

Constitution of: Harvest Hope Africa Ltd

ACN 633 239 031

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Constitution of Harvest Hope Africa Ltd

1. PRELIMINARY

1.1 Type of Company

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

1.2 Mission and charitable purposes

- (a) The Company is a missionary organisation who works to bring hope and restoration by equipping, transforming and empowering impoverished and vulnerable people and communities.
- (b) The charitable purpose for which the Company is established is to provide relief to impoverished, orphaned, addicted and displaced persons in Eastern and Central Africa and Australia, and without limitation to:
 - (i) facilitation of access to quality education and welfare service for vulnerable people;
 - (ii) operating schools for impoverished children;
 - (iii) provision of drug rehabilitation programs for addicted persons
 - (iv) facilitation of access to vocational and small business training for vulnerable women;
 - (v) sustainable development training and relief for impoverished communities; and
 - (vi) leadership training for potential leaders in impoverished communities.
- (c) The Company can only exercise the powers in section 124(1) of the Corporations Act to:
 - (i) carry out the objects of the Company set out in rule 1.2(b); and
 - (ii) do all things incidental or convenient in relation to the exercise of the power under rule 1.2(c)(i).

1.3 Application of income and property

- (a) Subject to rules 1.4 and 22.1, the Company must apply its income and assets solely towards promoting the objects of the Company as stated in rule **Error! Reference source not found..**
- (b) No part of the Company's income or assets may be paid or transferred directly or indirectly to any member of the Company except to the extent permitted by this document.

1.4 Certain payments allowed

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

- (a) interest on money lent by the member to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (b) reasonable remuneration for goods supplied by the member to the Company in the ordinary course of business; and

(c) reasonable rent for premises lent by the member to the Company.

1.5 Replaceable rules

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

1.6 Definitions

The following definitions apply in this document:

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

Board means the Directors acting collectively under this document.

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

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

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

member means a person whose name is entered in the Register as a member of the Company.

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

Representative means a person appointed as such under clause 6.

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

1.7 Interpretation of this document

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

(a) A reference to:

- (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (iv) anything (including a right, obligation or concept) includes each part of it.

(b) A singular word includes the plural, and vice versa.

(c) A word which suggests one gender includes the other genders.

(d) If a word is defined, another part of speech has a corresponding meaning.

- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
- (j) A word (other than a word defined in rule 1.6) which is defined by the Corporations Act or the ACNC Act has the same meaning in this document where it relates to the same matters as the matters for which it is defined in the Corporations Act or the ACNC Act.

2. MEMBERSHIP

2.1 Membership

Subject to rule 2.4, the members are:

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

2.2 Eligibility

A person is eligible to apply to become a member under rule 2 if that person supports the purposes of the Company.

2.3 Limited liability of members

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

2.4 Cessation of membership

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

- (a) the Secretary receives written notice of resignation from that member;
- (b) where the member is an individual, the member:
 - (i) dies;
 - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
 - (iii) is convicted of an indictable offence, or
- (c) where the member is not an individual, if:
 - (i) a liquidator is appointed in connection with the winding- up of the member; or

- (ii) an order is made by a Court for the winding-up or deregistration of the member; or
- (d) if a majority of three-quarters of the members present and voting at a general meeting by resolution terminate the membership of a member:
 - (i) whose conduct in their opinion renders it undesirable that that member continue to be a member of the Company;
 - (ii) only after the member has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed.

3. ADMISSION

3.1 Applications

Applications for membership of the Company must be in writing, signed by the applicant and in a form approved by the Directors in their absolute discretion.

3.2 Consideration of applications

- (a) The Directors will consider each application for membership at the next meeting of Directors after the application is received. In considering an application for membership, the Directors may:
 - (i) accept or reject the application; or
 - (ii) ask the applicant to give more evidence of eligibility for membership.
- (b) If the Directors ask for more evidence under rule 3.2, their determination of the application for membership is deferred until the evidence is given.
- (c) The Directors do not have to give any reason for rejecting an application for membership.

3.3 Notice

As soon as practicable following acceptance of an application for membership, the Secretary will send the applicant written notice of the acceptance and request payment of the applicant's first Membership Fee (if any).

