

# Constitution

The Sleep Health Foundation

Updated October 2016

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## 1. NAME OF THE COMPANY

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The name of the Company is The Sleep Health Foundation.

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## 2. TYPE OF COMPANY

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- (a) The Company is a not-for-profit public company limited by guarantee.
- (b) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
  - (i) payment of debts and liabilities of the Company;
  - (ii) payment of the costs, charges and expenses of winding up; and
  - (iii) any adjustment of the rights of the contributories among Members.
- (c) The amount that each Member or past Member is liable to contribute is limited to \$10.00.

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## 3. REPLACEABLE RULES

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This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

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## 4. DEFINITIONS AND INTERPRETATION

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### 4.1 Definitions

In this Constitution, unless there is something in the subject or context which is inconsistent:

**Act** means the *Corporations Act 2001*.

**Association** means the incorporated association known as the Australasian Sleep Association Incorporated ABN 32 172 170 561 and includes a reference to the public company limited by guarantee known as the Australasian Sleep Association (once it is incorporated and the activities of the Australasian Sleep Association Incorporated are transferred to it).

**Association Appointed Directors** means a Director appointed by the Association pursuant to **clause** Error! Reference source not found..

**Board** means the Board of Directors.

**Chair** means the person holding that office under this Constitution and includes any assistant or acting chair.

**Committee** means a committee established in accordance with **clause 44**.

**Company** means The Sleep Health Foundation.

**Constitution** means this Constitution as amended or supplemented from time to time.

**DGR** means a deductible gift recipient as defined by the law from time to time.

**Director** means any person holding the position of a director of the Company and **Directors** means the directors for the time being of the Company or, as the context permits, such number of them as have authority to act for the Company. **Director** includes the Member Appointed Directors, Association Appointed Directors and the Independent Directors.

**First Board** means the first Board of Directors of the Company pursuant to **clause** Error! Reference source not found..

**Independent Director** means the Director appointed to the Board pursuant to **clause** Error! Reference source not found..

**Individual Member** means a Member of the Company who is a natural person.

**Member** means a member of the Company pursuant to **clause 6** (and **Membership** has the corresponding meaning) and includes both Individual Members and Organisational Members.

**Member Appointed Directors** means those Directors appointed pursuant to **clause** Error! Reference source not found..

**Member Present** means, in connection with a meeting of Members, a Member being present in person or by proxy or attorney.

**Objects** means the objects of the Company set out in **clause 5.1**.

**Office** means the registered office for the time being of the Company.

**Officer** has the same meaning as given to that term in section 9 of the Act.

**Organisational Member** means a Member of the Company who is a body corporate.

**Register** means the register of Members to be kept pursuant to the Act.

**Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Act.

**Representative** has the meaning given to it in section 250D of the Act.

**Secretary** means the person appointed as the secretary of the Company and includes any assistant or acting secretary.

**Subscription** means the subscription fees payable by Members pursuant to **clause 8**.

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## 4.2 Interpretation

- (a) In this Constitution, unless there is something in the subject or context which is inconsistent:
  - (i) the singular includes the plural and vice versa;
  - (ii) each gender includes the other two genders;
  - (iii) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
  - (iv) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
  - (v) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
  - (vi) a reference to any clause or schedule is to a clause or schedule of this Constitution;
  - (vii) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- (b) An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.
- (c) Headings do not form part of or affect the construction or interpretation of this Constitution.

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## 5. OBJECTS AND PURPOSES

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### 5.1 Objects

- (a) The vision of the Company is that of a community that recognises the importance of good sleep to health, public safety, productivity and quality of life.
- (b) The Company is a charitable institution and a health promotion charity. The Object of the Company is to promote the prevention and control of all sleeping disorders and sleep deprivation, which includes, but is not limited to, the following:
  - (i) raising and administering funds for research into the detection, prevention and treatment of all sleep disorders and sleep deprivation,

- 
- including clinical sleep disorders, unhealthy sleep-wake behaviour, and sleep-related basic sciences;
  - (ii) encouraging best practice in the delivery of health care related to sleep disorders;
  - (iii) the provision of effective advocacy on sleep health issues with government, employer bodies, road safety authorities and other organisations;
  - (iv) raising public awareness and community involvement about sleep health issues and their resolution;
  - (v) undertaking targeted education and service delivery programmes in relation to sleep health issues;
  - (vi) raising and administering funds for community awareness programmes in relation to sleep health issues;
  - (vii) collaborating with professional organisations involved in sleep health to promote better sleep behaviours and health; and
  - (viii) anything ancillary to the Objects set out in **clauses 5.1(b)(i) to 5.1(b)(vii)**.
- (c) The Company can only exercise the powers in section 124(1) of the Act to:
    - (i) carry out the Objects; and
    - (ii) do all things incidental or convenient in relation to the exercise of power under **clause 5.1(c)(i)**.

