

Constitution

Multiple Sclerosis Limited

ACN 004 942 287

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Multiple Sclerosis Limited

A company limited by guarantee

Constitution

1 Interpretation

1.1 Company's name

The name of the company is Multiple Sclerosis Limited.

1.2 Company limited by guarantee

- (a) The liability of the members is limited to the amount of the guarantee given in rule 1.2(b).
- (b) Every member undertakes to contribute an amount not more than \$5 to the property of the company if it is wound up while the person is a member or within one year after the person ceases to be a member, for:
 - (1) payment of the company's debts and liabilities contracted before the time he or she ceased to be a member; and
 - (2) the costs, charges and expenses of winding up.

1.3 Altering this constitution or the activities

- (a) The company must not pass a special resolution making a material alteration to, or materially affecting, rule 1.1, 1.3, 2.1 or 2.3, or any other alteration to the constitution, if, as a result, the company is no longer charitable.
- (b) The company must notify the Commissioner if:
 - (1) a special resolution is passed materially altering rule 1.1, 1.3, 2.1 or 2.3; or
 - (2) the company is no longer eligible to be endorsed as charitable or as a deductible gift recipient under Subdivision 30-BA of ITAA 97, as a result of a change in its constitution or activities or otherwise.

1.4 What parts of the Act apply

Unless the contrary intention appears:

- (a) an expression used in a rule that deals with a matter dealt with by a provision of the Act has the same meaning as in that provision; and
- (b) subject to rule 1.6, an expression in a rule that has a defined meaning for the purposes of the Act has the same meaning as in the Act.

1.5 Replaceable Rules

This Constitution takes the place of the Replaceable Rules as set out below.

1.6 Definitions

In this constitution, unless the context otherwise requires:

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

auditor means the auditor of the company;

Commissioner means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of ITAA 97;

company's office means the company's registered office;

directors means the company's board of directors;

Inauguration means the appointment, election, reappointment or re-election (as the case may be) of a person as a director of the company;

ITAA 97 means the *Income Tax Assessment Act 1997* (Cth);

member means a member of the company;

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

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

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

Replaceable Rule has the same meaning as ascribed to it in the Act.

1.7 Meaning of words

In this constitution unless the context requires otherwise:

- (a) references to notices include formal notices of meeting and all documents and other communications from the company to its members;
- (b) a reference to any legislation or a provision of any legislation includes any amendment to that legislation or provision, any consolidation or replacement of that legislation or provision and any subordinate legislation made under that legislation;
- (c) a reference to a member present at a general meeting is a reference to a member present in person or by proxy or representative;
- (d) words used to refer to persons generally or to refer to a natural person include a body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
- (e) a reference to writing and written includes printing, lithography and other ways of representing or reproducing words in a visible form;
- (f) the singular (including defined terms) includes the plural and vice versa;
- (g) the word "includes" in any form is not a word of limitation; and
- (h) headings are used for convenience only and do not affect the interpretation of this constitution.

2 Purpose of Company

2.1 Charitable purposes

(a) The company has the following public charitable purposes:

- (1) to provide assistance to people who have been diagnosed with multiple sclerosis, people who have other neurological diseases and other medical conditions and people with disabilities. This assistance will be provided to:
 - (A) people who have been diagnosed with multiple sclerosis, people who have other neurological diseases and other medical conditions and people with disabilities, and their families and carers, to assist people who have been diagnosed with multiple sclerosis, people who have other neurological diseases and other medical conditions and people with disabilities to access and participate in, as far as they are able, all facets of life and to remove barriers that prevent them from enjoying equal access, opportunities and participation within the community; and
 - (B) members and other organisations with similar purposes, and must be provided reasonably across all geographic regions in which the company has operations, with the company's resources committed and applied appropriately and equitably across those regions and operations bearing in mind the needs of the company's clients in all regions;
- (2) to support research into the cause, cure, effects and treatments of multiple sclerosis, other neurological diseases, other medical conditions and disabilities, including the incidence, prevalence, economic, social and other effects of multiple sclerosis, other neurological diseases, other medical conditions and disabilities on people and their carers affected by these diseases;
- (3) to provide and engage in education of the public and members of Parliament in the effects of multiple sclerosis, other neurological conditions, other medical conditions and disabilities and advocate on behalf of people affected by multiple sclerosis, other neurological diseases, other medical conditions and disabilities; and
- (4) to do all such things as are incidental or conducive to the attainment of any or all of the purposes referred to in rules 2.1(a)(1) to 2.1(a)(3).

