



Corporations Act 2001

Company limited by guarantee

CONSTITUTION

— of —

AUSTRALIAN HIMALAYAN FOUNDATION LTD

REVIEWED AND UPDATED JULY 2016

Please note: The footnotes in this Constitution are for purposes of convenience only and do not affect the interpretation of this Constitution. The footnotes do not form part of this Constitution and may be removed or modified without the Australian Himalayan Foundation complying with the Corporations Act requirements that apply to removal or modification of constitutional provisions.

UPDATED OCTOBER 2020

Clause 15.2 substituted with Clauses 15.2.1 and 15.2.2. - AGM 26 October 2020.

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CONSTITUTION OF AUSTRALIAN HIMALAYAN FOUNDATION LTD.

1. DEFINITIONS

- 1.1 In this Constitution the following expressions shall, unless the context otherwise requires, have the following meanings
- 1.1.1 "**Alternate Director**" means any person appointed under Clause 17;
- 1.1.2 "**Board**" means the Board of Directors of the Company from time to time established under Clause 15;
- 1.1.3 "**Chairperson**" means the person elected from time to time pursuant to the provisions of Clause 15 to perform the duties of a chairperson;
- 1.1.4 "**Company**" means Australian Himalayan Foundation Ltd. (or, subject to the Law, any other name as approved by the Members from time to time) as governed by this Constitution;
- 1.1.5 "**Constitution**" means this Constitution as supplemented, substituted or amended from time to time and includes any rules, regulations and by-laws of the Company for the time being in force;
- 1.1.6 "**Deputy Chairperson**" means the person elected from time to time pursuant to the provisions of Clause 15 to perform the duties of a chairperson;
- 1.1.7 "**Directors**" means the Directors for the time being or such number of them as have authority, acting as a body, to act for the Company and includes, where applicable, a person duly appointed and for the time being acting as an Alternate Director;
- 1.1.8 "**Eligible Charity**" means a fund, authority or institution which qualifies under item 9.1.1 of the table in section 30-80(1) of the Tax Act or as otherwise required under the Tax Act;
- 1.1.9 "**First Resolution**" has the meaning in Clause 9.3.1;
- 1.1.10 "**GST**" has the meaning given by Section 195-1 of the GST Act;
- 1.1.11 "**GST Act**" means A New Tax System (Goods and Services Tax) Act 1999;
- 1.1.12 "**Himalayan Region**" has the meaning under Clause 3.1.1;
- 1.1.13 "**Law**" means the *Corporations Act 2001 (Cth)*;
- 1.1.14 "**Member**" means each person who is recorded as a Member in the Register;
- 1.1.15 "**Membership**" means the contractual rights of a person to membership of the Company, being the rights attaching to the class of Membership conferred on that person;
- 1.1.16 "**Membership Year**" means each period of 12 Months commencing on 1 July and ending on the next ensuing 30 June;
- 1.1.17 "**Month**" means calendar month;
- 1.1.18 "**Nominee**" means in respect of a Member who is not a natural person, the natural person nominated in accordance with the provisions of Clause 5.4 who is authorised to exercise all the rights of that Member under this Constitution;

- 1.1.19 "**office**" or "**office of the Company**" means the registered office for the time being of the Company;
- 1.1.20 "**Overseas Aid Fund**" means the Himalayan Region Overseas Aid Fund established and administered in accordance with Clause 4B;
- 1.1.21 "**present**" when used in relation to a Member at a meeting means present in person, or by proxy, or by attorney, or by representative;
- 1.1.22 "**President**" means the person elected from time to time pursuant to the provisions of Clause 15 to perform the duties of a president;
- 1.1.23 "**Public Fund Committee**" means the committee established under Clause 20 and which manages the Overseas Aid Fund;
- 1.1.24 "**Register**" means the register of members of the Company maintained pursuant to the Law and Clause 7;
- 1.1.25 "**Responsible Person**" means a person who has a high degree of responsibility to the community as a whole and includes school principals, judges, clergymen, solicitors, doctors, accountants and other professional persons, mayors, councillors, town clerks and members of parliament. Generally, they are persons who perform a public function or they belong to a professional body (such as the Institute of Chartered Accountants, State Law Societies and Medical Registration Boards) which has a professional code of ethics and rules of conduct;
- 1.1.26 "**seal**" means the common seal of the Company;
- 1.1.27 "**Secretary**" or "**Honorary Secretary**" means any person elected from time to time pursuant to the provisions of Clause 22.1 to perform the duties of a secretary of the Company;
- 1.1.28 "**Subscription**" means the annual subscription fee payable by Members pursuant to the provisions of Clause 5.3;
- 1.1.29 "**Tax Act**" means the *Income Tax Assessment Act, 1997*; and
- 1.1.30 "**Treasurer**" or "**Honorary Treasurer**" means the person elected from time to time pursuant to the provisions of Clause 15 to perform the duties of a treasurer of the Company;
- 1.1.31 "**Vice-President**" means the person elected from time to time pursuant to the provisions of Clause 15 to perform the duties of a vice-president;
- 1.1.32 "**writing**" or "**written**" includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form.

2. INTERPRETATION

- 2.1 In this Constitution
- 2.1.1 references to any officer of the Company includes any person acting for the time being as such officer;
- 2.1.2 words importing the singular include the plural and vice versa;
- 2.1.3 words importing any gender shall mean and include all other genders;

- 2.1.4 words importing persons include companies, corporations, partnerships, associations, institutions, bodies and entities (whether incorporated or not) and visa versa;
- 2.1.5 words or expressions defined in the Law but not defined in this Constitution shall, if not inconsistent with the subject or context, bear the same meaning in this Constitution; and
- 2.1.6 all references in this Constitution to any statutory enactment or law shall mean and be construed as references to that enactment or law as amended or modified or reenacted from time to time and to the corresponding provisions of any similar enactment or law of any other relevant jurisdiction and includes regulations and statutory instruments thereunder.
- 2.2 The headings to clauses or groups of clauses shall not affect the construction or interpretation of this Constitution.
- 2.3 The replaceable rules contained in the Law shall not, unless expressed in the Law to be mandatory in respect of the Company, apply to the Company.

3. OBJECTS

- 3.1 The principal object of the Company is for the public charitable purpose of providing relief to the people of the Himalayan Region and, exclusively, for that purpose:
 - 3.1.1 to establish, assist and support educational, health, cultural and environmental projects in the Himalayan regions of Nepal, India, Pakistan, Tibet and Bhutan (“the Himalayan Region”);
 - 3.1.2 to aid and assist in the provision of essential services to the people of the Himalayan Region (including, but without limitation, water, roads, tracks, sewerage, electricity, bridges and airstrips);
 - 3.1.3 to establish, assist and support schools or otherwise provide or assist in the provision of educational facilities and material in schools in the Himalayan Region;
 - 3.1.4 to provide scholarships for the study of healthcare, education and environmental science and other fields of study for the people of the Himalayan Region which directly or indirectly relate to the objects of the Company;
 - 3.1.5 to generally aid and assist in the advancement of education for the people of the Himalayan Region;
 - 3.1.6 to aid and assist in the preservation of the cultural activities and traditions of the people of the Himalayan Region;
 - 3.1.7 to establish, assist and support environmentally beneficial and sustainable projects in the Himalayan Region (including, but without limitation, forestry and the establishment of National Parks);
 - 3.1.8 to establish, assist and support projects to conserve and protect the environment and endangered plant and animal species in the Himalayan Region, including the promotion of afforestation where appropriate;
 - 3.1.9 to aid and assist in the preservation of historical, cultural and/or archaeological sites and buildings in the Himalayan Region;

