

Winding up

72. 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**, unless that **member** or former **member** is a charity described in clause 73.1.

73. Distribution of surplus assets

- 73.1 Subject to clauses 8.2 and 74, the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** that remain after the **company** is wound up must be distributed to one or more funds or institutions:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6; and
 - (b) that are not-for-profit entities whose governing documents prohibit the distribution of any **surplus assets** to its **members** to at least the same extent as the **company** under this constitution.
- 73.2 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.

74. Distribution of surplus assets if deductible gift recipient

- 74.1 Where the **company** has been endorsed as a deductible gift recipient under Subdivision 30-BA of the **Tax Act** in relation to a fund or institution it operates, and:

- (a) the fund or institution is wound up; or
- (b) the endorsement under Subdivision 30-BA of the **Tax Act** in relation to a fund or institution it operates is revoked;

any surplus assets of the **gift fund** for that fund or institution remaining after payment of all liabilities must be transferred to one or more funds or institutions that comply with clause 73.1 and are each deductible gift recipients.

- 74.2 Where the **company** operates more than one fund or institution for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the **Tax Act** is revoked only in relation to one of those funds or institutions then it may transfer any surplus assets of that fund or institution remaining after payment of all liabilities to any other fund or institution for which it is endorsed as a deductible gift recipient.

Definitions and interpretation

75. Definitions

In this constitution:

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

company means the company referred to in clause 1.

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

elected chairperson means a person elected by the directors to be the **company's** chairperson under clause 42.

general meeting means a meeting of **members** and includes the annual **general meeting** under clause 22.1.

gift fund means a management account of the Company that is established in accordance with clause 62.1.

legal capacity means, in relation to an individual, that the individual is at least 18 years of age, and that:

- (a) in the directors' reasonable assessment, the individual is capable of understanding the nature and effect of their participation in the **company's** affairs without the need of special assistance or explanation; or
- (b) in the directors' reasonable assessment, the individual is able to receive and understand communications and express their will in relation to the **company's** affairs; or
- (c) their person or estate is not liable to be dealt with under the laws relating to mental health:
 - i. on a permanent or ongoing basis,
 - ii. in an involuntary manner, or
 - iii. on a court ordered basis.

member means a person entered on the **register of members** of the **company**.

member present means, in connection with a **general meeting**, a **member present** in person, by representative or by proxy at the venue or venues for the meeting.

members' resolution means a resolution referred to in clause 31.1(a) that the **members** propose to move at a **general meeting**.

members' statement means a statement referred to in clause 31.1(b) given by the **company** to the **members** about a proposed resolution or any other matter that may properly be considered at a **general meeting**.

registered charity means a charity that is registered under the **ACNC Act**.

register of members means the register of members under the **Corporations Act**.

special resolution means a resolution:

- (a) of which notice has been given under clause 23.5(d); and
- (b) that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution.

surplus assets means any assets of the **company** that remain after paying all debts and other liabilities of the **company**, including the costs of winding up.

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

virtual meeting technology means any technology that allows a person to participate in a meeting without being physically present at the meeting.

76. Reading this constitution with the Corporations Act

- 76.1 The replaceable rules set out in the **Corporations Act** are displaced by this constitution and accordingly do not apply to the **company**.
- 76.2 While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.
- 76.3 If the **company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.
- 76.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

77. Interpretation

In this constitution:

- (a) the singular includes the plural and vice versa;
- (b) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression;
- (c) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations);
- (d) a reference to a meeting includes a meeting by technology provided the technology gives the persons entitled to attend the meeting, as a whole, reasonable opportunity to participate without being physically present in the same place, and includes a **general meeting**:
- i. at one or more physical venues;
 - ii. at one or more physical venues and using **virtual meeting technology**; or
 - iii. using **virtual meeting technology** only;
- (e) a reference to a person being present includes an individual participating in a meeting in person or through a proxy, attorney or representative of a **member** (appointed under clause 26);

- (f) a reference to a “place” includes the place or location where a meeting may be held, is held or is taken to be held under the Corporations Act if Virtual Meeting Technology is used in holding the meeting;
- (g) a reference to a person includes a natural person, corporation or other body corporate; and
- (h) “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

78. Signing and electronic communication

Where, by a provision of this constitution, a document including a notice is required to be signed or communicated, that requirement may be satisfied in any manner permitted by the applicable law of a state or territory or the Commonwealth relating to electronic signing and transmission of documents.