3.4 Time of membership

- (a) Subject to rule 3.4(b) an applicant for membership becomes a member:
 - (i) if the applicant has received a request for payment of a Membership Fee, when the Membership Fee is paid; or
 - (ii) if applicant is not required to pay a Membership Fee, when the applicant's name is entered onto the Register.
- (b) If the first Membership Fee of an applicant for membership is not paid within 30 days after the date the applicant is notified of acceptance of their application for membership, the Directors may cancel their acceptance of the applicant for membership of the Company.

3.5 Non transferable

The rights and privileges of every member are personal to each member and are not transferable by the member's own act or by operation of law.

4. MEMBERSHIP FEE

4.1 Determination of Membership Fee

- (a) The Directors may determine the membership fee payable for membership (**Membership Fee**).
- (b) The Directors will review all Membership Fees before the end of the Company's financial year and prescribe the Membership Fees for the following year.

4.2 Membership Fee due

A member must pay the Membership Fee each year on or before the date prescribed by the Directors.

If a member does not pay the Membership Fee within 30 days after it becomes due the Directors:

- (a) will give the member notice of that fact; and
- (b) if the Membership Fee remains unpaid 21 days from the date of that notice, may declare that member's membership forfeited.

4.3 Cessation of membership and Membership Fees

In the event the member ceases to be a member pursuant to rule 4.2(b) or rule 2.4:

- (a) the Company will not refund to the member any Membership Fee; and
- (b) the member will remain liable for and will pay to the Company all Membership Fees which were due at the date of ceasing to be a member.

5. POWERS OF ATTORNEY

- (a) If a member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the member's membership in the Company, that member must deliver the instrument appointing the Attorney to the Company for notation.
- (b) If the Company asks the member to file with it a certified copy of the instrument for the Company to retain, the member will promptly comply with that request.
- (c) The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

6. REPRESENTATIVES

6.1 Appointment of Representative

- (a) Any corporation or organisation which is a member may by written notice to the Secretary:
 - (i) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
 - (ii) remove a Representative.
- (b) A certificate executed in accordance with section 127 of the Corporations Act is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.

- (c) The chairperson of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by and to the satisfaction of the chairperson of the general meeting.
- (d) The appointment of a Representative may set out restrictions on the Representative's powers.

6.2 **Representatives' rights**

A Representative is entitled to:

- (a) exercise at a general meeting all the powers which the corporation or organisation which appointed him or her could exercise if it were a natural person;
- (b) stand for election as an office bearer or Director; and
- (c) be counted towards a quorum on the basis that the member corporation or organisation is to be considered personally present at a general meeting by its Representative.

7. **REGISTER OF MEMBERS**

- (a) The Company must set up and maintain a register of members.
- (b) In accordance with section 169 of the Corporations Act, the Register must contain the following information:
 - (i) the name and address of each member;
 - (ii) the date on which the entry of the member's name in the Register is made;
 - (iii) the name and details of each person who stopped being a member within the last seven years;
 - (iv) the date on which the person stopped being a member; and
 - (v) an index of members' names if the Company has more than 50 members and the Register itself is not kept in a form that operates effectively as an index.

8. **MEETINGS OF MEMBERS**

8.1 **Annual general meeting**

- (a) The Company must hold an annual general meeting at least once in every calendar year (after the end of the first financial year).
- (b) Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
 - (i) a review of the Company's activities;
 - (ii) a review of the Company's finances;
 - (iii) any auditor's report; and
 - (iv) the appointment and payment of auditors, if any.