- 3.1.10 to establish, assist and support hospitals and other healthcare institutions, and to establish, assist and support projects for provision of healthcare in rural and remote locations in the Himalayan Region (including, without limitation, healthcare programs);
 - 3.1.11 to assist in the provision of emergency services to the people of the Himalayan Region when the circumstances require;
 - 3.1.12 to establish, assist and support in projects which seek to redress any negative impact of tourism in the Himalayan Region, including projects which educate tourists and trekkers (both domestic and foreign) in responsible tourism practices;
 - 3.1.13 to encourage and promote the Himalayan Region and generally to create greater community awareness in the knowledge and understanding of the objects of the Company;
 - 3.1.14 to administer one (1) or more funds into which all gifts, donations and bequests to the Company will be credited;
 - 3.1.15 to conduct seminars, lectures, conferences and educational programs for the promotion of the objects of the Company;
 - 3.1.16 to establish and maintain such centres and agencies as the Company may think desirable to further its objects and purposes;
 - 3.1.17 to establish close communications with corporations, entities, associations, foundations, institutions, organisations and groups including government instrumentalities and authorities and professionals that may have related interests to the Company;
 - 3.1.18 to disseminate information relating to the Himalayan Region and to produce, edit, publish, issue, sell and circulate any newsletters, papers, books, journals, bulletins, brochures, circulars and other publications that the Board considers necessary or desirable for the promotion of the Company and the objects and purposes of the Company;
 - 3.1.19 to be actively involved in raising funds for the Company to be applied in the pursuit of the objects of the Company (including the procurement of government, corporate and individual contributions and donations and engaging in fund raising activities);
 - 3.1.20 to do all such other things as are incidental or conducive to the attainment of the objects and aims of the Company and its Members.
- 3.2 The objects of the Company shall not be carried on for the purposes of profit or gain to its Members and the income and property of the Company, from whatever source derived, shall be applied solely towards the promotion of the objects of the Company and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit to the Members of the Company.
- 3.3 Notwithstanding anything contained in Clauses 3.2 and 4B.12, nothing contained in those Clauses shall prevent the payment, in good faith, of remuneration to any officers or servants of the Company or to any Member in return for any services actually rendered to the Company or for goods supplied in the ordinary or usual way of business, nor prevent the payment of interest at a rate not exceeding the rate fixed for the purposes of this Clause 3 by the Board on money borrowed from any Member or reasonable and proper rent for premises demised or let by any Member to the Company.

4. POWERS OF THE COMPANY

- 4.1 The Company has, subject to the Law, power to do all things necessary or convenient to be done for, or in connection with, the performance of its objects.
- 4.2 The Company has both within and outside Australia, all the rights, powers and privileges and the legal capacity of a natural person¹ including, but not limited to, the powers to –
- 4.2.1 accept gifts, devises, bequests or assignments made to the Company, whether on trust or otherwise, and whether unconditionally or subject to a condition and, if a gift, devise, bequest or assignment is accepted by the Company on trust or subject to a condition, to act as trustee or to comply with the condition, as the case may be;
 - 4.2.2 acquire, hold and dispose of real and personal property;
 - 4.2.3 lease the whole or any part of any land or building for the purpose of the Company;
 - 4.2.4 occupy, use and control any land or building owned or held under lease by any other person and made available to the Company;
 - 4.2.5 enter into contracts;
 - 4.2.6 erect buildings;
 - 4.2.7 purchase or take on hire, or to accept as a gift or on deposit or loan, and to dispose of or otherwise deal with furnishings, equipment and other goods;
 - 4.2.8 manage and invest funds raised by the Company on such terms as the Company thinks fit; and
 - 4.2.9 do anything incidental to any of the Company's objects.
- 4.3 Notwithstanding anything contained in this Constitution, any money or other property held by the Company upon trust or accepted by the Company subject to a condition, shall not be dealt with except in accordance with the obligations of the Company as trustee or as the person who has accepted the money or other property subject to the condition, as the case may be.

4B. HIMALAYAN REGION OVERSEAS AID FUND

- 4B.1 The primary objective of the Overseas Aid Fund is to provide relief to the people of the Himalayan Region.
- 4B.2 Members of the public are to be invited to make gifts of money or property to the Overseas Aid Fund for the primary objective of the Company.
- 4B.3 Money from interest on donations, income derived from donated property, and money from the realisation of any property is to be deposited into the Overseas Aid Fund.
- 4B.4 A separate bank account is to be opened to deposit money donated to the Overseas Aid Fund, including interest accruing thereon and from which monies may be drawn for the Company's primary objectives. Gifts to the Overseas Aid Fund are to be kept separate from other funds of the Company.
- 4B.5 Receipts are to be issued in the name of the Overseas Aid Fund and proper accounting records and procedures are to be kept and used for the Overseas Aid Fund.

¹ A 'natural person' is a living human being, as distinguished from a corporation, which is treated in law as a fictitious person.

- 4B.6 The Overseas Aid Fund will be operated on a not-for-profit basis.
- 4B.7 The Public Fund Committee shall be responsible for managing the Overseas Aid Fund.
- 4B.8 The Public Fund Committee shall be not less than two (2) persons, a majority of whom must be Responsible Persons².
- 4B.9 The Company must inform the Australian Taxation Office as soon as possible if:
- 4B.9.1 there are any changes to the Company's contact details, governing documents, operational arrangements, financial arrangements or Directors;
- 4B.9.2 there is any change to the membership of the Public Fund Committee; or
- 4B.9.3 it is proposed to wind up Overseas Aid Fund.
- 4B.10 The Company agrees to comply with any rules that the government may make to ensure that gifts made to the Overseas Aid Fund are only used for its primary objective.
- 4B.11 If the Overseas Aid Fund is wound up, any surplus assets of the Overseas Aid Fund must be paid to, given or transferred to another Eligible Charity in accordance with Clause 27.
- 4B.12 Subject to Clause 3.3, the income and property of the Overseas Aid Fund must be used and applied solely in promotion of its primary objective and no portion shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to Members, Directors or any other officers of the Company or trustees of the Company.
- 4B.13 Any allocation of funds or property to other persons or organisations will be made in accordance with the established purposes of the Company and not be influenced by the preference of the donor.

5. MEMBERSHIP AND ELIGIBILITY

5.1 Number and classes of Membership

- 5.1.1 The number of Members shall be not less than one (1) nor more than the maximum number (if any), which the Board may from time to time prescribe.
- 5.1.2 The Members of the Company shall, consist of such persons as the Directors shall admit to Membership in accordance with the provisions of this Constitution.
- 5.1.3 A person seeking admission to Membership who is not a natural person³ must nominate a natural person to be its Nominee in accordance with Clause 5.4.
- 5.1.4 The Directors may, at any time and from time to time, establish different classifications of Membership and may prescribe the qualifications, rights and privileges of persons admitted to Membership in, or transferred into, such classifications of Membership but in the event that a new class of Membership is established, the qualifications, rights and privileges of that Membership must be approved by ordinary resolution of the existing Members.