## 5.2 Income and Property

- (a) The income and property of the Company will only be applied towards the promotion of the Objects.
- (b) No income or property of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company. However, nothing in this Constitution will prevent payment in good faith to a Member:
  - (i) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
  - (ii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
  - (iii) of reasonable and proper rent for premises leased by any Member to the Company.

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- (c) No payment shall be made to any Director other than the payment:
- (i) of out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; and
  - (ii) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service.
- (d)
- (i) Subject to **clause 5.2(d)(ii)**, no Member shall make any private commercial gain that is attained by virtue of its Membership of the Company, including, but not limited to, private commercial gain arising from or in connection to any advertising, promoting, publicising, publishing or broadcasting by the Member in respect of its Membership of the Company.
  - (ii) **Clause 5.2(d)(i)** does not apply to Members who have, or whose products or services have, been endorsed by the Company.

## MEMBERSHIP

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### 6. ADMISSION TO MEMBERSHIP

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#### 6.1 Number of Members

The Company must have at least six (6) Members.

#### 6.2 Pre-condition to Membership

A person is entitled to become a Member if that person agrees to assume the liability to pay the Member's Guarantee Amount.

#### 6.3 Becoming a Member

Subject to the Corporations Act, a person becomes a Member on the registration of that person's name in the Register of Members.

#### 6.4 Classes of Membership

There are two (2) classes of membership in the Company:

- (a) Individual Members; and
- (b) Organisational Members.



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### 6.5 Application for Membership

- (a) The Board may prescribe the form of the application for Membership.
- (b) An application for Membership must:
  - (i) be in writing signed by the applicant; and
  - (ii) if the Board has prescribed the form of the application, be in that prescribed form.

### 6.6 Consideration for application for Membership

At the first meeting of the Board after an application for Membership has been received by the Board, the Board must consider the application and either accept or reject the application, without being required to provide any reasons for its determination.

### 6.7 Registration as Member

If the Board accepts an application for Membership, as soon as practicable, the Board must register the name of the person and the respective class of membership in the Register of Members.

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## 7. MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE

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A right, privilege or obligation which a person has by reason of being a Member of the Company:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of the person's Membership.

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## 8. SUBSCRIPTIONS

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- (a) There shall be an annual Subscription payable by each Member to the Company, which will be due on 1 July each year or on the date a Member is admitted to Membership within the Company (as the case may be).
- (b) Subject to **clause 8(c)**, the amount of any Subscription shall be fixed by the Board and shall be payable by Members at such times and in such manner as determined by the Board from time to time. The Board can set different rates of Subscriptions for different classes of Membership.
- (c) The Board may in its discretion:
  - (i) determine that:
    - (A) no Subscription is payable; or
    - (B) a discounted Subscription is payable;

- by a Member or Members in a given year; and
- (ii) extend the time for payment of Subscriptions by any Member.
- (d) No part of any Subscription shall be refunded to a Member who ceases to be a Member in accordance with **clause 9**.

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## 9. CESSATION OF MEMBERSHIP

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- (a) A Member's Membership will cease:
    - (i) if, being an Individual Member, upon that Member dying;
    - (ii) on the date that the Secretary receives written notice of resignation from that Member;
    - (iii) subject to **clause 8(c)**, if that Member fails to pay the Member's Subscription fees for a period of twelve (12) successive months;
    - (iv) if the Member is expelled pursuant to **clause 10**;
    - (v) if, being an Organisational Member:
      - (A) that Member is dissolved or otherwise ceases to exist;
      - (B) that Member has:
        - (1) a receiver;
        - (2) a receiver and manager;
        - (3) a liquidator;
        - (4) an administrator;
        - (5) an administrator of a deed of company arrangement;  
or
        - (6) a trustee of other person administering a compromise or arrangement between the Member and someone else;
- appointed to it; or
- (vi) if the Company in general meeting resolves by a resolution with a 75% majority of Members Present, to terminate the membership of a Member whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company. The Member must be given at least twenty one (21) days' notice of the proposed resolution and must be given

the opportunity to be heard at the meeting at which the resolution is proposed.

- (b) A Member may at any time, pursuant to **clause 9(a)(ii)**, resign as a Member but shall continue to be liable for:
  - (i) any Subscriptions and all arrears due and unpaid at the date of resignation; and
  - (ii) all other monies due by the Member to the Company;
  - (iii) any sum for which the Member is liable as a Member of the Company under **clause 2(b)**; and
  - (iv) if applicable, the Member's Guarantee Amount.