2.2 Capacity

For the purposes outlined in rule 2.1, the directors may:

- (1) formulate policies;
- (2) make rules in connection with any policy; and
- (3) revoke or amend any policy or rules and formulate others.

2.3 Income and property

- (a) The company's income and property must be applied solely towards promoting the company's purposes as stated in rule 2.1.
- (b) No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, or other profit distribution, to any director or to any member or former member or to any person claiming through any member or former member.
- (c) No directors fees may be paid to the directors. All other payments to directors must be approved by the directors including, but not limited to:
 - (1) out-of-pocket expenses incurred by a director in performing a duty as a director of the company; or
 - (2) a service rendered to the company by a director, a company of which the director is a director or employee or a firm of which a director is a partner, in a professional or technical capacity or as an employee, other than in the capacity as a director of the company, where:
 - (A) the provision of the service has the prior approval of the directors; and
 - (B) the amount payable is not more than an amount which commercially would be reasonable payment for the service.
- (d) This rule does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any director to the extent permitted by law and this constitution.

3 Members

3.1 Eligibility to be a member

- (a) The members are:
 - (1) each member of the company at the date this constitution is adopted; and
 - (2) each person admitted to membership under this constitution.
- (b) Every applicant for membership of the company must:
 - (1) be over 18 years of age;
 - (2) apply in the form and manner decided by the directors; and
 - (3) pay any applicable annual subscription fee.
- (c) The directors may decide to create eligibility criteria and categories of membership with the same or differing rights, privileges, obligations and restrictions.
- (d) The directors or delegate shall consider any application for membership submitted by applicants in accordance with this constitution.
- (e) The directors or delegate are not required to give reasons for their decision to accept or reject an applicant to them.

- (f) The directors must notify all persons entered on the register of members of the amount and time for payment of any annual subscription fee and of any alteration to that fee. Varying amounts of any annual subscription fee may be applied between classes of membership or between members within classes of membership, as decided by the directors acting reasonably and made available to the members in a membership policy.
- (g) Where the annual subscription fee is not received:
 - (1) by 1 September, the directors must issue a written reminder notice to the member; and
 - (2) after one month of the date of the written reminder notice, the member's rights and privileges associated with that membership will be suspended.
- (h) If a member who was suspended pursuant to rule 3.1(g) has not paid an annual subscription fee for more than 2 months after the written reminder notice, the person ceases to be a member and the person's name must be removed from the register of members.

3.2 Membership not transferable

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

3.3 Variation of category rights

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

3.4 Disciplining of members

- (a) The directors may by resolution expel a member from the company if, in their absolute discretion, they decide it is not in the interests of the company for the person to remain a member.
- (b) If the directors intend to propose a resolution under rule 3.4(a), at least one week before the meeting at which the resolution is to be proposed, they must give the member written notice:
 - (1) stating the date, place and time of the meeting;
 - (2) setting out the intended resolution and the grounds on which it is based; and
 - (3) informing the member that he or she may attend the meeting and may give an oral or written explanation or submission before the resolution is put to the vote.

3.5 Cessation of membership

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

- (a) dies;
- (b) resigns as a member by giving written notice to the company;
- (c) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health;
- (d) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
- (e) is expelled under rule 3.4(a);
- (f) ceases to be a member under rule 3.1(h); or
- (g) becomes, if the directors so decide in their absolute discretion, an untraceable member because the person has ceased to reside at, attend or otherwise communicate with his or her registered address.