5.2 Admission to Membership

- 5.2.1 Every person who, at the date of registration of the Company, is a Member of the Company and has paid his Subscription for the current Membership Year, continues to be a Member of the Company.

² The definition of 'responsible person' is as per Clause 1.1.25

³ A 'natural person' is a living human being, as distinguished from a corporation, which is treated in law as a fictitious person.

- 5.2.2 A person who is not a Member of the Company at the time of registration of the Company (or who was a Member at that time but has ceased to be a Member) shall not be admitted to Membership unless –
- 5.2.2.1 he applies for Membership in accordance with Clause 5.2.3; and
- 5.2.2.2 his admission as a Member is approved by the Directors.
- 5.2.3 Every person seeking admission to Membership of the Company must –
- 5.2.3.1 sign a written application addressed to the Secretary, in the form prescribed by the Board;
- 5.2.3.2 specify the class of Membership sought (if there are different classes) and such other particulars as the Board may either generally or, in a particular case, require;
- 5.2.3.3 provide the undertaking referred to in Clause 5.5 and
- 5.2.3.4 give or leave the application, undertaking and payment for the first year's Subscription with, or for, the Secretary of the Company.
- 5.2.4 As soon as practicable after receipt of an application referred to in Clause 5.2.3 or, a nomination or notice referred to in Clause 5.4, the Secretary must refer the application, nomination or notice to the Directors.
- 5.2.5 On an application, nomination or notice being referred to the Directors, the Directors shall determine, in their absolute discretion, whether to approve or to reject the application, nomination or notice.
- 5.2.6 The Directors may decline to accept an application for Membership or nomination or notice with respect to a Nominee, without assigning any reason.
- 5.2.7 Upon an application being approved by the Directors, the Secretary must, as soon as practicable –
- 5.2.7.1 if the applicant is a natural person⁴ notify the applicant in writing that he has been approved for Membership; and
- 5.2.7.2 if the applicant is not a natural person – notify the applicant and its Nominee in writing that the applicant has been approved for Membership and that the Nominee has been approved as its authorised representative.
- 5.2.8 An applicant for Membership becomes a Member and is entitled to exercise the rights of Membership when his name is entered into the Register.
- 5.2.9 The Secretary must, within 28 days after approval by the Directors and receipt of the amounts referred to in Clause 5.3, enter the applicant's name in the Register and, if the applicant is not a natural person⁵, the Nominee's name.
- 5.2.10 If an application, nomination or notice has been rejected by the Directors, the Secretary must, as soon as practicable –
- 5.2.10.1 notify the applicant in writing that his application or nomination or notice has been rejected; and

⁴ A 'natural person' is a living human being, as distinguished from a corporation, which is treated in law as a fictitious person.

⁵ As above

5.2.10.2 return to the applicant the first year's Subscription (if any) which accompanied the application.

5.3 Subscription

- 5.3.1 Subject to following provisions of this Clause 5.3, the Subscription shall be \$100.00 per Membership Year or such other amount as may be determined by the Directors from time to time.
- 5.3.2 The Directors shall be entitled to determine, in their absolute discretion, that the Subscription payable in any Membership Year by any class of Members may be different to the Subscription payable by any other class of Members.
- 5.3.3 If the first Membership Year applicable to the person seeking admission to Membership is comprised of less than 365 days, the first year's Subscription payable by that person shall be apportioned according to the number of days remaining in that Membership Year.
- 5.3.4 The Subscription shall be payable by each Member, in advance at the commencement of each Financial Year, addressed to the Treasurer, or to such other person as the Board shall, from time to time, determine for that purpose.

5.4 Nominee

- 5.4.1 A nomination for the purposes of Clause 5.1.3 must –
- 5.4.1.1 be in writing;
 - 5.4.1.2 be signed or executed by the body corporate or entity seeking Membership;
 - 5.4.1.3 be addressed to the Secretary, or to such other person as the Board shall, from time to time, determine for that purposes; and
 - 5.4.1.4 accompany the application referred to in Clause 5.2.3.
- 5.4.2 A Nominee, nominated pursuant to Clauses 5.1.3 and 5.4.1, may be removed or replaced by written notice to the Secretary, signed or executed by the body corporate or entity which nominated that Nominee.
- 5.4.3 If the body corporate or entity which nominated a Nominee gives notice to the Secretary that it wishes its Nominee to be removed or replaced (for whatever reason), the Secretary will, subject to approval of the Directors in accordance with the provisions of Clause 5.2.5, as soon as practicable, make the appropriate entries in the Register to remove and/or to replace that Nominee.

5.5 Undertaking

- 5.5.1 Every Member shall provide an undertaking, in writing, in accordance with the provisions of Clause 5.5.2.
- 5.5.2 Every Member of the Company undertakes to contribute to the property of the Company in the event of the Company being wound up while he is a Member, or within one (1) year after he ceases to be a Member, for payment of the debts and liabilities of the Company (contracted before he ceases to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributors among themselves such amount as may be required, not exceeding, in any event, \$100.00 per Member.

5.6 GST

- 5.6.1 All payments that are required to be made by a Member under this Constitution (including but not limited to Subscriptions) are exclusive of GST.
- 5.6.2 If any payment referred to in Clause 5.6.1 is for, or is in connection with, a supply made by the Company under this Constitution on which the Company is liable to pay GST, then such payment shall be increased by the prevailing rate of that GST and the Member shall pay that increased amount to the Company at the same time and in the same manner as all other payments required to be made.
- 5.6.3 The Company must issue to the Member a tax invoice for the increased amount referred to in Clause 5.6.2 within 14 days from the date that the increased amount is required to be paid by the Member.

6. RIGHTS OF MEMBERS

- 6.1 Subject to this Constitution, all Members are entitled to all the rights and privileges of Membership of the Company.
- 6.2 A right, privilege, or obligation of a person by reason of his Membership –
 - 6.2.1 is not capable of being transferred or transmitted to another person; and
 - 6.2.2 terminates upon the cessation of his Membership whether by death or resignation or otherwise as more particularly set out in Clause 9.

7. REGISTER OF MEMBER

7.1 Information in Register

The Secretary must keep and maintain a Register containing –

- 7.1.1 the name and address of each Member;
- 7.1.2 the date on which each Member's name was entered in the register;
- 7.1.3 in the case of a Member who is not a natural person⁶, the name and address of the Nominee;
- 7.1.4 the class of Membership (if any); and
- 7.1.5 any other information which the Directors considers necessary.

7.2 Inspection and copies

- 7.2.1 The Register shall be available for inspection, free of charge, by any Member upon request.
- 7.2.2 A Member may make a copy of entries in the Register.

8. DEFAULT BY MEMBERS

- 8.1 If a Member fails to pay the whole or any part of his Subscription in any Membership Year, for more than 60 days after the due date for payment then –

⁶ A 'natural person' is a living human being, as distinguished from a corporation, which is treated in law as a fictitious person.