- (c) Before or at the annual general meeting, the Board must give information to the members, entitled to attend and vote at the meeting, on the Company's activities and finances during the period since the last annual general meeting.
- (d) The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

8.2 General meetings called by the Board

- (a) A general meeting may be convened at any time by the Board.
- (b) If members with at least 5% of the votes that may be cast at a general meeting, make a written request to the Company for a general meeting to be held, the Board must:
 - (i) within 21 days of the members' request, give all members notice of a general meeting; and
 - (ii) hold the general meeting within 2 months of the members' request.
- (c) The percentage of votes that members have is to be worked out as at midnight before the members request the meeting.
- (d) The members who make the request for a general meeting must:
 - (i) state in the request any resolution to be proposed at the meeting;
 - (ii) sign the request; and
 - (iii) give the request to the Company.
- (e) Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

8.3 General meetings called by members

- (a) If the Board do not call the meeting within 21 days of being requested under rule 8.2(b), 5% or more of the members who made the request may call and arrange to hold a general meeting.
- (b) To call and hold a meeting under rule 8.3(a) the members must:
 - (i) as far as possible, follow the procedures for general meetings set out in this document;
 - (ii) call the meeting using the list of members on the Company's member register, which the Company must provide to the members making the request at no cost; and
 - (iii) hold the general meeting within 3 months after the request was given to the Company.
- (c) The Company must pay the members who request the general meeting any reasonable expenses they incur because the Directors did not call and hold the meeting.

8.4 Notice of meeting

Subject to rule 8.5, at least 21 days' written notice of a general meeting must be given individually to:

- (a) each member (whether or not the member is entitled to vote at the meeting);

- (b) each Director; and
- (c) the auditor (if the Company is required to appoint an auditor).

8.5 **Short notice**

- (a) Subject to rule 8.5(b), notice of a meeting may be provided less than 21 days before the meeting if:
 - (i) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand; or
 - (ii) for any other general meeting, members with at least 5% of the votes that may be cast at the meeting agree beforehand.
- (b) Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
 - (i) remove a director;
 - (ii) appoint a director in order to replace a director who was removed; or
 - (iii) remove an auditor (if the Company has appointed an auditor).
- (c) Notice of a general meeting must include:
 - (i) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (ii) the general nature of the meeting's business;
 - (iii) if applicable, that a special resolution is to be proposed and the words of the proposed resolution;
 - (iv) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - (A) the proxy does not need to be a member of the Company;
 - (B) the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
 - (C) the proxy form must be delivered to the Company at least 48 hours before the meeting.

8.6 **Postponement or cancellation**

The Board may:

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

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

8.7 **Fresh notice**

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

8.8 **Technology**

- (a) The Company may hold a general meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.
- (b) Anyone using this technology is taken to be present in person at the meeting.

8.9 **Accidental omission**

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

9. **PROCEEDINGS AT MEETINGS OF MEMBERS**

9.1 **Member present at meeting**

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

9.2 **Quorum**

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

9.3 **Quorum not present**

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

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

9.4 **Chairing meetings of members**

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

9.5 **Attendance at general meetings**

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

9.6 **Adjournment**

Subject to rule 8.7, the chairperson of a general meeting at which a quorum is present:

- (a) may; and
- (b) must, if directed by ordinary resolution of the meeting, adjourn it to another time and place.

9.7 **Business at adjourned meetings**

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

10. **MEMBERS' RESOLUTIONS**

10.1 **Members resolutions**

- (a) Members with at least 5% of the votes that may be cast on a resolution may give written notice to the Company of a resolution they propose to move at a general meeting (**members' resolution**).
- (b) A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- (c) Separate copies of a document setting out the notice may be signed by members if the wording is the same in each copy.
- (d) The percentage of votes that members have is to be worked out as at midnight before the request or notice is given to the company.
- (e) If the Company has been given notice of a members' resolution, the resolution must be considered at the next general meeting held more than 2 months after the notice is given.
- (f) This rule does not limit any other right that a member has to propose a resolution at a general meeting.

10.2 **Company must give notice of proposed resolution**

- (a) If the Company has been given a notice under rule 10.1:
 - (i) in time to send the notice of proposed members' resolution to members with a notice of meeting, it must do so at the Company's cost; or
 - (ii) too late to send the notice of proposed members' resolution to members with a notice of meeting, then the members who proposed the resolution must pay the expenses reasonably incurred by the company in giving members notice of the proposed members' resolution. However, at a general meeting, the members may pass a resolution that the company will pay these expenses.
- (b) The Company does not need to send the notice of proposed members' resolution to members if:
 - (i) it is more than 1,000 words long;
 - (ii) the directors consider it may be defamatory;

- (iii) rule 1.1(a)(ii) applies, and the members who proposed the resolution have not paid the Company enough money to cover the cost of sending the notice of the proposed members' resolution to members; or
- (iv) 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.