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## 10. DISCIPLINING OF MEMBERS

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### 10.1 Disciplining of Members

- (a) The Board may resolve to expel any Member or to suspend any Member from Membership of the Company if the Member:
  - (i) has persistently refused or neglected to comply with a provision or provisions of this Constitution; or
  - (ii) has persistently or wilfully acted in a manner prejudicial to the interests of the Company.
- (b) A resolution of the Board pursuant to **clause 10.1(a)** will be of no effect unless the Board confirms the resolution in accordance with this clause at a meeting held not earlier than fourteen (14) days and not later than twenty eight (28) days after the service on the Member of notice under **clause 10.1(c)**.
- (c) If the Board resolves under **clause 10.1(a)** to expel or suspend any Member, the Secretary must serve the Member with a notice in writing:
  - (i) setting out the resolution of the Board and the grounds upon which it is based;
  - (ii) stating that the Member may address the Board at a meeting to be held not earlier than fourteen (14) days and not later than twenty eight (28) days after service of the notice;
  - (iii) stating the date, place and time of that meeting; and
  - (iv) informing the Member that the Member may do either or both of the following:
    - (A) attend and speak at that meeting;

- (B) submit to the Board at or prior to the date of that meeting written representations relating to the resolution.
- (d) At a meeting of the Board held in accordance with **clause 10.1(c)**, the Board must:
  - (i) give the Member an opportunity to make oral representations;
  - (ii) give due consideration to any written representations submitted to the Board by the Member at or prior to the meeting; and
  - (iii) resolve whether to confirm or to revoke the decision to expel or suspend the Member.
- (e) The Member must be notified in writing of the decision of the Board within seven (7) days. If the Board resolves to confirm the expulsion or suspension, the Member must also be notified of the right of appeal available under **clause 10.2**.
- (f) A resolution confirmed by the Board under **clause 10.1(d)** does not take effect:
  - (i) until the expiration of the period within which the Member is entitled to appeal against the resolution; or
  - (ii) if the Member exercises the right of appeal, until the Company confirms the resolution pursuant to **clause 10.2(d)**.

## 10.2 Right of Appeal of Disciplined Member

- (a) A Member may appeal to the Company in general meeting against a resolution of the Board, which is confirmed under **clause 10.2(d)**. Written notice of such an appeal must be lodged with the Secretary within seven (7) days of service of the notice required under **clause 10.1(e)**.
- (b) Upon receipt of a notice of appeal the Secretary must convene a general meeting of the Company to be held within twenty one (21) days after the date of receipt of the notice.
- (c) At a general meeting of the Company convened under **clause 10.2(b)**:
  - (i) no business other than the question of the appeal may be transacted;
  - (ii) the Board and the Member must be given the opportunity to state their respective cases orally or in the writing, or both; and
  - (iii) the Members Present must vote by secret ballot on the question of whether the resolution will be confirmed.
- (d) Confirmation of the resolution may be by a simple majority of those Members Present.

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## 11. RESOLUTION OF DISPUTES BETWEEN MEMBERS

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- (a) Disputes between Members (in their capacity as Members), including any disputes in relation to the Company's fundraising activities, shall be referred to the Board which must take steps to resolve the dispute.
- (b) If a dispute so referred is not solved to the satisfaction of any party to the dispute within thirty (30) days of its being referred, then that party may refer the dispute to mediation before a mediator appointed by mutual agreement of the parties.
- (c) Failing agreement by the parties to the appointment of a mediator within fourteen (14) days of a party notifying the other party of its intention to refer the dispute to mediation, the appointment of the mediator shall be made by the President of the New South Wales Law Society.
- (d) The costs of the mediator appointed pursuant to **clause 11(b)** or **clause 11(c)** (as the case may be) shall be shared equally between the Members party to the dispute.
- (e) At least seven (7) days before a mediation session established by a mediator appointed pursuant to **clause 11(b)** or **clause 11(c)** (as the case may be) is to commence, the parties to the dispute are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

## GENERAL MEETINGS

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### 12. CONVENING OF GENERAL MEETINGS

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- (a) Any three (3) Directors may, whenever those Directors think fit, convene a general meeting of the Company.
- (b) Members shall be entitled to require a general meeting to be convened in accordance with the provisions of the Act.
- (c) A general meeting of the Company may be convened at two or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting.