- 8.1.1 all of the rights and privileges of that Member shall be suspended until the Subscription, or such part thereof which is payable and remains outstanding, is paid or until his Membership has been determined in accordance with the provisions of Clause 8.2; and
 - 8.1.2 the Treasurer or Secretary shall give notice to that Member requiring payment of the Subscription, or such part of the Subscription which is payable and remains outstanding.
- 8.2 If any Member fails to pay his Subscription in accordance with Clause 8.1, or any part thereof which is payable and remains outstanding for more than 60 days after service of the notice to the Member in accordance with Clause 8.1.2, then the Member shall cease to be a Member pursuant to Clause 9 and the Treasurer or Secretary must notify that Member accordingly.

9. CESSATION OF MEMBERSHIP

9.1 Ceasing to be a Member

A person ceases to be Member of the Company if –

- 9.1.1 he resigns his Membership as provided in Clause 10.1; or
- 9.1.2 the provisions of Clauses 8.1 and 8.2 or the succeeding provisions of this Clause 9 become applicable to that Member.

9.2 Continuing liability

A Member who resigns his Membership continues to be liable for any Subscription and all arrears due and unpaid at the date of his resignation and for all other moneys due by him to the Company and for any sum not exceeding \$100.00 for which he may become liable as a Member under Clause 5.5.2.

9.3 Power to censure, fine, suspend or expel

9.3.1 If any Member –

- 9.3.1.1 fails to comply with the provisions of this Constitution; or
- 9.3.1.2 fails to comply with any of the rules, regulations or by-laws of the Company; or
- 9.3.1.3 is guilty of any conduct which, in the opinion of the Directors, is unbecoming of a Member or prejudicial to the interests of the Company or its Members,

the Directors may, subject to the provisions of Clause 9.3.2, by resolution of the Directors ("the First Resolution") censure, fine, suspend or expel that Member from the Company.

9.3.2 A First Resolution⁷ of the Directors under Clause 9.3.1 –

- 9.3.2.1 does not take effect unless the Directors, at a meeting held not earlier than 14 days and not later than 21 days after the service on the Member of a notice in accordance with the provisions of Clause 9.3.3 confirms the First Resolution⁸ in accordance with that Clause; and

⁷ The definition of 'First Resolution' is as per Clause 9.3.1

⁸ As above

- 9.3.2.2 where the Member exercises a right of appeal to the Company, does not take effect unless the Members confirm the First Resolution in accordance with Clause 9.3.8.
- 9.3.3 Where the Directors pass a First Resolution⁹ under the provisions of Clause 9.3.1, the Secretary must, as soon as practicable, cause to be served on the Member, a notice in writing –
- 9.3.3.1 setting out the First Resolution of the Directors and the grounds on which it is based;
- 9.3.3.2 stating that the Member may address the Board at a meeting to be held not earlier than 14 days and not later than 21 days after service of the notice;
- 9.3.3.3 stating the date, place and time of that meeting;
- 9.3.3.4 informing the Member that he may do one of the following –
- 9.3.3.4.1 attend the meeting; or
- 9.3.3.4.2 give to the Directors, before the date of the meeting, a written statement seeking revocation of the First Resolution.
- 9.3.4 At a meeting of the Directors held in accordance with Clause 9.3.3, the Directors must –
- 9.3.4.1 give the Member, or his representative, an opportunity to be heard; and
- 9.3.4.2 give due consideration to any written statement submitted by, or on behalf of, the Member; and
- 9.3.4.3 by resolution, determine whether to confirm or to revoke the resolution.
- 9.3.5 If the Directors, by resolution, confirm the First Resolution¹⁰, the Secretary must notify the Member of the confirmation, and the Member may not later than 48 hours before the date of the meeting, lodge with the Secretary a notice to the effect that he wishes to appeal to the Company in general meeting against the First Resolution.
- 9.3.6 In the event that the Secretary receives a notice under Clause 9.3.5, the Secretary must notify the Directors and the Directors must call a general meeting of Members within 21 days after the date on which the Secretary received that notice and the general meeting must be held not later than two (2) calendar months after the Secretary received the notice.
- 9.3.7 At a general meeting of the Members called and held in accordance with Clause 9.3.6 –
- 9.3.7.1 no business other than the question of the appeal shall be transacted;
- 9.3.7.2 the Directors may place before the meeting details of the grounds for the resolution and the reasons for the passing of that resolution;

⁹ As above

¹⁰ The definition of 'First Resolution' is as per Clause 9.3.1

- 9.3.7.3 the Member, or his representative, must be given an opportunity to be heard; and
- 9.3.7.4 the Members present shall vote by secret ballot on the question whether the resolution should be confirmed or revoked.
- 9.3.8 If at the general meeting –
 - 9.3.8.1 a majority of the Members present and voting, vote in favour of the confirmation of the First Resolution¹¹, the First Resolution shall stand confirmed; and
 - 9.3.8.2 in any other case, the First Resolution shall be revoked.
- 9.3.9 No Member will be entitled to vote at any general meeting called and held in accordance with Clause 9.3.6 unless all moneys then due and payable to the Company by that Member have been paid.
- 9.3.10 If the First Resolution¹² is confirmed by Members, the Member concerned shall immediately thereafter cease to be entitled to exercise any rights or privileges as a Member and, in the case of a resolution to expel the Member concerned, that Member shall be expelled.

10. RESIGNATION OF MEMBER

- 10.1 A Member who has paid all moneys due and payable by that Member to the Company may resign from the Company by first giving one (1) month's notice in writing to the Secretary of his intention to resign and upon the expiration of that period of notice, the Member shall cease to be a Member.
- 10.2 Upon the expiration of a notice given under Clause 10.1, the Secretary shall –
 - 10.2.1 repay to the Member by whom the notice was given, the proportion of the Subscription received by the Company as is referable to the unexpired term of the Membership Year; and
 - 10.2.2 make an entry in the Register recording the date on which the Member by whom the notice was given, ceased to be a Member.

11. GENERAL MEETINGS

11.1 Annual General Meeting

- 11.1.1 The annual general meeting of the Company shall, subject to the Law, be held not later than the last day of the fourth month following the Company's financial year end for the purposes of –
 - 11.1.1.1 the election or removal of any Directors;
 - 11.1.1.2 the consideration of the financial reports of the Company, the Director's report and the auditor's report; and
 - 11.1.1.3 such other business as may be properly transacted at the annual general meeting.
- 11.1.2 The annual general meeting of the Company must be held in accordance with the provisions of the Law and this Constitution.

¹¹ As above

¹² The definition of 'First Resolution' is as per Clause 9.3.1

11.2 General meetings

All general meetings other than the annual general meeting will be called general meetings.

11.3 Calling and holding general meetings

11.3.1 The Chairperson or Deputy Chairperson may in addition to the annual general meeting, whenever they think fit, call a general meeting and general meetings will be called on such requisition¹³, or in default, may be convened by such requisitionists as provided by the Law.

11.3.2 Every requisition¹⁴ made by Members must

11.3.2.1 be in writing; and

11.3.2.2 state any resolution to be proposed at the general meeting; and

11.3.2.3 be signed by the Members making the request; and

11.3.2.4 be given to the Chairperson or Deputy Chairperson or, in their absence, be left at the office of the Company.

