

Constitution

Nutrition and Catering Institute (NACI) Limited

A Public Company Limited by Guarantee

MILLS OAKLEY

Level 12, 400 George Street
SYDNEY NSW 2000

Telephone: 61 2 8289 5800

Facsimile: 61 2 9247 1315

DX 13025, SYDNEY, MARKET STREET

www.millsoakley.com.au

Ref: VMVS/3250432

Table of Contents

1	Name of the Company.....	1
2	Type of Company	1
3	Replaceable Rules.....	1
4	Definitions and Interpretation.....	1
4.1	Definitions.....	1
4.2	Interpretation	3
5	Objects and Powers	3
5.1	Objects	3
5.2	Income and Property	4
5.3	Remuneration of Directors	4
	MEMBERSHIP.....	5
6	Admission to Membership.....	5
6.1	Sole Member	5
6.2	Member Responsibilities and Benefits	5
7	Membership Entitlements Not Transferable.....	5
8	Representative(s)	5
9	Annual Subscription	6
10	Cessation of Membership.....	6
	GENERAL MEETINGS.....	6
11	Convening of General Meetings.....	6
11.1	AGMs	6
11.2	Convening of General Meetings.....	7
12	Notice of General Meeting	7
13	Cancellation or Postponement of General Meeting	7
13.1	Cancellation or Postponement of General Meeting	7
13.2	Failure to Notify in Writing.....	8
	PROCEEDINGS AT GENERAL MEETINGS	8
14	Quorum	8
15	Chairperson	8
16	Adjournments	9
17	Determination of Questions.....	9
18	Disqualification.....	9
19	Right of Non-Members to Attend General Meeting	9
20	Objection to Qualification to Vote	10
	PROXIES.....	10
21	Right to Appoint Proxies	10
22	Appointing a Proxy	10

22.1	Appointing a Proxy.....	10
22.2	Instrument of Proxy.....	10
23	Lodgement of Proxies.....	10
24	Validity of Proxies	11
25	Rights of Proxies and Attorneys	11
	APPOINTMENT AND REMOVAL OF DIRECTORS	12
26	Number and Appointment of Directors.....	12
26.1	Number of Directors.....	12
26.2	Composition of Board	12
26.3	Initial Board.....	12
26.4	Appointed Directors	12
26.5	Co-opted Directors.....	12
26.6	Term	12
26.7	Office Bearers.....	13
27	Performance Review	13
28	Appointor	14
28.1	Appointor	14
28.2	Vacation of Appointor	14
28.3	Change in Appointor	14
29	General Right to Appoint Directors.....	14
30	Vacation of Office.....	15
31	Filling of Vacancies on the Board	15
32	Acting Office Bearers.....	15
33	Alternate Directors	16
	POWERS AND DUTIES OF DIRECTORS.....	16
34	Duties of Directors	16
35	Powers of Directors	16
36	Negotiable Instruments.....	16
37	Conferment of Powers	17
	DIRECTORS' DISCLOSURE OF INTEREST	17
38	Contracts	17
	PROCEEDINGS OF DIRECTORS.....	18
39	Meetings of Directors.....	18
40	Quorum	18
41	Chairperson	19
41.1	Doctor Karen Abbey	19
41.2	Other Chairperson	19
42	Voting.....	19
43	Resolutions by Directors	20
44	Committees.....	20

45	Validation of Acts of Directors	20
	MINUTES.....	21
46	Minutes	21
	SECRETARY.....	21
47	Appointment and Tenure	21
	BY-LAWS	22
48	By-Laws	22
	EXECUTION OF DOCUMENTS	22
49	Execution of Documents	22
	ACCOUNTS AND INSPECTION OF RECORDS.....	22
50	Accounts and Inspection.....	22
	NOTICES.....	23
51	Service of Notices	23
	WINDING UP	23
52	Winding Up	23
	52.1 Surpluses Arising from Deductible Donations	23
	52.2 Other Surpluses.....	24
	INDEMNITY	25
53	Indemnity	25
54	Payment of Indemnity Policy Premium.....	25
55	Indemnity to Continue.....	25
	Form of Appointment of Proxy.....	27

1 Name of the Company

The name of the Company is Nutrition and Catering Institute (NACI) Limited.