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### 13. NOTICE OF GENERAL MEETING

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- (a) Subject to consent to shorter notice being given in accordance with the Act, at least twenty one (21) days notice of any general meeting must be given specifying:
  - (i) the place, day and hour of the meeting;
  - (ii) the general nature of any business to be transacted at the meeting;

- (iii) if a special resolution is to be proposed, the details of and intention to propose it;
  - (iv) if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
  - (v) any other information required by the Act.
- (b) The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.
- (c) The matters upon which Members can vote are limited to those matters expressly provided for in the Act, this Constitution and the general law. Typically, Members have a right to vote on certain decisions relating to the structure and Constitution of the Company, including:
- (i) the adoption of and amendment to the Constitution;
  - (ii) changes to the name and type of the Company;
  - (iii) variations to the rights attached to a particular class of Membership;
  - (iv) the election of the Member Appointed Directors;
  - (v) the removal of Directors pursuant to section 203D of the Act;
  - (vi) the appointment and removal of the Company's auditors;
  - (vii) the initiation of a Member's voluntary winding up of the Company; and
  - (viii) any special resolution to be decided upon by the Members as notified in accordance with **clause 13(a)(iii)**.

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## 14. CANCELLATION OR POSTPONEMENT OF GENERAL MEETING

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- (a) Subject to the provisions of the Act and this Constitution, the Board may cancel a general meeting of the Company:
- (i) convened by the Board; or
  - (ii) which has been convened by a Member or Members pursuant to the Act upon receipt by the Company of a written notice withdrawing the requisition signed by that Member or those Members.
- (b) The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.
- (c) Where any general meeting is cancelled or postponed or the venue for the same is changed:

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- (i) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
  - (ii) any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

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## 15. REPRESENTATIVES

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For the purposes of this Constitution:

- (a) This **clause 15** applies to Organisational Members.
- (b) A signature by a Representative of an Organisational Member on behalf of that Organisational Member is taken to be the signature of that Organisational Member for the purposes of this Constitution.
- (c) Any power or right of an Organisational Member as granted by this Constitution can be exercised by the Representative of that particular Organisational Member.
- (d) Organisational Members are represented at meetings of Members by their Representatives, subject to the right of a Representative to appoint a proxy pursuant to **clause 27**.
- (e) Any notice served on a Representative will be deemed to service on the Organisational Member which is represented by that particular Representative.
- (f) The actions of a Representative bind the Organisational Member which is represented by that particular Representative.
- (g) Each Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if a Member himself or herself.

## PROCEEDINGS AT GENERAL MEETINGS

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### 16. QUORUM

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- (a) No business may be transacted at any general meeting unless a quorum of Members is present at all times during the meeting.
- (b) Five (5) Members Present and entitled to vote constitute a quorum for all general meetings.

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- (c) If within thirty (30) minutes after the time appointed for holding a general meeting a quorum is not present:
    - (i) the meeting, if convened upon the requisition of Members, shall be dissolved;
    - (ii) in any other case:
      - (A) it will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Board may by notice to the Members appoint; and
      - (B) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.

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## 17. CHAIR

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- (a) The Chair of the Board shall be the Chair of each meeting of Members.
- (b) The Chair of the Board shall be entitled to preside as Chair at every general meeting.
- (c) Where a general meeting is held and:
  - (i) there is no Chair; or
  - (ii) the Chair is not present within thirty (30) minutes after the time appointed for the holding of the meeting or, if present, is unwilling to act as Chair of the meeting,

the other Directors present may choose another Director as Chair of the meeting by two-thirds majority, or if their number is not three or a multiple of three, then the nearest number to one-third. If no Director is so chosen, or if all the Directors present decline to take the chair, the Members Present may choose one of their number to be Chair of the meeting.
- (d) The rulings of the Chair of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

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## 18. ADJOURNMENTS

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- (a) The Chair of a general meeting at which a quorum is present:
  - (i) may adjourn a meeting with the consent of the meeting; and
  - (ii) must adjourn the meeting if the meeting so directs,

to a time and place as determined.



- (b) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (d) It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for thirty (30) days or more, in which case notice of the adjourned meeting must be given as in the case of an original meeting.

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## 19. DETERMINATION OF QUESTIONS

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- (a) At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
  - (i) the Chair of the meeting; or
  - (ii) at least two (2) Members Present and entitled to vote on the resolution.
- (b) Before a vote on a resolution is taken, the Chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) A declaration by the Chair of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company, which has been signed by the Chair of the meeting or the next succeeding meeting, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

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## 20. POLLS

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- (a) A poll may be demanded:
  - (i) before a vote on a resolution is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.
- (b) If a poll is demanded it must be taken in such manner and at such time and place as the Chair of the meeting directs, subject to **clause 20(e)**.
- (c) The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.

- (d) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- (e) A poll demanded on the election of a Chair or any question of adjournment of the meeting must be taken immediately.
- (f) The demand for a poll may be withdrawn.

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## 21. VOTING RIGHTS

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A Member has one (1) vote, both on a show of hands and a poll.

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## 22. VOTING DISQUALIFICATION

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No person other than a Member shall be entitled to a vote at a general meeting.