4 General meetings

4.1 Calling general meetings

- (a) The directors may call and arrange to hold a general meeting whenever they think fit.
- (b) A general meeting may be called and arranged to be held only as provided by this rule or as provided by sections 249D, 249E, 249F and 249G of the Act.
- (c) The directors may change the venue for, postpone or cancel a general meeting, unless the meeting is called and arranged to be held by the members or the court under the Act. If a general meeting is called and arranged to be held under section 249D of the Act, the directors may not:
 - (1) postpone it beyond the date by which section 249D requires it to be held; or
 - (2) cancel it without the consent of the requisitioning member.

4.2 Notice of general meetings

- (a) Notice of every general meeting must be given in any manner authorised by rule 11 to each person who is at the date of the notice:
 - (1) a member entitled to vote, except a member who has not supplied the company with an address in Australia for giving notices;
 - (2) a director; and
 - (3) the auditor.
- (b) A notice of a general meeting must:
 - (1) specify the date, time and place of the meeting;

- (2) except as provided by the Act, state the general nature of the business to be transacted at the meeting; and
 - (3) specify a place and fax number or electronic address for the receipt of proxies.
- (c) A person may waive notice of a general meeting by written notice to the company.
- (d) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this rule 4.2 does not invalidate any thing done or resolution passed at the general meeting if:
 - (1) the non-receipt or failure occurred by accident or error; or
 - (2) before or after the meeting, the person:
 - (A) has waived or waives notice of that meeting under rule 4.2(c); or
 - (B) has notified or notifies the company of the person's agreement to that thing or resolution by written notice to the company.
- (e) A person's attendance at a general meeting waives any objection that person may have to:
 - (1) a failure to give notice, or the giving of a defective notice, of the meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
 - (2) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

4.3 Decisions at general meetings

- (a) Except where by law a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the meeting. Such a decision is for all purposes a decision of the members.
- (b) Where the votes on a proposed resolution, whether by show of hands or on a poll, are equal the chair of the meeting is not entitled to a second or casting vote and the resolution is lost.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless, before the vote is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:
 - (1) the chair of the meeting;
 - (2) at least two members present and with the right to vote on the resolution; or
 - (3) a member or members present at the meeting and representing at least 5% of the total voting rights of all the members entitled to vote on the resolution on a poll.

- (d) A demand for a poll does not prevent a general meeting continuing for the transaction of any business except the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it must be taken in such manner, and either at once or after an interval or adjournment or otherwise, as the chair of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (g) A poll demanded at a general meeting on the election of a chair of the meeting or on a question of adjournment must be taken immediately.
- (h) The demand for a poll may be withdrawn.

5 Proceedings at general meetings

5.1 Quorum at general meetings

(a) Quorum must be present

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

(b) Number required for quorum

A quorum consists of 10 members who are entitled to vote at the meeting and who are either present at the meeting or who have appointed a proxy or representative who is present at the meeting.

(c) Determining whether quorum present

In determining whether a quorum is present, the company must count any individuals attending as proxies or representatives once for each member who has appointed that individual as either a proxy or representative. However, if a member has appointed more than 1 proxy or representative, then the company must only count 1 of them.

(d) No quorum present

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

- (1) where the meeting was convened on the requisition of members, the meeting must be dissolved; or
- (2) in any other case:
 - (A) the meeting stands adjourned to the day, and at the time and place, that the directors decide or, if the directors do not

make a decision, to the same day in the next week at the same time and place; and

- (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

5.2 Chair of general meetings

- (a) The chair of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chair at each general meeting.
- (b) If at a general meeting:
- (1) there is no chair of directors;
 - (2) the chair of directors is not present within 15 minutes after the time appointed for the meeting; or
 - (3) the chair of directors is present within that time but is not able or willing to act as chair of the meeting,
- the following may preside as chair of the meeting (in order of precedence):
- (4) a deputy chair (if any) chosen by a majority of the directors present;
 - (5) another director who is present and able and willing to act who is chosen by a majority of the directors present;
 - (6) the only director present and able and willing to act; or
 - (7) if no director present at the meeting is able and willing to act, a member chosen by a majority of members present who is present and able and willing to act.