2 Type of Company

- (a) The Company is a not-for-profit public company limited by guarantee.
- (b) Subject to this Constitution, the 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; and
 - (ii) payment of the costs, charges and expenses of winding up.
- (c) The amount that the Member or past Member is liable to contribute is limited to \$10.00.

3 Replaceable Rules

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

4 Definitions and Interpretation

4.1 Definitions

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

- (a) **ACNC** means Australian Charities and Not-for-profits Commission;
- (b) **ACNC Act** means *Australian Charities and Not-for-Profits Commission Act 2012* (Cth);
- (c) **ACNC Regulation** means *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth);
- (d) **AGM** means annual general meeting;
- (e) **Alternate Director** means a person of a Director's choosing who sits on the Board in that Director's place in the event that the Director cannot attend a meeting;
- (f) **Appointed Director** means a person appointed as a Director pursuant to **clause 26.4**;
- (g) **Appointor** means Doctor Karen Abbey or any other Appointor appointed pursuant to **clause 28.3**;
- (h) **Board** means the board of Directors of the Company;
- (i) **Business Day** means a day that is not a Saturday, Sunday or public holiday in New South Wales;
- (j) **By-Laws** means the by-laws adopted and amended by the Board from time to time in accordance with **clause 48**;
- (k) **Chairperson** means the person holding that office under **clause 26.7** and includes any assistant or acting Chairperson under this Constitution;

- (l) **Charity** means an entity that is registered with the ACNC as a charity;
- (m) **Committee** means a committee established in accordance with **clause 44**;
- (n) **Company** means Nutrition and Catering Institute (NACI) Limited;
- (o) **Constitution** means this constitution as amended or supplemented from time to time;
- (p) **Co-opted Director** means a person with specific skills, including, but not limited to, a lawyer, accountant or person with expertise for a particular project the Company may undertake, appointed as a Director pursuant to **clause 26.5**;
- (q) **Corporations Act** means *Corporations Act* 2001 (Cth);
- (r) **Deputy-Chairperson** means a person appointed to that position pursuant to **clause 26.7(b)(ii)** and includes any assistant or acting Deputy-Chairperson under this Constitution.
- (s) **DGR** means a deductible gift recipient as defined by the law;
- (t) **Director** means any person holding the position of a director of the Company (and includes Appointed Directors and Co-opted Directors), and **Directors** means the directors for the time being of the Company or, as the context permits, such number of them as has authority to act for the Company;
- (u) **Member** means:
 - (i) Nutrition & Catering Consultancy Pty Ltd (ACN 084 734 145); or
 - (ii) a replacement member appointed pursuant to **clause 10(b)** or **10(c)**, and **Membership** has the corresponding meaning;
- (v) **Member's Guarantee Amount** means the amount referred to in **clause 2(c)**;
- (w) **Objects** mean the objects of the Company as set out in **clause 5.1**;
- (x) **Office** means the registered office for the time being of the Company;
- (y) **Office Bearer** means a person holding any of the offices pursuant to **clause 26.7**;
- (z) **Officer** has the same meaning as given to that term in section 9 of the Corporations Act;
- (aa) **Register** means the register of the Member to be kept pursuant to the Corporations Act;
- (bb) **Registration** means registration of the Company as a body corporate by the Australian Securities and Investments Commission;
- (cc) **Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act;
- (dd) **Representative** means a person authorised in accordance with section 250D of the Corporations Act to act as a representative of the Member, pursuant to **clause 8**;
- (ee) **Secretary** means the person appointed to that position under **clause 47(a)** and includes any assistant or acting Secretary; and
- (ff) **Special Resolution** has the meaning given to it by the Corporations Act.