11.4 Notice of general meetings

Subject to the provisions of the Law relating to special resolutions and agreements for shorter notice, written notice must be given of all annual general meetings and general meetings in accordance with the provisions of the Law, specifying

11.4.1 the place, date and time for the meeting (and, if the general meeting is to be held in two (2) or more places, the technology that will be used to facilitate this);

11.4.2 the general nature of the business of the meeting;

11.4.3 if a special resolution is to be proposed

11.4.3.1 an intention to propose the special resolution; and

11.4.3.2 the special resolution itself;

11.4.4 if a Member is entitled to appoint a proxy that –

11.4.4.1 the Member has a right to appoint a proxy; and

11.4.4.2 that the proxy must be another Member of the Company.

11.5 Accidental omission

The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Member shall not invalidate the proceedings at any meeting.

11.6 Business at annual general meeting and general meetings

All business shall be deemed special that is transacted at a general meeting and all that is transacted at an annual general meeting shall also be deemed special with the exception of –

¹³ 'Requisition' is a formal written request for something to be done.

¹⁴ As above

- 11.6.1 the consideration of the financial reports, Director's reports and auditor's reports;
- 11.6.2 the appointment of the auditor and the fixing of his remuneration; and
- 11.6.3 the election of the Directors.

12. PROCEEDINGS AT GENERAL MEETINGS

12.1 Quorum

- 12.1.1 No business shall be transacted at any annual general meeting or any other general meeting unless a quorum of six¹⁵ of the Members is present at the time when the meeting proceeds to business.
- 12.1.2 If within 15 minutes from the time appointed for a general meeting a quorum is not present
 - 12.1.2.1 the meeting, if called on the requisition¹⁶ of Members, shall be dissolved; and
 - 12.1.2.2 in any other case
 - 12.1.2.2.1 it shall stand adjourned to the same day in the next week at the same time and place or to such other time and place as the Directors may determine; and
 - 12.1.2.2.2 if at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the Members present (being not less than two) shall comprise a quorum.

12.2 Chairing meetings

- 12.2.1 The Chairperson will preside at every meeting of the Members or, if the Chairperson is not present within 15 minutes after the time appointed for holding the meeting, or is unwilling to act, then the Deputy Chairperson shall be the Chairperson or, if the Deputy Chairperson is not present or is unwilling to act, the Members present shall choose some one of their number to be Chairperson.
- 12.2.2 The Chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place but so that
 - 12.2.2.1 no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place;
 - 12.2.2.2 when a meeting is adjourned for 30 days or more at any one time notice of the adjourned meeting shall be given as in the case of an original meeting; and

¹⁵ The change to the quorum from two-thirds of the membership to six (6) members was approved at a General Meeting of the AHF on 4 July 2016.

¹⁶ 'Requisition' is a formal written request for something to be done.

- 12.2.2.3 save as aforesaid it shall not be necessary to give any notice of an adjourned meeting or of the business to be transacted at an adjourned meeting.

12.3 Decisions at meetings

- 12.3.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the results of the show of hands) demanded
- 12.3.1.1 by the Chairperson; or
- 12.3.1.2 by at least five (5) Members present having the right to vote at the meeting; or
- 12.3.1.3 by any Member or Members present and representing not less than 5% of the votes that may be cast on the resolution on a poll

and unless a poll is demanded, a declaration by the Chairperson that a resolution has on a show of hands been carried, or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of the proceedings of the Company 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.

- 12.3.2 The demand for a poll may be withdrawn.
- 12.3.3 If a poll is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairperson directs and the result of the poll shall be the resolution of the matter in respect of which the poll was demanded but a poll demanded on the election of a Chairperson or on a question of adjournment shall be taken forthwith.
- 12.3.4 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

13. VOTES OF MEMBERS

13.1 Voting at meetings of Members

A Member may, subject to any special rights or restrictions imposed on or attaching to a class of Membership and subject to the provisions of Clause 13.3, vote in person or by proxy or by attorney or, if a corporation, by its Nominee or other representative and on a show of hands or on a poll every such Member shall have one vote.

13.2 Voting by committee or trustee

A Member who is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under any relevant law relating to mental health may vote whether on a show of hands or on a poll by his committee or by the trustee or by such other person as properly has the management of his estate and any such committee trustee or other person may vote by proxy or attorney.

13.3 Entitlement to vote

No Member shall be entitled to vote at any general meeting if any Subscription owing by that Member shall be more than one (1) month in arrears at the date of the meeting.

13.4 Objection to right to vote

No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairperson of the meeting, whose decision on such objection shall be final and conclusive.

14. PROXIES

14.1 Member's entitlement to appoint proxy

- 14.1.1 Each Member entitled to attend and cast a vote at a meeting of Members may appoint an individual as his proxy¹⁷.
- 14.1.2 The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing.
- 14.1.3 A proxy must be a Member of the Company.
- 14.1.4 A Member shall be entitled to instruct his proxy to vote in favour of or against any proposed resolutions and unless so instructed the proxy may vote as he thinks fit.

14.2 Instrument of appointment

- 14.2.1 The instrument appointing a proxy¹⁸ and the power of attorney¹⁹ or other authority (if any) under which it is signed, or a notarially certified copy of that power or authority, must be received by the Company not less than 48 hours before the time for holding the general meeting or adjourned general meeting at which the person named in the instrument proposes to vote (unless a shorter period is specified in the notice of general meeting to which the proxy relates) and, in default, the instrument of proxy shall not be treated as valid unless otherwise determined by the Chairperson.
- 14.2.2 For the purposes of Clause 14.2.1, an instrument appointing a proxy must be received by the Company at any of the following
 - 14.2.2.1 the office of the Company; or
 - 14.2.2.2 a fax number at the office of the Company; or
 - 14.2.2.3 a place, fax number or electronic address specified for that purpose in the notice of meeting.
- 14.2.3 An instrument appointing a proxy may be in any usual form or in any other form, which the Directors may approve.

14.3 Authority to demand poll

Any instrument appointing a proxy²⁰ confers authority to demand or join in demanding a poll.

¹⁷ A 'proxy' is one who is appointed or authorized to act for another.

¹⁸ As above

¹⁹ 'The power of attorney' is the authority to act on behalf of a person in certain specified matters, such as financial dealings, or in general. It also refers to a legal instrument granting such authority.

²⁰ A 'proxy' is one who is appointed or authorized to act for another.

15. BOARD OF DIRECTORS

15.1 Number of Directors

- 15.1.1 Subject to the Law, the number of members of the Board shall be not less than three (3) nor more than nine (9)²¹, each of whom shall be appointed by the Members in accordance with Clause 15.1.2, a majority of which shall consist of persons who have a degree of responsibility to the general community, and at least one (1) of whom is a Responsible Person²².
- 15.1.2 The Members may, by a resolution passed by not less than 75% of the votes cast by Members present (in person or by proxy or representative) at a meeting of Members and entitled to vote, appoint a person to be a Director.
- 15.1.3 The Members or Directors may appoint, from among the members of the Board –
- 15.1.3.1 the Chairperson; and
- 15.1.3.2 the Deputy Chairperson.
- 15.1.4 A Director need not be a Member.