5.3 Conducting general meetings

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

- (e) A meeting by telephone or other electronic means is taken as held at the place decided by the chair of the meeting, as long as at least one of the members involved was at that place for the duration of the meeting.

5.4 Adjournment of general meetings

- (a) The chair of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
- (b) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (c) Except as provided by rule 5.4(b), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (d) Where a meeting is adjourned, the directors may change the venue of, or postpone or cancel, the adjourned meeting, unless the meeting was called and arranged to be held by the members or the court under the Act. If a meeting is called and arranged to be held under section 249D of the Act, the directors may not postpone it beyond the date by which section 249D requires it to be held and may not cancel it without the consent of the requisitioning member.

5.5 Voting rights

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

5.6 Method of voting

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
 - (1) in person or, where a member is a body corporate, by its representatives; or
 - (2) by proxy.

5.7 Proxies

- (a) A proxy or representative must be a member of the company.

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

5.8 Appointment of proxy

- (a) Unless otherwise provided in the instrument, an instrument appointing a proxy or representative is to be taken to confer authority:
 - (1) to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution;
 - (2) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than the period of notice required by the Act has been given;
 - (3) even though the instrument may refer to specific resolutions and may direct the proxy or representative how to vote on those resolutions:
 - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (B) to vote on any procedural motion, including any motion to elect the chair, to vacate the chair or to adjourn the meeting; and
 - (C) to act generally at the meeting.
- (b) An instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument so provides, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.
- (c) Subject to rule 5.8(d), an instrument appointing a proxy need not be in any particular form as long as it is in writing, legally valid and signed by or on behalf of the appointor or the appointor's attorney.
- (d) A proxy may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy, and the authority under which the instrument is signed or a certified copy of the authority, are:
 - (1) received at the registered office of the company, a fax number at the company's registered office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting before the time specified in the notice;
 - (2) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - (3) in the case of a poll, produced when the poll is taken.
- (e) The directors may waive all or any of the requirements of rules 5.8(c) and 5.8(d) and in particular may, on the production of such other evidence as the directors require to prove the validity of the appointment or a proxy, except:
 - (1) a verbal appointment of a proxy;

- (2) an appointment of a proxy which is not signed in the manner required by rule 5.8(c); and
 - (3) the deposit, tabling or production of a copy (including a copy sent by fax) of an instrument appointing a proxy or of the power of attorney or other authority under which the instrument is signed.
- (f) A vote given in accordance with the terms of an instrument appointing a proxy is valid despite the revocation of the instrument or of the authority under which the instrument was executed, if no written notice of the revocation has been received by the company by the time and at one of the places at which the instrument appointing the proxy is required to be deposited, tabled or produced under rule 5.8(d).
- (g) The appointment of a proxy is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution, the person acting as proxy for the appointer is not entitled to vote, and must not vote, as the appointer's proxy on the resolution.

6 The Board

6.1 Number of Board

- (a) Subject to rule 6.1(b)(1), there must be:
- (1) at least 7 directors; and
 - (2) not more than 12 directors.
- (b) The:
- (1) directors may increase or reduce the minimum or maximum number of directors and determine the rotation by which the increased or decreased number is to retire from office;
 - (2) company may by resolution, subject to:
 - (A) rules 6.1(a);
 - (B) the candidate for appointment being considered by the Nominations Committee and the Nominations Committee providing its report and recommendation to the directors under rule 6.6(c)(1) and the directors providing a report on the candidate to members, prior to his or her appointment;
 - (C) the candidate signing a consent to act as a director; and
 - (D) at least 7 members (excluding the candidate) having given their written endorsement to the appointment of the candidate,appoint any individual as a director as an addition to the existing directors; and
 - (3) company may by resolution, in accordance with section 203D of the Act, remove a director.