4.2 Interpretation

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

- (a) the singular includes the plural and vice versa;
- (b) each gender includes the other gender;
- (c) the word **person** means a natural person and any partnership, association, body or entity whether incorporated or not;
- (d) the words **writing** and **written** include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (e) 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;
- (f) a reference to any clause or schedule is to a clause or schedule of this Constitution;
- (g) 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;
- (h) an expression used in a particular Part or Division of an Act or Regulation 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; and
- (i) headings do not form part of or affect the construction or interpretation of this Constitution.

5 Objects and Powers

5.1 Objects

- (a) The Company is a charitable institution established to control and prevent diet-related chronic disease, in particular cardiovascular disease, gastrointestinal disease, diabetes, obesity and malnutrition (**Chronic Diseases**), as well as foodborne diseases, in human beings. The Company will achieve its object by:
 - (i) providing nutritional and dietary education to individuals who serve food to those suffering from, or who are at risk of suffering from, the Chronic Diseases, in order to reduce suffering associated with, and to reduce the prevalence of, the Chronic Diseases. Those individuals include, but are not limited to:
 - (A) hospital staff;
 - (B) aged care staff;
 - (C) community and disability staff;
 - (D) staff in indigenous communities; and
 - (E) carers and/or families of individuals suffering from the Chronic Diseases;
 - (ii) reducing Chronic Disease, using research, innovation and education in nutritional science, in order to prevent diseases via improved clinical

- pathways, upskilling the foodservice sectors in the preparation of meals and menus;
 - (iii) promoting healthier nutrition, diets and recipes, in order to prevent the Chronic Diseases, based on scientific research;
 - (iv) using clinical results, connecting food preparation techniques with Chronic Disease and foodborne disease, to achieve foodservices best practice in order to prevent and/or control Chronic Disease and foodborne disease;
 - (v) performing further research on the connection between nutrition, diets and food preparation and the prevalence of the Chronic Diseases; and
 - (vi) anything ancillary to the charitable objects referred to in **clauses 5.1(a)(i) to 5.1(a)(v)**.
- (b) The Company can only exercise the powers in section 124(1) of the Corporations Act to:
- (i) carry out the Objects of the Company; and
 - (ii) do all things incidental or convenient in relation to the exercise of power under **clause 5.1(b)(i)**.

5.2 Income and Property

- (a) The income and property of the Company shall be applied solely towards the promotion of the Objects of the Company.
- (b) No income or property of the Company shall 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 shall prevent payment in good faith to the 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.

5.3 Remuneration of Directors

No payment shall be made to any Director other than the following payments in good faith by the Company:

- (a) payment of remuneration if the Director is employed in any capacity by the Company, other than in the capacity as a Director;
- (b) interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company by the Director;
- (c) reasonable and proper rent for premises demised or let by that Director;
- (d) 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;
- (e) payment of any premium in respect of any such indemnity insurance as is permitted by **clause 54**; and

- (f) 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.

MEMBERSHIP

6 Admission to Membership

6.1 Sole Member

- (a) Subject to **clauses 10(b)** and **10(c)**, the sole Member of the Company is Nutrition & Catering Consultancy Pty Ltd (ACN 084 734 145).
- (b) There may be no other members of the Company apart from the Member.

6.2 Member Responsibilities and Benefits

- (a) The Member agrees to assume the liability to pay the Member's Guarantee Amount.
- (b) The Member shall be entitled to vote at general meetings.
- (c) In addition to the Member being entitled to vote at all general meetings, the Board shall determine from time to time what additional benefits shall attach to Membership.

7 Membership Entitlements Not Transferable

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

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

8 Representative(s)

- (a) The Member must appoint as its Representative(s) a minimum of one natural person(s).
- (b) The Member may appoint more than one (1) Representative, but only one (1) Representative may exercise the Member's powers at any one time.
- (c) The name and address of the Representative(s) will be entered in the Register as the representative of the Member.
- (d) All correspondence and notices from the Company will be served on the Representative(s), and any notice served on the Representative(s) will be deemed to be service on the Member.
- (e) If the appointment of a Representative by the Member is made by reference to a position held, the appointment must identify the position.
- (f) Despite **clause 7**, the Member may remove and replace a Representative where the Member gives written notice to the Board in a form approved by the Board.
- (g) A signature by a Representative of the Member on behalf of the Member is taken to be the signature of the Member for the purposes of this Constitution.