15.2 Term of office²³

- 15.2.1 Each Director who was a Director of the company as at the date of incorporation, and was still a Director at the Annual General Meeting held in 2019 ('the original Directors') shall on each occasion they are elected or appointed as Directors hold office for three (3) years or until removed from office, or re-elected or re-appointed, or the Director vacates office in accordance with clause 16, and shall not be limited in regard to the number of occasions on which they may be re-elected or re-appointed.
- 15.2.2 All other Directors of the company other than the original Directors shall hold office for three (3) years or until removed from office, re-elected or re-appointed, or the Director vacates office in accordance with clause 16, and may not be re-elected or re-appointed for more than three consecutive terms, of three (3) years, or part thereof.

15.3 Casual vacancy or addition to Board

- 15.3.1 In the event of a casual vacancy in any office referred to in Clause 15.1.3, the Directors may appoint another Director to the vacant office.
- 15.3.2 The Directors may, by a resolution passed by not less than 75% of the votes cast by the Directors, appoint a person as an addition to the Board but so that the total number of Directors shall not, at any time, exceed the total number (if any) fixed in accordance with this Constitution.
- 15.3.3 A Director appointed in accordance with the provisions of Clause 15.3.1 or 15.3.2 shall hold office in accordance with Clause 15.2.

²¹ The expansion of the Board from eight (8) to nine (9) members was approved during the General Meeting of the AHF on 10 March 2014.

²² The definition of 'Responsible Person' is as per Clause 1.1.25

²³ Substitution of clause 15.2 was approved during the General Meeting of the AHF on 26 October 2020.

15.4 Increase or reduction in number of Directors

The Company may, from time to time, by resolution passed at a general meeting of Members –

- 15.4.1 increase or reduce the number of Directors; or
- 15.4.2 determine the qualifications or experience necessary for eligibility as a Director.

15.5 Remuneration of Directors

- 15.5.1 The Directors (excluding those who are salaried employees of the Company) shall be honorary.
- 15.5.2 No Directors (excluding those who are salaried employees of the Company) will be entitled to any remuneration for their services but will be entitled to be paid all travelling and other expenses properly incurred by them in attending, participating and returning from meetings of the Directors, or any committee established by the Directors, or annual general meetings, or general meetings of Members of the Company, or otherwise, in connection with the business of the Company.

15.6 Removal of Director

The Company may, by a resolution passed by not less than 75% of the votes cast by Members present (in person or by proxy or representative) and entitled to vote and of which notice in accordance with the Law has been given, remove any Director and may, by resolution passed by the same majority referred to above, appoint another person in his place. The person so appointed will hold office in accordance with the provisions of Clause 15.2.

16. DISQUALIFICATION OF DIRECTORS

16.1 Vacation of office

The office of Director shall be vacated if the Director —

- 16.1.1 ceases to be a Director pursuant to any provision of the Law;
- 16.1.2 becomes bankrupt or makes any arrangement or composition with his creditors generally;
- 16.1.3 becomes prohibited from being a Director by reason of any order made under the Law;
- 16.1.4 becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under any relevant law relating to mental health;
- 16.1.5 resigns his office by notice in writing to the Company;
- 16.1.6 is removed from office pursuant to this Constitution; or
- 16.1.7 is absent without permission of the Board from three (3) consecutive meetings of the Board.

16.2 Exclusions and disclosure of certain interests

Notwithstanding any rule of law or equity to the contrary but subject to the provisions of the Law —

- 16.2.1 a Director shall not be disqualified by his office from contracting with the Company either as vendor purchaser or otherwise or from being employed or acting in any capacity professionally or otherwise by or on behalf of the Company;
- 16.2.2 no contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company with any corporation or partnership of or in which any Director is a director member or otherwise in any way interested and no contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested shall be liable to be impeached affected or avoided by reason of the Director holding his office or of the fiduciary relation thereby established or by reason of the Director being a party thereto or otherwise interested therein;
- 16.2.3 no Director so contracting or being such Director member or so interested shall be liable to account to the Company for any profit realised by any such contract or arrangement by reason only of such Director holding his office or of the fiduciary relation thereby established or by reason of his interest;
- 16.2.4 subject to the provisions of Clause 16.3 and the Law, a Director (including an Alternate director) may not be present at a meeting of Directors while a matter relating to a contract or arrangement in which the Director has (directly or indirectly) a material personal interest is being considered and may not vote on or in relation to the matter;²⁴
- 16.2.5 a Director may sign, or attest the affixing of the common seal, to any document relating to a contract or arrangement in which the Director has an interest;
- 16.2.6 a Director may hold any other office in conjunction with his directorship and may be appointed to that office on such terms as to remuneration tenure of office and otherwise as may be arranged by the Directors;
- 16.2.7 a Director of the Company may be or become a Director of any other company promoted by the Company and any subsidiary company or company having dealings with the Company and no such Director shall be accountable for any benefits received as director or member of or holder of any office or place of profit under that company; and
- 16.2.8 the Directors may exercise the voting power conferred by the shares in any companies held or owned by the Company in such manner in all respects as the Directors think fit (including the exercise thereof in favour of any resolution appointing the Directors or any of them to be directors of such companies or voting or providing for the payment of remuneration to directors of such companies) and any such Director of the Company may vote in favour of the exercise of such voting rights in the manner aforesaid notwithstanding that he may be or be about to be appointed a director of such other company.

16.3 Disclosure not required

The provisions of Clause 16.2.4 shall not apply to an interest that a Director has -

- 16.3.1 as a Member of the Company; and
- 16.3.2 in common with the other Members of the Company; or

²⁴ Any incidents are reported in the AHF 'Conflict of Interest Register'.

- 16.3.3 in a matter relating to an existing or proposed contract of insurance merely because the contract insures or would insure that Director as an officer of the Company in accordance with Clause 28; or
- 16.3.4 if the Board has at any time passed a resolution that identifies the Director, the interest of that Director and the matter and the Directors voting for the resolution are satisfied that the interest of that Director should not disqualify that Director from being present while the matter is being considered or voting on the matter; or
- 16.3.5 as otherwise permitted by the Law.

17. ALTERNATE DIRECTORS

17.1 Appointment of Alternate Directors

A Director may, with the approval of the other Directors, appoint any person to be an Alternate Director in his place during such period as he thinks fit.

17.2 Rights of Alternate Director

Any person while he holds office as an Alternate Director shall be entitled to notice of meetings of the Directors and to attend, vote and exercise all the powers of the appointer in his place.

17.3 Vacation of office

An Alternate Director shall ipso facto²⁵ vacate office if his appointer vacates office as a Director or removes the appointee from office.

17.4 Notice of appointment or removal

Any appointment or removal under this Clause 17 shall be effected by notice in writing to the Company and to the person concerned under the hand of the Director who makes the appointment or removal.

18. POWERS AND DUTIES OF THE DIRECTORS

18.1 Management of Company

- 18.1.1 Subject to this Constitution and the Law, the affairs of the Company shall be managed by the Directors.
- 18.1.2 The Directors
 - 18.1.2.1 shall control and manage the business and affairs of the Company;
 - 18.1.2.2 may, subject to this Constitution and the Law, exercise all such powers and functions as may be exercised by the Company other than those powers and functions that are required by this Constitution or the Law to be exercised by general meetings of the Members; and
 - 18.1.2.3 subject to this Constitution and the Law, has power to perform all such acts and things as appear to the Directors to be essential for the proper management of the business and affairs of the Company.

²⁵ 'Ipso facto' means by the fact itself; by that very fact.