10.3 Circular resolutions of members

- (a) Subject to rule 10.3(b), the Directors may put a resolution to the members, entitled to vote, to pass a resolution without a general meeting being held (**a circular resolution**).
- (b) Circular resolutions cannot be used:
 - (i) for a resolution to remove an auditor, appoint a Director or remove a Director;
 - (ii) for passing a special resolution; or
 - (iii) where the Corporations Act or this document requires a meeting to be held.
- (c) A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in rule 10.3(d) or rule 10.3(e).
- (d) Members may sign:
 - (i) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - (ii) separate copies of that document, as long as the wording is the same in each copy.
- (e) The Company may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

11. ENTITLEMENT TO VOTE

11.1 Number of votes

- (a) Each member entitled to vote has one vote.
- (b) Except where a special resolution is required, questions arising at a general meeting must be decided by a majority of votes cast by the members.

11.2 Casting vote of chairperson

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

11.3 Decision on right to vote

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

12. HOW VOTING IS CARRIED OUT

12.1 Method of voting

- (a) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded under rule 12.2:
 - (i) before the show of hands is taken;
 - (ii) before the result of the show of hands is declared.
- (b) Unless a poll is demanded, the chairperson's declaration of a decision on a show of hands is final.

12.2 Demand for a poll

- (a) A poll may be demanded on any resolution (except a resolution concerning the election of the chairperson of a meeting) by:
 - (i) at least a simple majority of the members entitled to vote on the resolution; or
 - (ii) the chairperson.
- (b) The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

12.3 When and how polls must be taken

If a poll is demanded:

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

13. PROXIES

13.1 Appointment of proxies

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

13.2 Deposit of proxy appointment forms and proxy appointment authorities

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

13.3 Appointment for particular meeting, standing appointment and revocation

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

13.4 Position of proxy if member present

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

13.5 More than one current proxy appointments

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

13.6 Continuing authority

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

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

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

14. DIRECTORS

14.1 Number of Directors

- (a) The number of Directors will not be less than 3, the minimum specified by the Corporations Act, nor more than 7 Directors unless the Company in general meeting by resolution changes the maximum number.
- (b) The initial Directors of the Company are the persons who have consented to act as directors and are set out in the Company's application for registration as a Company (the Initial Directors). Those persons hold office subject to this Constitution.

14.2 Chairperson and deputy chairperson

Immediately following the annual general meeting in each year, the Board:

- (a) must appoint a Director to the office of chairperson of Directors; and

- (b) may elect one or more Directors to the office of deputy chairperson of Directors.

15. ELECTION AND APPOINTMENT OF DIRECTORS

15.1 Election

- (a) Apart from the Directors appointed under rule 16, the members may elect a Director by a resolution passed in a general meeting.
- (b) Each of the Directors must be appointed by a separate resolution, unless:
 - (i) the members present have first passed a resolution that the appointments may be voted on together, and
 - (ii) no votes were cast against that resolution.

15.2 Eligibility

A person is eligible for election as a Director of the Company if they:

- (a) 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);
- (b) give the Company their signed consent to act as a Director of the Company; and
- (c) are not ineligible to be a Director under the Corporations Act or the ACNC Act.

16. CASUAL DIRECTORS

- (a) The Directors may appoint a person as a Director to fill a casual vacancy or as an additional director if that person.
- (b) Any person appointed under this rule holds office until the next general meeting.

17. TERM OF OFFICE

17.1 Retirement

- (a) At each annual general meeting:
 - (i) any Director appointed by the Directors to fill a casual vacancy or as an additional Director must retire, and
 - (ii) at least one-third of the remaining Directors must retire.
- (b) The Directors who must retire at each annual general meeting under rule 1.1(a)(ii) will be the Directors who have been longest in office since last being elected. Where Directors were elected on the same day, the Director(s) to retire will be decided by lot unless they agree otherwise.
- (c) Other than a Director appointed under rule 16, a Director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- (d) Each Director must retire at least once every three years.