- (h) Any power or right of the Member as granted by this Constitution can be exercised by a Representative of the Member.
- (i) The actions of a Representative bind the Member.
- (j) Each Representative shall comply with the terms of this Constitution in all matters pertaining to the Company as if the Member himself or herself.

9 Annual Subscription

No annual subscription shall be payable by the Member to the Company

10 Cessation of Membership

- (a) The Member's Membership will cease:
 - (i) on the date that the Secretary receives written notice of resignation from the Member;
 - (ii) if that Member is dissolved or otherwise ceases to exist; or
 - (iii) if that Member has:
 - (A) a receiver;
 - (B) a receiver and manager;
 - (C) a liquidator;
 - (D) an administrator;
 - (E) an administrator of a deed of company arrangement; or
 - (F) a trustee of other person administering a compromise or arrangement between the Member and someone else;
 appointed to it.
- (b) In the event that the Member ceases to be the Member pursuant to **clause 10(a)**, the vacating Member shall have the power to appoint a new Member to the Company, the choice of that new Member being within the full and unfettered discretion of the vacating Member.
- (c) In the event that the vacating Member does not or is unable to appoint a new Member pursuant to **clause 10(b)**, the Board may appoint a new Member to the Company, the choice of that new Member being within the full and unfettered discretion of the Board.

GENERAL MEETINGS

11 Convening of General Meetings

11.1 AGMs

Notwithstanding section 111L of the Corporations Act:

- (a) in the event that the Board wishes to do so, it may convene an AGM; and
- (b) any AGM which is convened must be done so in accordance with the requirements of the Corporations Act.

11.2 Convening of General Meetings

- (a) No fewer than two (2) Directors may, whenever those Directors think fit, convene a general meeting of the Company.
- (b) Notwithstanding section 111L of the Corporations Act:
 - (i) the Member may call a general meeting; and
 - (ii) the Company will do so,in accordance with the provisions of part 2G.2 of the Corporations Act pertaining to the rights of members to call a general meeting.
- (c) A general meeting of the Company may be convened at two (2) or more venues using any technology that gives the Member a reasonable opportunity to participate in the meeting.

12 Notice of General Meeting

- (a) Notwithstanding section 111L of the Corporations Act:
 - (i) subject to **clause 12(a)(ii)**, at least twenty-one (21) days' notice of any general meeting must be given specifying:
 - (A) the place, day and hour of the meeting;
 - (B) the general nature of any business to be transacted at the meeting;
 - (C) if a Special Resolution is to be proposed, the details of and intention to propose it;
 - (D) if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
 - (E) any other information required by the Corporations Act; and
 - (ii) fewer than twenty-one (21) days notice may be given of a general meeting in accordance with section 249H of the Corporations 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) Subject to **clause 12(b)**, notice of every general meeting must be given in any manner authorised by this Constitution to:
 - (i) the Member;
 - (ii) every Director; and
 - (iii) the auditor for the time being of the Company (if any).

13 Cancellation or Postponement of General Meeting

13.1 Cancellation or Postponement of General Meeting

- (a) Subject to the provisions of the Corporations Act (notwithstanding section 111L of the Corporations 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 the Member pursuant to **clause 11.2(b)** upon receipt by the Company of a written notice withdrawing the requisition signed by the Member.
- (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 Member relating to the original meeting.
- (c) Where any general meeting is cancelled or postponed or the venue for a general meeting is changed the Board must 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.