18.2 Validity of acts of Directors

No regulation made by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made.

18.3 Powers of Directors

Without limiting the generality of Clauses 4, 18.1.1 and 18.1.2, the Directors –

- 18.3.1 may make rules, regulations and by-laws for the conduct, administration and management of the Company and may from time to time alter, modify and revoke such rules, regulations and by-laws and make new or additional rules, regulations and by-laws but so that such rules, regulations and by-laws shall not be inconsistent with any of the provisions of this Constitution nor result in the Company ceasing to comply with any special conditions applicable to the Company under the Tax Act;
- 18.3.2 have the power to do all things necessary or convenient to be done for or in connection with the performance of its functions;
- 18.3.3 may, in addition to all other general and special powers possessed by them from time to time, borrow in the name and for all or any of the purposes of the Company or in connection with its business any sum or sums of money for such period and at such rate or rates of interest and otherwise upon such terms and conditions as the Directors may think fit and so that –
 - 18.3.3.1 any sum or sums of money so borrowed may be raised or secured by mortgage charge or pledge of the whole or any part of the real or personal estate revenues property undertaking choses in action debts or effects of the Company including unpaid calls and uncalled capital or by deposit receipts debentures, debenture stock bonds, trusts deeds, personal covenant or otherwise as the Directors may from time to time think fit without such security;
 - 18.3.3.2 every such mortgage charge or other security may be in such form and contain such powers of sale and other powers trusts and provisions and may be accompanied by such collateral further and other security as the Directors may think fit; and
- 18.3.4 may invest any funds belonging to or vested in the Company;
- 18.3.5 may from time to time by power of attorney²⁶ appoint any company, corporation, firm, person or body of persons (whether nominated directly or indirectly by the Directors) to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these regulations) and for such period and subject to such conditions as it may think fit any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in him; and
- 18.3.6 may open any banking account and operate the bank account in the ordinary course of business.

²⁶ 'The power of attorney' is the authority to act on behalf of a person in certain specified matters, such as financial dealings, or in general. It also refers to a legal instrument granting such authority.

18.4 Negotiable instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) by any two (2) Directors or in such other manner as the Directors may from time to time determine.

19. PROCEEDINGS OF THE DIRECTORS

19.1 Directors' Meetings

The Directors –

- 19.1.1 shall meet at least twice in each year at such place and such time as the Directors may determine for the dispatch of business;
- 19.1.2 may adjourn and otherwise regulate their meetings as they think fit using any technology consented to from time to time by all the Directors; and
- 19.1.3 may from time to time invite any person they consider necessary or appropriate to attend at any meeting of the Directors but a person invited to attend any such meeting shall not be entitled to vote.

19.2 Notice of meeting

Written notice of each Directors' meeting must be given to each Director at least one (1) business days before the date of the meeting.

19.3 Decisions at Directors' Meetings

- 19.3.1 Subject to this Constitution, questions arising at any meeting of the Directors shall be decided by a majority of votes.
- 19.3.2 The Chairperson shall have a deliberative vote and a second or casting vote.

19.4 Calling Directors' Meetings

- 19.4.1 A Director may, and the Secretary on the requisition of a Director must, at any time, summon a meeting of the Directors.
- 19.4.2 Additional and special meetings of the Directors may be called and held by the Chairperson or by any two (2) Directors.

19.5 Quorum

The quorum necessary for transaction of the business of the Directors may be fixed by the Directors and, unless fixed, will be two thirds of the total number of Directors for the time being, rounded up to the nearest whole number.

19.6 Vacancy

The continuing Directors may act notwithstanding any vacancy in their body but, if and so long as their number is reduced below the number fixed pursuant to this Constitution as the specified number of Directors, the continuing Directors may act in the event of an emergency or for the purpose of increasing the number of members of the Directors to that number or of summoning a general meeting of the Company but for no other purpose.

19.7 Chairperson

The Chairperson shall preside at every meeting of the Directors or, if there is no Chairperson or, if at any meeting he is not present within 15 minutes after the time appointed for

holding the meeting, the Deputy Chairperson shall be Chairperson, or if the Deputy Chairperson is not present at the meeting, then the Directors present may choose one (1) of their number to be Chairperson of the meeting.

19.8 Validity of actions

All acts of the Directors undertaken at any meeting of the Directors, or by any person acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of that Director, or person so acting, or that they or any of them were disqualified, be as valid as if every member or other person had been duly appointed and was qualified to be a Director.

19.9 Resolutions without meetings

19.9.1 A resolution in writing signed by all the Directors for the time being entitled to receive notice of a meeting of the Directors and to vote, shall be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held.

19.9.2 Any resolution passed in accordance with Clause 19.9.1 may consist of identical copies of the document recording the resolution and accompanying information, each signed by one (1) or more Directors.

19.10 Telephone and audio visual communications

19.10.1 For the purpose of this Constitution the contemporaneous linking together by telephone or by such other method of audio or audio visual communication system of a number of the Directors, not less than the quorum specified in Clause 19.5 (whether or not any one (1) or more of the Directors is out of Australia) shall constitute a meeting of the Directors and all the provisions in this Constitution as to meetings of the Directors shall apply to such meetings subject to the following conditions namely

19.10.1.1 all the Directors for the time being entitled to receive notice of a meeting, shall be entitled to notice of a meeting by telephone or by such other method of audio or audio visual communication system and to be linked by telephone or such other audio or audio visual communication system;

19.10.1.2 each of the Directors taking part in the meeting by telephone or such other audio or audio visual communication system must be able to hear each of the other Directors taking part at the commencement of the meeting; and

19.10.1.3 at the commencement of the meeting each such Director must acknowledge his presence for the purpose of a meeting of the Directors to all other Directors taking part.

19.10.2 A notice of a meeting of the Directors may be given by telephone or by such other method of audio or audio visual communication system as the Directors may, from time to time, determine or as provided in Clause 26.

19.10.3 For the purposes of Clause 19.10.1 a Director may not leave the meeting by disconnecting his telephone or such other audio or audio visual communication system unless he has previously obtained the express consent of the Chairperson of the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless he has previously obtained the express consent of the Chairperson to leave the meeting.

- 19.10.4 A minute of the proceedings at such meeting by telephone by such other method of audio or audio visual communication system shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified to be a correct minute by the Chairperson of the meeting.

20. COMMITTEES

20.1 Establishment

The Directors may –

- 20.1.1 establish such committees as it considers necessary for the purposes of the Company;
- 20.1.2 delegate any of its powers and or functions to any such committee and define the powers, duties and functions of each committee so established;
- 20.1.3 determine the procedure of each committee and the appointment or election of its officers;
- 20.1.4 change any of the powers, duties and functions of a committee; and
- 20.1.5 remove any member of a committee or dissolve a committee.

20.2 Delegation of powers

- 20.2.1 Any committee established by the Directors in accordance with Clause 20.1, shall in the exercise of the powers delegated to that committee conform to any regulations that are imposed on it by the Directors.
- 20.2.2 The Directors may appoint one (1) or more advisory boards consisting of such persons as the Directors thinks fit. Any such advisory boards shall act in an advisory capacity only and in the exercise of the powers so delegated, conform to any regulations that are imposed on them by the Directors.