- (e) A Director who retires under rule 17.1 may nominate for election or re-election, subject to rule 17.1(f).
- (f) A Director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a special resolution of the members.

17.2 Cessation of Director's appointment

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

- (a) is not permitted by the ACNC Act to be a director;
- (b) becomes disqualified from managing corporations under Part 2D.6 of the Corporations Act and is not given permission or leave to manage the Company under section 206F or 206G of the Corporations Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend three (3) consecutive Board meetings (not including meetings of a committee of the Board) without leave of absence from the Board;
- (e) resigns by notice in writing to the Company;
- (f) is removed from office under rule 17.3;
- (g) is convicted on indictment of an offence and the Directors do not within one month after that conviction resolve to confirm the Director's appointment or election (as the case may be) to the office of Director; or
- (h) is directly or indirectly interest in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act.

17.3 Removal from office

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

17.4 Too few Directors

If the number of Directors is reduced below the minimum required by rule 14.1, the continuing Directors may act as the Board only:

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

18. POWERS OF THE BOARD

18.1 Powers generally

- (a) Except as otherwise required by the Corporations Act, any other applicable law or this document, the Board:
 - (i) has power to manage the business of the Company; and
 - (ii) may exercise every right, power or capacity of the Company except those which must be exercised by the Company in general meeting and/or by the members.

- (b) The board may make regulations, by-laws and policies consistent with this document, which in the opinion of the Board are necessary or desirable for the proper control, administration and management of the Company's finances, affairs and property, or are necessary for the convenience, comfort and well-being of the members and amend or rescind any regulations and by-laws.
- (c) A regulation, policy or by-law of the Company made by the Board may be disallowed by the Company in a later general meeting. A resolution or regulation made by the Company in general meeting cannot invalidate prior acts of the Board which would have been valid if that resolution or regulation had not been passed or made.

18.2 Exercise of powers

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 24; or
- (b) in accordance with a delegation of the power under rule 20.

19. NEGOTIABLE INSTRUMENTS

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

20. DELEGATION OF BOARD POWERS

20.1 Power to delegate

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

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

20.2 Power to revoke delegation

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

20.3 Terms of delegation

- (a) A delegation of powers under rule 20.1 may be made:
 - (i) for a specified period or without specifying a period; and
 - (ii) on the terms (including power to further delegate) and subject to any restrictions the Board decides.
- (b) A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

20.4 **Proceedings of committees**

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.

20.5 **Deemed limitations**

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

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

21. **DIRECTORS' DUTIES AND INTERESTS**

21.1 **Compliance with duties under the ACNC Act and general law**

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

21.2 **Director can hold other offices etc**

A Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any, partner, director or employee of the auditor;
- (b) be a member of any corporation (including the Company) or partnership other than the Company's auditor; or
- (c) be a creditor of any corporation (including the Company) or partnership; or
- (d) enter into any agreement with the Company.

21.3 **Disclosure of interests**

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

21.4 **Director interested in a matter**

- (a) Each Director who has a material personal interest in a matter that is being considered at a meeting of the Board (or that proposed in a circular resolution) must not, except as provided under rule 21.4(b):
 - (i) be present at the meeting while the matter is being discussed; or
 - (ii) vote on the matter.
- (b) A Director may be counted in a quorum at a Board meeting that considers, and votes on, any matter in which that Director has an interest.

- (c) The Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company.
- (d) The Director may retain benefits under the transaction even though the Director has the interest.
- (e) The Company cannot avoid the transaction merely because of the existence of the interest.

21.5 **Agreements with third parties**

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

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

21.6 **Obligation of secrecy**

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

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

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

22. DIRECTORS' REMUNERATION

22.1 **Payments to Directors**

The Company is prohibited from paying fees to a Director.

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

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

23. OFFICERS' INDEMNITY AND INSURANCE

23.1 Officer's right of indemnity

Rules 23.2 and 23.3 apply:

- (a) to each person who is or has been a director, secretary or executive officer of the Company;
 - (b) to any other officers or former officers of the Company;
 - (c) if the Directors so determine, to any auditor or former auditor of the Company,
- each an **Officer** for the purposes of this rule.