13.2 Failure to Notify in Writing

Any failure to notify in writing any person entitled to receive notice of the meeting (other than the Member) or failure of a person to receive a written notice (other than the Member) shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

PROCEEDINGS AT GENERAL MEETINGS

14 Quorum

- (a) No business may be transacted at any general meeting unless there is a quorum at all times during the meeting.
- (b) For the purposes of **clause 14(a)**, the Member shall constitute a quorum for all general meetings.
- (c) If, within thirty (30) minutes after the time appointed for holding a general meeting, a quorum is not present, then:
 - (i) the meeting, if convened upon the requisition of the Member, shall be dissolved; and
 - (ii) in any other case:
 - (A) it will stand adjourned to such other day time and place as the Board may by notice to the Member 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.

15 Chairperson

- (a) The Chairperson shall preside as chair at each general meeting.
- (b) Where a general meeting is held and:
 - (i) there is no Chairperson; or
 - (ii) the Chairperson is not present within thirty (30) minutes after the time appointed for the holding of the meeting or, if present, is unwilling to preside over the meeting,

then the following person will be chair of the meeting in lieu of the Chairperson in the order of availability set out below:

- (iii) Deputy-Chairperson;
 - (iv) Secretary; and
 - (v) another Director chosen by the Directors present at the meeting.
- (c) The rulings of the chair 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.

16 Adjournments

- (a) The chair at 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 deemed passed on the day it was passed, and not on the date of the original meeting.
- (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.

17 Determination of Questions

- (a) At any general meeting a resolution to be considered at the meeting shall be decided on the verbal vote of the Member.
- (b) Notwithstanding **clause 17(a)**, where not excluded from doing so by the law, the Member may pass a resolution by the Member recording it and signing the record.

18 Disqualification

No person other than:

- (a) a Representative of the Member;
 - (b) a proxy or attorney of the Member; or
 - (c) a proxy of the Representative,
- shall be entitled to vote at a general meeting.

19 Right of Non-Members to Attend General Meeting

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

20 Objection to Qualification to Vote

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 of the general meeting, whose decision shall be final and conclusive and a vote allowed by the chair of the general meeting shall be valid for all purposes.

PROXIES

21 Right to Appoint Proxies

- (a) The Member or a Representative may appoint a person as the Member's or the Representative's proxy to attend and vote for the Member at the meeting.
- (b) If the Member or Representative appoints a proxy, the proxy is entitled to vote both verbally and in any written resolution pursuant to **clause 17(b)**.

22 Appointing a Proxy

22.1 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.

22.2 Instrument of Proxy

- (a) The instrument of proxy is valid if it contains the following information, and any additional information required by the Corporations Act (notwithstanding the application of section 111L of the Corporations Act):
 - (i) the name and address of the Member or the name of a Representative of the Member, if applicable;
 - (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.
- (c) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 22.2(a)**.
- (d) An instrument of proxy may be revoked at any time by notice in writing to the Company.

23 Lodgement of Proxies

- (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 the Member or Representative'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 twenty-four

(24) 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. In default, the instrument of proxy or the power of attorney will not be treated as valid.

- (b) For the purposes of this **clause 23**, it will be sufficient that any document required to be lodged be received in legible form by facsimile at the place at which the document is required to be delivered by the Member or Representative, and the document shall be regarded as received at the time the facsimile was received at that place.
- (c) For the purposes of **clause 23**, it will be sufficient that any document required to be lodged be received in legible form by email or other electronic transmission if the notice of meeting so permits, and the document is sent to 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 or other electronic transmission by the Company.

24 Validity of Proxies

A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:

- (a) the death or unsoundness of mind of the Representative;
- (b) the bankruptcy of the Representative;
- (c) 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, or revocation at least forty-eight (48) hours (or such shorter period as the Board may allow) before 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.

25 Rights of Proxies and Attorneys

- (a) Subject to **clause 25(b)**, unless the Member or Representative 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.
- (b) 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, then the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.
- (c) The chair of a general meeting may require any person acting as a proxy to establish to the satisfaction of the chair that he or she is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his or her identity, then he or she may be excluded from voting.