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## 23. OBJECTION TO QUALIFICATION TO VOTE

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Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the Chair, whose decision shall be final and conclusive and a vote allowed by the Chair shall be valid for all purposes.

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## 24. PERSONS OF UNSOUND MIND AND MINORS

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- (a) A Member:
  - (i) of unsound mind; or
  - (ii) whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
  - (iii) who is a minor;

may vote whether on a show of hands or on a poll by that Member's committee or by such other person as properly has the management or guardianship of that Member's estate or by the public trustee (as the case may be) and the committee or other person or trustee may vote by proxy or representative.
- (b) Any person having the right of management or guardianship of the person or estate in respect of a Member as referred to in **clause 24(a)** must not exercise any of the rights conferred under that clause unless and until the person has provided to the Board satisfactory evidence of the appointment of the person accordingly.

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## **25. CHAIR'S CASTING VOTE**

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In the case of an equality of votes whether on a show of hands or on a poll, the Chair of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote.

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## **26. RIGHT OF NON-MEMBERS TO ATTEND GENERAL MEETING**

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- (a) The Chair of a general meeting may invite any person who is not a Member to attend and address a meeting.
- (b) Any auditor of the Company shall be entitled to attend and address a general meeting.

## **PROXIES**

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## **27. RIGHT TO APPOINT PROXIES**

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- (a) A Member who is entitled to attend and vote at a general meeting of the Company may appoint a person as the Member's proxy to attend and vote for the Member at the meeting and such person need not be a Member.
- (b) If a Member appoints a proxy, the proxy is entitled to vote on a show of hands and on a poll.

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## **28. APPOINTING A PROXY**

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### **28.1 Appointing a Proxy**

The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing.

### **28.2 Instrument of Proxy**

- (a) The instrument of proxy is valid if it contains the information required by the Act which at the date of this Constitution is the following information:
  - (i) the name and address of the Member;
  - (ii) the name of the Company;
  - (iii) the proxy's name or the name of the office of the proxy; and
  - (iv) the meetings at which the instrument of proxy may be used.
- (b) An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.

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- (c) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 28.2(a)**.
  - (d) An instrument of proxy may be revoked at any time by notice in writing to the Company.

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## 29. LODGMENT OF PROXIES

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- (a) An instrument appointing:
  - (i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
  - (ii) an attorney to exercise a Member's voting rights at a general meeting or a certified copy of that power of attorney,

must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than forty eight (48) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote and in default the instrument of proxy or the power of attorney will not be treated as valid.
- (b) For the purposes of this clause it will be sufficient that any document required to be lodged by a Member be received in legible form by facsimile at the place at which the document is required to be delivered by the Member and the document shall be regarded as received at the time the facsimile was received at that place.
- (c) For the purposes of this clause it will be sufficient that any document required to be lodged by a Member be received in legible form by email if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the email transmission by the Company.

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## 30. VALIDITY OF PROXIES

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- (a) A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
  - (i) the death or unsoundness of mind of the Member;
  - (ii) the bankruptcy or liquidation of the Member;
  - (iii) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

if the Company has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least forty eight (48) hours (or such shorter period as the Board may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

- (b) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

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## 31. RIGHTS OF PROXIES AND ATTORNEYS

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- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (b) Unless a Member by the instrument of proxy directs the proxy to vote in a certain manner, the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.
- (c) A proxy will not be revoked by the appointor attending and taking part in any general meeting, but if the appointor votes on a resolution either on a show of hands or on a poll, the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.
- (d) The Chair of a general meeting may require any person acting as a proxy to establish to the satisfaction of the Chair that he is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his identity, he may be excluded from voting either upon a show of hands or upon a poll.

## APPOINTMENT AND REMOVAL OF DIRECTORS

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### 32. NUMBER AND APPOINTMENT OF DIRECTORS

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#### 32.1 Number of Directors

The Board of Directors shall consist of no more than *eleven (11)* persons.

#### 32.2 Constitution of Board

- (a) *The Board shall consist* of the following:
  - (i) two (2) Association Appointed Directors appointed by the Board of the Association;
  - (ii) four (4) Member Appointed Directors; and
  - (iii) up to *four (4)* Independent Directors appointed by the Board.

(iv) *where applicable, the Immediate Past Chair of the Foundation, for the first two years following departure from the position of Chair, provided he/she has left in good standing*

(b) A Director does not also have to be a Member.

### 32.3 Election of Member Appointed Directors

(a) Nomination of candidates for election as a Member Appointed Director:

(i) must be made in writing, signed by a Member and accompanied by written consent of the candidate (which may be endorsed on the form of the nomination); and

(ii) must be delivered to the Secretary at least six (6) weeks before the date fixed for the holding of the annual general meeting at which the election is fixed to take place.