23.2 Indemnity

- (a) The Company must indemnify every Officer on a full indemnity basis and to the full extent permitted by law against all losses, liabilities, costs, charges and expenses (**Liabilities**) incurred by the Officer as an officer of the Company.
- (b) The Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an Officer in defending an action for a Liability incurred as an Officer.
- (c) The indemnity in this rule:
 - (i) does not operate in respect of any Liability of the Officer to the extent that Liability is covered by insurance;
 - (ii) is enforceable without the Officer having to first incur any expense or make any payment; and
 - (iii) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer or auditor of the Company.

23.3 Insurance

Subject to the Corporations Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any Officer against any Liability as an officer or auditor of the Company including, but not limited to:

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

23.4 Contract

Subject to the Corporations Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law, the Company may, without limiting an Officer's rights under this rule 23, enter into an agreement with an Officer, to give effect to the rights of the Officer under this rule 23 on any terms and conditions that the Board thinks fit.

23.5 Directors' access to documents

If the Board agree, the Company must give a Director or former director access to:

- (a) certain documents, including documents provided for or available to the Board, and
- (b) any other documents referred to in those documents.

24. BOARD MEETINGS

24.1 Convening Board meetings

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

24.2 Notice of Board meeting

The convenor of each Board meeting:

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

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

24.3 Use of technology

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

24.4 Chairing Board meetings

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

24.5 Quorum

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

24.6 Majority decisions

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

24.7 Procedural rules

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

24.8 Written resolution

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

24.9 **Additional provisions concerning written resolutions**

For the purpose of rule 24.8:

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

24.10 **Valid proceedings**

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

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

25. **SECRETARY**

25.1 **Appointment of Secretary**

The Board:

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

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

25.2 **Terms and conditions of office**

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

25.3 **Cessation of Secretary's appointment**

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

- (a) is not permitted by Corporations Act to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G of the Corporations Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 25.4.

25.4 **Removal from office**

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

26. MINUTES

26.1 Minutes must be kept

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 20);
- (d) resolutions passed by Directors without a meeting; and
- (e) disclosures and notices of Directors' interests.

26.2 Minutes as evidence

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

26.3 Inspection of minute books

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

27. FINANCIAL REPORTS AND AUDIT

27.1 Company must keep financial records

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

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director and the auditor to inspect those records at all reasonable times.

27.2 Appointment of auditor or reviewer

If required by the Corporations Act or ACNC Act (as the case may be), the company must appoint a qualified auditor or reviewer. No member may act as auditor or reviewer of the Company.

28. FINANCIAL YEAR

28.1 Company's financial year

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

29. WINDING UP

29.1 Surplus assets not to be distributed to members

If the Company is wound up, any surplus assets must not be distributed to a member or a former member of the Company, unless that member or former member is a charity described in rule 29.2(a).

29.2 Distribution of surplus assets

- (a) Subject to the Corporations Act and any other applicable law, and any court order, any surplus assets (including 'gift funds' defined in rule 29.2(d)) that remain after the Company is wound up must be distributed to one or more charities:
 - (i) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in rule 1.2;
 - (ii) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company, and
 - (iii) if the Company is endorsed as a deductible gift recipient, that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth).
- (b) The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the Company may apply to the Supreme Court to make this decision.
- (c) If the Company's deductible gift recipient endorsement is revoked (whether or not the Company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of 29.2(a)(i), (ii) and (iii) as decided by the Board.
- (d) For the purpose of this rule:
 - (i) 'gift funds' means:
 - (A) gifts of money or property for the principal purpose of the Company;
 - (B) contributions made in relation to a fund-raising event held for the principal purpose of the Company; and
 - (C) money received by the Company because of such gifts and contributions.
 - (ii) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).

30. NOTICES

30.1 Notices by Company

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

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

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

30.2 **Overseas members**

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

30.3 **When notice is given**

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

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

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

30.4 **Business days**

For the purposes of rule 30.3, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

30.5 **Counting days**

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

30.6 **Notices to "lost" members**

If:

- (a) on two or more consecutive occasions a notice served on a member in accordance with this rule is returned unclaimed or with an indication that the member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a member is not at the address shown in the Register or notified to the Company under rule 30.2,

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

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