6.2 Appointment of Directors

- (a) Subject to rules 6.1(a) and 6.2(c) and either:
 - (1) all of the conditions in rules 6.1(b)(2)(B), 6.1(b)(2)(C) and 6.1(b)(2)(D) being satisfied; or
 - (2) all of the following being satisfied:
 - (A) the candidate for appointment being recommended by the Nominations Committee under rule 6.6(d); and
 - (B) the candidate signing a consent to act as a director,the directors may appoint any individual as a director either:
 - (3) to fill a casual vacancy; or
 - (4) as an addition to the existing directors.
- (b) A director appointed by the directors under rule 6.2(a), holds office only until the conclusion of the next annual general meeting following his or her appointment.
- (c) The directors may not appoint any person as a director under rule 6.2(a) where that person, at any time in the preceding 12 months was:
 - (1) removed as a director by members; or
 - (2) not elected as a director when proposed for election as a director.

6.3 Rotation of directors

- (a) At each annual general meeting, one-third of the directors (excluding a director appointed by the directors under rule 6.2(a)), or, if their number is not 3 or a multiple of 3, then the number nearest one-third (rounded down), and any other director who has held office for 3 years or more since last being elected, must retire from office.
- (b) The directors to retire under rule 6.3(a) are those directors who wish to retire and not offer themselves for re-election, and so far as is necessary to obtain the number required, those who have been longest in office since their last election or appointment. As between directors who were last elected or appointed on the same day, those to retire must, unless they can agree among themselves, be determined by the directors, or in the absence of a valid determination, by lot.
- (c) The directors to retire under rule 6.3(a) (both as to number and identity) are to be determined having regard to the composition of the board of directors at the date of the notice calling the annual general meeting. A director is not required to retire and is not relieved from retiring because of a change in the number or identity of the directors after the date of the notice but before the meeting closes.
- (d) Subject to the director being considered by the Nominations Committee and the Nominations Committee providing its report and recommendation to the directors under rule 6.6(c)(1) prior to his or her Inauguration, a director retiring from office under rule 6.2(b) is eligible for Inauguration subject to a maximum term of 9 continuous years, unless the maximum term is varied for a particular director by the directors.

- (e) The retirement of a director from office under this constitution and the re-election or reappointment of the director or the election or appointment of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and Inauguration occur.

6.4 Eligibility to be Director

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

- (a) the person:
 - (1) is in office as a director immediately before that meeting;
 - (2) has been nominated by the directors for election at that meeting;
 - (3) has been recommended by the Nominations Committee and proposed to members under rule 6.6(d); or
 - (4) has, at least 60 business days but no more than 90 business days before the meeting, given the company a notice signed by him or her stating his or her desire to be a candidate for election at that meeting;
- (b) the person is not an employee of the company or any related body corporate;
- (c) the person has signed a consent to act as a director;
- (d) at least 7 members (excluding the person) have given their written endorsement to the election or re-election (as the case may be) of the person;
- (e) the person has been considered by the Nominations Committee and the Nominations Committee has provided its report and recommendation to the directors under rule 6.6(c)(1) prior to his or her proposed election or re-election (as the case may be); and
- (f) unless the person has nominated themselves for election, the person has been recommended for election or re-election (as the case may be) by the Nominations Committee under rule 6.6(d) or by the directors.

6.5 Vacancy on Board

The office of a director becomes vacant:

- (a) in the circumstances prescribed by the Act;
- (b) if the director becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (c) if the director is removed or retires from office under this constitution; or
- (d) if the director resigns by written notice to the company.

6.6 Director nomination process

- (a) So far as practicable and appropriate in the prevailing circumstances, the following principles must always be borne in mind and advanced, in the

process of recommending persons for Inauguration, and in the process of persons being Inaugurated under this rule 6.6 or otherwise:

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

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

6.7 Interested directors

- (a) A director may not hold another position in the company or any related body corporate.