20.3 Eligibility of members

A member of a committee or advisory board established by the Directors in accordance with Clauses 20.1 and 20.2.2, need not be a Director or a Member.

21. PROCEEDINGS OF COMMITTEES

21.1 Committee Meetings

Each committee or advisory board established by the Directors shall meet at such times and places as determined by the members of those committees or advisory boards.

21.2 Chair and functions and powers

Each committee or advisory board –

- 21.2.1 shall elect one (1) of their number to chair its meetings and if no person is elected or, if at any meeting the person so elected is not present within 15 minutes after the time appointed for holding the meeting, the members present may choose one (1) of their number to chair the meeting; and
- 21.2.2 may elect one (1) of their number to undertake such functions, duties and responsibilities as may be delegated by that committee or advisory board to that person, subject always, to the approval by the Directors.

21.3 Decisions at committee or advisory board meetings

Questions arising at any meeting shall be determined by a majority of votes of the members present and, in the case of an equality of votes at any such meeting, the person appointed to chair any such meeting shall have a deliberative vote and a second or casting vote.

21.4 Proceedings of committee or advisory board

Without limiting the generality of Clauses 21.1 to 21.3 (both inclusive), the provisions of Clause 19 have effect, with such modifications as may be necessary, in relation to meetings of any committee or advisory board.

22. SECRETARY

22.1 Appointment

22.1.1 The Directors will appoint a Secretary in accordance with the Law for such period and on such terms as the Directors thinks fit and the Directors may revoke any such appointment.

22.1.2 The Secretary may be a Director.

22.2 Minutes and books

22.2.1 The Secretary shall keep minutes and books to record

22.2.1.1 all appointments of officers;

22.2.1.2 the names of the Directors present at each meeting of the Directors;

22.2.1.3 the names of the members of any committee of the Company present at each meeting of a committee;

22.2.1.4 all resolutions and proceedings at all meetings of the Members of the Company and of the Directors and each committee and of all resolutions determined on without meetings; and

22.2.1.5 of all other matters required by the Law.

22.2.2 Except in the case of documents deemed to constitute minutes in accordance with the provisions of the Law and resolutions signed in accordance with the provisions of Clause 19.9, all minutes shall be signed by the Chairperson of the meeting at which the proceedings were held or by the Chairperson of any succeeding meeting.

23. THE SEAL AND EXECUTION OF DOCUMENTS

23.1 The Company may have a common seal.

23.2 If the Company has a common seal, the Directors shall provide for the safe custody of the common seal of the Company which shall only be used with the authority of the Directors and every instrument to which the seal is affixed shall be signed by a Director and shall be countersigned by the Secretary or by a second Director or by some other person or persons appointed by the Directors to attest the affixing of the common seal.

23.3 All documents which of legal necessity need not be under common seal and which the Company is capable in law of entering into shall be legally binding on the Company if signed by the same persons specified in Clause 23.2 of this Constitution.

24. ACCOUNTS

- 24.1 The books of account and other records of the Company shall be kept at the registered office of the Company or at such other place or places as determined by the Directors.
- 24.2 The Directors shall keep or cause to be kept proper books of account and other records of the Company and shall distribute copies of financial reports as required by the Law and shall, from time to time, determine whether and to what extent and at what times and places and under what conditions or regulations the records, accounts and books of the Company, or any of them, shall be open to the inspection of Members not being Directors.
- 24.3 No Member shall have any right of inspecting any record, account or book or paper of the Company except as conferred by statute or as authorised by the Directors or by the Company in general meeting.
- 24.4 The financial year of the Company shall be 30 June in each year unless otherwise determined by the Members.

25. AUDIT

A properly qualified Auditor or Auditors shall be appointed and his or their duties shall be regulated in accordance with the provisions of the Law.

26. NOTICES

26.1 Method of giving notice

A notice may be given by the Company to any Member –

- 26.1.1 personally;
- 26.1.2 by sending it by post to him at his registered address or to the address (if any) supplied by him to the Company for the giving of notices to him; or
- 26.1.3 by sending it to the fax number or electronic address (if any) nominated by the Member.

26.2 Service of notice

- 26.2.1 Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing prepaying and posting a letter containing the notice and to have been effected, in the case of a notice of a meeting, on the day after the date of its posting and in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- 26.2.2 A notice of meeting sent by fax or other electronic means is taken to be given on the business day after it is sent.
- 26.2.3 Notwithstanding the provisions of Clause 26.1, the Directors may, in their absolute discretion, give a notice by any other means as shall ensure expeditious receipt of the notice. Service of the notice shall be deemed to be effected if the mode of service of the notice is properly addressed and paid for and lodged for delivery or transmission with a competent person, authority or body and to have been effected at the time at which in the ordinary course that mode of service of the notice would be delivered.

26.3 Notice to joint Members

A notice may be given by the Company to joint Members by giving the notice to the joint Member first named in the Register.

26.4 Persons entitled to notice

- 26.4.1 Notice of every general meeting shall be given in any manner hereinbefore authorised to
- 26.4.1.1 every Member except those Members who have not supplied to the Company an address for the giving of notices to them;
- 26.4.1.2 the Auditor for the time being of the Company; and
- 26.4.1.3 such other persons as required by the Law.
- 26.4.2 No person other than as referred to in Clause 26.4 shall be entitled to receive notices of general meetings.

27. WINDING UP

- 27.1 If upon the winding up or deregistration of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the remaining property shall be paid to or given or transferred to or for one or more Eligible Charity as determined by the Members of the Company.
- 27.2 The identity of such Eligible Charity or other funds or institutions referred to in Clause 27.1 shall be determined by the Members of the Company at or before the time of the winding up or deregistration and, in default thereof, by application to the Supreme Court of Victoria for determination.
- 27.3 Where gifts to an Eligible Charity are deductible only if, among other things, the conditions set out in item 9.1.1 of the table in subdivision 30-80(1) of the Tax Act are satisfied, a transfer under this Clause 27 must be made in accordance with those conditions.

28. INDEMNITY AND INSURANCE

28.1 Indemnification of officers

- 28.1.1 The Company may indemnify²⁷ a person who is, or has been, an officer of the Company, to the full extent permissible by law, out of the property of the Company, against –
- 28.1.1.1 any liability incurred by that person as an officer of the Company; and
- 28.1.1.2 legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company;
- except in respect of a liability or legal costs for which the Company is prohibited from indemnifying the officer pursuant to the Law.
- 28.1.2 For the avoidance of doubt, Clause 28.1.1 will not apply so as to enable the Company to indemnify a person who is, or has been, an officer of the Company to the extent that the law precludes the giving of such an indemnity.

28.2 Insurance premium

The Company may pay a premium for a contract insuring a person who is, or has been, an officer of the Company against –

²⁷ An 'indemnity' is a sum paid by A to B by way of compensation for a particular loss suffered by B. The indemnitor (A) may or may not be responsible for the loss suffered by the indemnitee (B). Forms of indemnity include cash payments, repairs, replacement, and reinstatement.

- 28.2.1 any liability incurred by that person as an officer of the Company; and
- 28.2.2 any liability for costs and expenses incurred by that person in defending proceedings relating to that person acting as an officer of the Company, whether civil or criminal, and whatever their outcome,

except any liabilities in respect of which the Company is prohibited from doing so pursuant to the Law.