(b) The Secretary shall deliver the nomination form for each candidate to the board of the Association.

(c) The board of the Association must consider the nominations and either accept or reject the candidates, in its absolute discretion, without being required to provide any reasons for its determination.

(d) A candidate who has been approved by the board of the Association is eligible for election as a Member Appointed Director.

(e) Voting for the election of candidates as Member Appointed Directors, from those who have been approved by the board of the Association pursuant to clause 32.3(c):

(i) is to be held at the annual general meeting; and

(ii) a majority of Members entitled to vote is required for the successful election of a candidate as a Member Appointed Director.

### 32.4 Independent Directors

(a) The Board can elect up to *four (4)* Independent Directors to the Board.

(b) An Independent Director shall be a person who will bring skills and experience to the Board to enable the Board to advance the Objects.

### 32.5 Association Appointed Directors

(a) The board of the Association will appoint two (2) Association Appointed Directors to the Board.

(b) The board of the Association can at any time and in its absolute discretion remove either or both of the Association Appointed Directors it has appointed and replace the person(s) with another Association Appointed Director(s).

### 32.6 **Chair and Deputy Chair**

- (a) The Chair will be elected by the Board from amongst the Directors for a term of two (2) years.
- (b) The Chair will be eligible for re-election as Chair for a maximum of three (3) successive terms.
- (c) *Following retirement the Chair may remain on the Board as a Director for up to two (2) further years, as Immediate Past Chair, providing he/she has retired from the position of Chair in good standing and has the support of the Board to do so.*
- (d) *A Deputy Chair will be elected by the Board from amongst the Directors for a term of up to two (2) years, with a maximum of three (3) successive terms, pursuant to clause 32.7(a). The Deputy Chair will act for the Chair in the Chair's absence.*

### 32.7 **Term**

- (a) *Except for a Director who holds the position of Chair or Immediate Past Chair, each Director shall hold office for a term of two (2) years but shall not hold office for more than six (6) consecutive years. Directors shall be eligible for reappointment as a Director after a lapse of two (2) years from the date from which they last held office as a Director.*
- (b) A Director who holds the position of Chair may hold office as a Director for a maximum of *fourteen (14)* successive years, provided that the years in office by the Director beyond the first six (6) successive years are spent in the office of Chair or *Immediate Past Chair* pursuant to clause 32.6.
- (c) The Member Appointed Directors who commence holding office at the first annual general meeting, shall hold office until the following dates:
  - (i) half of the Member Appointed Directors shall retire (and be eligible for re-election) at the third annual general meeting held by the Company; and
  - (ii) the other half of the Member Appointed Directors who did not retire pursuant to clause 32.7(c)(i) shall retire (and be eligible for re election) at the fourth annual general meeting of the Company.
- (d) If there is any dispute as to whether a particular Member Appointed Director is to retire pursuant to clause 32.7(c)(i) or clause 32.7(c)(ii), this shall be determined by lot.

### 32.8 **First Board**

Notwithstanding anything else herein contained, the Directors who commence holding office on the date of incorporation of the Company until the first annual general meeting shall be those directors that constitute the board of the Company at that time.

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### 33. GENERAL RIGHT TO APPOINT AND REMOVE DIRECTORS

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- (a) Subject to the Act and prior approval by the board of the Association, the Board may at any time appoint any person as a Director to fill any casual vacancy in the position of a Member Appointed Director. Any Director so appointed shall only hold office until the next annual general meeting of the Company after the appointment is made.
- (b) The Board may act despite any vacancy in their body, but if the number falls below the minimum required by the Act, the Board may act:
  - (i) for the purpose of increasing the number of Directors to the minimum; or
  - (ii) for the purpose of convening a general meeting; or
  - (iii) in emergencies;but for no other purpose.

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### 34. VACATION OF OFFICE

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- (a) Any Director may retire from office on giving written notice to the Company (and, if an Association Appointed Director, on giving written notice to the board of the Association) at the Office of his intention to retire and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).
- (b) The office of a Director shall become vacant if the Director:
  - (i) dies;
  - (ii) becomes bankrupt or makes any arrangement or composition with creditors generally;
  - (iii) becomes prohibited from being a director of a company by reason of any order made under the Act;
  - (iv) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
  - (v) resigns by notice in writing to the Company;
  - (vi) is absent without permission of the Board from meetings of the Board held for more than six (6) months; or
  - (vii) is removed from office by the person or body who nominated the Director by notice in writing, which may be given without any reason being ascribed to it.



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## POWERS AND DUTIES OF DIRECTORS

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### 35. POWERS OF DIRECTORS

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The control, ultimate management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not by the Act or by this Constitution required to be exercised in any other manner.