- (b) A director may not be paid any directors fees but is entitled to be reimbursed out of the funds of the company for his or her reasonable travelling, accommodation and other expenses incurred when travelling to or from meetings of the directors or a committee or when otherwise engaged on the affairs of the company.
- (c) A director:
 - (1) may be or become a director or other officer of, or otherwise interested in, any related body corporate or other body corporate promoted by the company or in which the company is interested as a shareholder or otherwise; and
 - (2) is not accountable to the company for any remuneration or other benefits he or she receives as a director or officer of, or from having an interest in, that body corporate.
- (d) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the company in the manner in all respects that they think fit.
- (e) A director is not disqualified merely because he or she is a director from contracting with the company in any respect including, but not limited to:
 - (1) selling property to, or purchasing property from, the company;
 - (2) lending money to the company with or without interest or security;
 - (3) guaranteeing the repayment of money borrowed by the company for a commission or profit;
 - (4) underwriting or guaranteeing the subscription for securities in any related body corporate or other body corporate promoted by the company or in which the company is interested as a shareholder or otherwise, for a commission or profit; or
 - (5) being employed by the company or acting in any professional capacity (except as auditor) on behalf of the company.
- (f) A contract made by a director with the company and a contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is not avoided or rendered voidable merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (g) A director contracting with or being interested in any arrangement involving the company is not liable to account to the company for any profit realised by or under that contract or arrangement merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (h) Unless section 195 of the Act permits, a director who has a material personal interest in a matter that is being considered at a directors' meeting or a meeting of the Nominations Committee must not:
 - (1) be present while the matter is being considered at the meeting; or
 - (2) vote on the matter.

- (i) The directors may make regulations requiring the disclosure of interests that a director, and any person considered by the directors as 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.

7 Powers and duties of the Board

7.1 Powers and duties of directors

- (a) The directors are responsible for managing the company's affairs and carrying out the objects of the company. The directors may exercise to the exclusion of the company in general meeting all the company's powers which are not required, by the Act or by this constitution, to be exercised by the company in general meeting.
- (b) Without limiting rule 7.1(a), the directors may exercise all the company's powers to:
 - (1) borrow or otherwise raise money;
 - (2) charge any property or business of the company; and
 - (3) issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.
- (c) The directors may decide how cheques, promissory notes, bankers 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.
- (d) The directors may pay out of the company's funds all expenses of the promotion, formation and registration of the company and the vesting in it of the assets acquired by it.
- (e) The directors may:
 - (1) appoint or employ a person to be 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 the period and on the conditions they think fit;
 - (2) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
 - (3) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney at any time, with or without cause.
- (f) A power of attorney may contain any provisions for the protection and convenience of the attorney or persons dealing with the attorney that the directors think fit.

8 Proceedings of the Board

8.1 Frequency of meetings

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

8.2 Use of technology for Board meetings

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

8.3 Convening meetings of directors

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

8.4 Notice of meetings of directors

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

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

8.5 Quorum at meetings of directors

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

8.6 Chair of directors

- (a) The directors must elect one of the directors as chair of directors and must decide the period for which that director is to be the chair.

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

8.7 Decisions of directors

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

8.8 Written resolutions of directors

- (a) If:
 - (1) all the directors, other than any director:
 - (A) on leave of absence approved by the directors;
 - (B) who disqualifies himself or herself from considering the thing or resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; or
 - (C) who the directors reasonably believe is not entitled at law to do the thing or to vote on the resolution in question,assent to a document containing a statement to the effect that a thing has been done or resolution has been passed; and

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

8.9 Minutes of meetings and minutes of resolutions

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

8.10 Committees of directors

- (a) The directors may delegate any of their powers to one or more committees consisting of the number of directors they think fit and may alter or revoke that delegation.
- (b) A committee to which any powers have been delegated must exercise the powers delegated in accordance with any directions given by the directors.
- (c) Any such committee shall:
 - (1) have a majority of non-executive directors;
 - (2) have a chair appointed by a majority of the directors;
 - (3) have power to co-opt persons who are not directors, but such co-opted persons shall not be entitled to vote on matters to be determined by the committee; and
 - (4) be subject to a review and performance process determined by the directors.
- (d) The provisions of this constitution that apply to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee consisting of 2 or more directors.