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### 36. NEGOTIABLE INSTRUMENTS

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All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by

- (a) the Chair or a Director so authorised in writing by the Chair; and
  - (b) the Secretary or a staff member so authorised in writing by the Board.
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### 37. CONFERMENT OF POWERS

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- (a) The Board may from time to time confer upon any Director for the time being, or any other person as they may select, such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.
  - (b) Powers conferred under this **clause 37** may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.
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## DIRECTORS' DISCLOSURE OF INTEREST

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### 38. CONTRACTS

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- (a) The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions that apply to such contracts or arrangements.
- (b) A Director must disclose an interest in accordance with the Act and the Secretary must record all declarations in the minutes of the relevant meeting.
- (c) A Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board subject to compliance with section 195 and related provisions of the Act still may:
  - (i) vote on the matter;

- (ii) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
  - (iii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
  - (iv) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- (d) The Company shall not make any payment for services rendered by a Director in a professional or technical capacity, except where the provision of such services and the amount payable have prior approval of the Board and where the amount does not exceed an amount that is commercially reasonable for those services.
- (e) A Director's failure to make disclosure under this **clause 38** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
- (f) A general notice given to the Board by a Director that the Director is an officer, a member of or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

## PROCEEDINGS OF DIRECTORS

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### 39. MEETINGS OF DIRECTORS

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- (a) The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as it thinks fit, provided that they shall meet together not less than three (3) times each calendar year.
- (b) A Director may at any time and the Secretary upon the request of a Director shall convene a meeting of the Board by giving at least twenty four (24) hours notice of the meeting to all Directors, except a Director who the person convening the meeting reasonably believes to be outside Australia.
- (c) Notice of a meeting of the Board need not be in writing.
- (d) A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (e) All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as

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required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors.

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#### 40. QUORUM

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- (a) A majority of Directors entitled to attend a meeting of the Board who are personally present (or in conference in accordance with **clause 39(d)**) form a quorum and a quorum must be present at all times during the meeting.
- (b) A Director who is disqualified from voting on a matter pursuant to **clause 38** shall be counted in the quorum despite that disqualification.

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#### 41. CHAIR

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- (a) The Chair of the Board (as elected pursuant to **clause** Error! Reference source not found.) shall, if present, preside as Chair of every meeting of the Board.
- (b) If a meeting of the Board is held and the Chair is not present within ten (10) minutes after the time appointed for the holding of the meeting or, if present, does not wish to chair the meeting, then the other Directors present must elect one of their number to be Chair of the meeting.

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#### 42. VOTING

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- (a) A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- (b) Each Director shall have one (1) vote.
- (c) In case of an equality of votes at a meeting of the Board, the Chair has a casting vote in addition to a deliberative vote.

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#### 43. RESOLUTIONS BY DIRECTORS

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- (a) The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document
- (b) A facsimile transmission which is received by the Company and which purports to have been signed by a Director shall, for the purposes of this

**clause 43**, be taken to be in writing and signed by that Director at the time of the receipt of the facsimile transmission by the Company in legible form.

- (c) An email transmission which is received by the Company and which purports to have been sent by a Director shall, for the purposes of this **clause 43**, be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Company.
- (d) In addition, a Directors' meeting may be called or held and resolutions may be passed using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting or the putting of the resolution.

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## 44. COMMITTEES OF DIRECTORS

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### 44.1 Committees

The Board may form and delegate any of its powers to one or more Committees consisting of such Directors and other persons as it thinks fit, and may from time to time revoke such delegation.

### 44.2 Operation of all Committees

- (a) A Committee must, in exercise of the powers delegated to it, conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- (b) The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- (c) A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act and this Constitution to be made entered and signed. A copy of these minutes shall be tabled at the next Board Meeting.

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## 45. VALIDATION OF ACTS OF DIRECTORS

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All acts done:

- (a) at any meeting of the Board; or
- (b) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

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## MINUTES

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### 46. MINUTES

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- (a) The Board must cause minutes to be kept in accordance with the Act for the purposes of recording:
  - (i) the names of the Directors present at each meeting of the Directors and of Directors present at each meeting of any Committee;
  - (ii) all orders, resolutions and proceedings of general meetings and of meetings of Directors and of Committees;
  - (iii) such matters as are required by the Act to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of his interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.
- (b) Such minutes shall be signed by the Chair of the meeting, or the Chair of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

## SECRETARY

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### 47. APPOINTMENT AND TENURE

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- (a) There must be at least one Secretary (who is the Company Secretary for the purposes of the Act) appointed by the Board for a term and on conditions determined by the Board.
- (b) The Board may remove any Secretary so appointed.

## EXECUTION OF DOCUMENTS

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### 48. EXECUTION OF DOCUMENTS

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- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Act, the Company may execute any agreement, deed or other document by:
  - (i) two Directors signing the same; or
  - (ii) one Director and one Secretary signing the same.

- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

## ACCOUNTS AND INSPECTION OF RECORDS

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### 49. ACCOUNTS AND INSPECTION

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- (a) The Board shall cause proper financial records to be kept and must distribute copies of the financial reports of the Company and a Director's report in accordance with the requirements of the Act.
- (b) The Board must also from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of Members.

## NOTICES

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### 50. SERVICE OF NOTICES

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- (a) A notice may be given by the Company to any Member by:
- (i) serving it on the Member personally;
  - (ii) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Company for the giving of notices;
  - (iii) facsimile to the facsimile number supplied by the Member to the Company for the giving of notices; or
  - (iv) sending it to the electronic address supplied by the Member to the Company for the giving of notices.
- (b) Any Member who has not left at or sent to the Office his place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.
- (c) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.
- (d) Where a notice is sent by facsimile or other electronic means, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the business day after it is sent.

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- (e) A notice may be given by the Company to the persons entitled to a share in consequence of the death, lunacy or bankruptcy of a Member by:
    - (i) service on the Member personally;
    - (ii) sending it by post addressed to the person by name or by the title of the representative of the deceased or lunatic or the assignee of the bankrupt or by any like description at the address, if any, within Australia supplied for the purpose by the person claiming to be entitled;
    - (iii) by giving the notice in any manner in which the same might have been given if the death, lunacy or bankruptcy had not occurred.
  - (f) Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Company to that effect shall be conclusive evidence of service.

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## 51. NOTICES OF GENERAL MEETING

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Subject to **clause 50(b)**, notice of every general meeting must be given in any manner authorised by this Constitution to:

- (a) every Member; and
- (b) the auditor for the time being of the Company.

## WINDING UP

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### 52. WINDING UP

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#### 52.1 Winding Up

- (a) If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another institution or corporation which has:
  - (i) objects which are similar to the Objects of the Company;
  - (ii) a constitution which requires its income and property to be applied in promoting its objects;
  - (iii) a constitution which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Company by **clause 5.2(b)**; and
  - (iv) which is endorsed as a DGR.

- (b) The identity of the corporation or institution is to be determined by the Members in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court for determination.

## 52.2 Revocation of DGR Endorsement

In the event that the Company ever has its endorsement as a DGR revoked, the Company must transfer all remaining gifts, deductible contributions and any money received in respect of such gifts and contributions to another DGR, such DGR to be determined by the Members and failing such determination being made, by application to the Supreme Court for determination.

## INDEMNITY

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### 53. INDEMNITY

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To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this **clause 53** unless:

- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
- (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
  - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Act.

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### 54. PAYMENT OF INDEMNITY POLICY PREMIUM

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- (a) To the extent permitted by law the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:
- (i) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
  - (ii) a contravention of sections 182 or 183 of the Act.



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- (b) The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
  - (c) Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions, then the Company shall not be required to indemnify the Officer under **clause 53** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

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## **55. INDEMNITY TO CONTINUE**

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The indemnity granted by the Company contained in **clause 53** and **54** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.

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We the several persons whose signatures appear hereunder hereby agree to the foregoing Constitution:

Name and address of members	Signature of members	Signature and address of witness
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**APPENDIX 1**

APPLICATION FOR MEMBERSHIP OF COMPANY

**The Sleep Health Foundation**

(incorporated under the *Corporations Act 2001*)

I, \_\_\_\_\_ (*full name of the applicant including ACN if applicable*) of  
\_\_\_\_\_ (*address*) hereby apply to become a Member of the abovenamed  
incorporated Company. In the event of my admission as a Member, I agree to be bound by  
the Constitution of the Company for the time being in force.

\_\_\_\_\_  
Signature of applicant

Date: \_\_\_\_\_

**OR**

**EXECUTED** for and on behalf of )  
**COMPANY** in accordance with section 127 )  
of the *Corporations Act 2001* by its duly )  
authorised officers: )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**APPENDIX 2**

The Sleep Health Foundation  
Form of Appointment of Proxy

**PROXY FORM**

**(1) Your details**

*(Please print your name and address)*

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Postcode: \_\_\_\_\_

Telephone: \_\_\_\_\_

**(2) Appoints**

Name: \_\_\_\_\_

*(Please print name of proxy)*

or failing the person so named, or if no person is named, the **Chair of the Meeting** to vote in accordance with the following directions or, if no directions have been given, as the proxy or the Chair sees fit at the Annual General Meeting of **The Sleep Health Foundation** be held on [insert date] commencing at [insert time] and at any adjournment thereof.

**(3) Directions**

**(4) Signature**

**(5) Date**