8.11 Delegation to individual directors

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

8.12 Validity of acts

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

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

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

9 Executive officers

9.1 Chief Executive Officers

- (a) The directors may appoint 1 or more Chief Executive Officers.
- (b) All or any of the powers delegated to a Chief Executive Officer under this constitution may be given together with or to the exclusion of the powers of the directors.

9.2 Company secretary

- (a) The directors must maintain at least one company secretary.
- (b) The directors may appoint one or more assistant secretaries.

9.3 Provisions that apply to all executive officers

- (a) A reference in this rule 9.3 to an executive officer is a reference to a Chief Executive Officer, company secretary, assistant secretary or other officers appointed by the Board pursuant to clause 7.1(e).
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions that the directors think fit.
- (c) Subject to any contract between the company and the relevant executive officer, an executive officer may be removed or dismissed by the directors at any time, with or without cause.
- (d) The directors may:
 - (1) confer on an executive officer the powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the directors) they think fit;
 - (2) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
 - (3) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on him or her.
- (e) An act done by a person acting as an executive officer is not invalidated merely because of:
 - (1) a defect in the person's appointment as an executive officer; or
 - (2) the person being disqualified to be an executive officer,if that circumstance was not known by the person when the act was done.

10 Audit

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

11 Notice

11.1 Notices by the company to members

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

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

- (c) by sending it to the fax number or electronic address (if any) nominated by the member.

11.2 Notices by the company to directors

Subject to this constitution, a notice may be given by the company to any director either by serving it personally at, or by sending it by post in a prepaid envelope to, the director's usual residential or business address, or by electronic means or fax to such electronic address or fax number, as the director has supplied to the company for giving notices.

11.3 Notices by members or directors to the company

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

11.4 Time of service

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

- (e) For the purposes of rule 11.4(d), business day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in the place concerned.

11.5 Other communications and documents

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

11.6 Notices in writing

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

12 Winding up

If, on the winding up of the Company, any surplus assets remain after the satisfaction of all its debts and liabilities, the Company must give and transfer the surplus assets to a fund authority or institution:

- (a) that is charitable at law and complies with section 150(1) of the Act;
- (b) whose constitution prohibits distribution or payments to its members and directors (if any) to an extent at least as great as outlined in clause 2.3;
- (c) gifts to which can be deducted under Division 30 of the Income Tax Assessment Act (ITAA 97), due to it be characterised as a public benevolent institution under item 4.1.1 of the table in section 30-45 or a health promotion charity under item 1.1.6 of section 30-20, as the Company decides by special resolution of the Company in General Meeting; and
- (d) where gifts to fund, authority or institution or deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30B of the ITAA 97 are satisfied, the gift and transfer must be made in accordance with those conditions.

The identity of the institution referred to in this rule 12 must be decided by the directors.

13 Indemnity and insurance

13.1 Persons to whom the indemnity and insurance apply

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

- (a) each person who is or has been a director or executive officer (within the meaning of rule 9.3(a)) of the company; and
- (b) any other officers or former officers of the company as the directors in each case decide.

13.2 Indemnity

- (a) The company must indemnify, on a full indemnity basis and to the full extent permitted by law, each indemnified officer against:
 - (1) all losses or liabilities (including costs and expenses) incurred by the person as an officer of the company; and
 - (2) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the indemnified officer becomes involved because of that person's capacity as an officer of the company.
- (b) This indemnity:
 - (1) is a continuing obligation and is enforceable by an indemnified officer even though that person has ceased to be an officer of the company; and
 - (2) operates only to the extent that the loss or liability in question is not covered by insurance.

13.3 Insurance

The company may, to the extent permitted by law:

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

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

13.4 Savings

Nothing in this rule:

- (a) affects any other right or remedy that an indemnified officer may have in respect of any loss or liability referred to in this indemnity or insurance; or
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom this rule does not apply.

13.5 Deed

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

14 Inspection of records

14.1 Inspection by members

Subject to the Act, the directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and

other documents of the company or any of them will be open to inspection by the members (other than directors).

14.2 Right of a member to inspect

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