APPOINTMENT AND REMOVAL OF DIRECTORS

26 Number and Appointment of Directors

26.1 Number of Directors

- (a) The Board of Directors shall consist of not fewer than four (4) and not more than seven (7) persons.
- (b) Subject to section 201P of the Corporations Act, the Board may by resolution vary the number of Directors holding office from that referred to in **clause 26.1(a)**.

26.2 Composition of Board

Subject to **clause 26.3**, the Board shall consist of:

- (a) up to seven (7) Appointed Directors; and
- (b) up to two (2) Co-opted Directors appointed by the Board from time to time, so long as the number of Directors does not exceed the maximum referred to in **clause 26.1**. Subject to section 201P of the Corporations Act, the Board shall determine from time to time how many Appointed Directors and how many Co-Opted directors shall be on the Board.

26.3 Initial Board

- (a) The Directors to hold office from Registration shall be:
 - (i) Doctor Karen Lynette Abbey;
 - (ii) John Robert Cooke;
 - (iii) Andrew James Hudson;
 - (iv) Professor Sandra Maureen Capra; and
 - (v) Kathleen Anne Reece.
- (b) The initial Directors shall nominate from amongst their number who shall:
 - (i) hold each office, if any (as set out in **clause 26.7(b)**); and
 - (ii) hold office for an initial term of three (3) years, and who shall hold office for an initial term of four (4) years.
- (c) The initial Directors shall all be deemed to be Appointed Directors.

26.4 Appointed Directors

Subject to **clause 26.3(c)**, all Appointed Directors shall be appointed by the Appointor.

26.5 Co-opted Directors

The Board may appoint Co-opted Directors to the Board at any time to fill the positions provided for in **clause 26.2(b)**.

26.6 Term

- (a) Notwithstanding **clause 26.6(b)**, Doctor Karen Abbey is entitled to be on the Board indefinitely, and is not subject to term limits.
- (b) Subject to **clauses 26.6(a)** and **26.3(b)(ii)**, Appointed Directors shall hold office for a term of three (3) years, but shall be eligible for reappointment for one further term of three (3) years. Appointed Directors shall not hold office for more

than six (6) consecutive years, except Directors appointed for an initial term of four (4) years under **clause 26.3(b)(ii)**, who shall not hold office for more than seven (7) consecutive years.

- (c) Co-opted Directors shall hold office for a term of up to three (3) years, but shall be eligible for reappointment for a further term of up to three (3) years. Co-Opted Directors shall not hold office for more than six (6) consecutive years.
- (d) Once a Director has served the maximum consecutive term under **clause 26.6(b)** or **26.6(c)**, the Director is only eligible for reappointment to the Board after a period of at least three (3) years has passed since the expiry of the Director's previous term on the Board.

26.7 Office Bearers

- (a) The initial Chairperson shall be Doctor Karen Abbey.
- (b) The Appointor shall, by the end of first meeting of the Board held after Registration and thereafter by the end of the first meeting of the Board held after an Office Bearer has retired, appoint from amongst the Appointed Directors sitting on the Board at the time of the Board meeting:
 - (i) the Chairperson;
 - (ii) the Deputy-Chairperson; and
 - (iii) such other Office Bearer positions as the Appointor deems necessary from time to time,should the position be vacant.
- (c) As Chairperson, Doctor Karen Abbey shall be entitled to hold that office for an indefinite term, and she will not be subject to term limits, provided that Doctor Karen Abbey shall not hold office as Chairperson beyond her retirement or removal from the Board as a Director.
- (d) If Doctor Karen Abbey is not the Chairperson, the Chairperson shall hold office for a term of up to three (3) years (as determined by the Appointor) but shall be eligible for reappointment for a further term of up to three (3) years (as determined by the Appointor), provided that a Chairperson shall not hold office beyond their retirement or removal from the Board as a Director.
- (e) The Deputy-Chairperson shall hold office for a term of up to three (3) years (as determined by the Appointor) but shall be eligible for reappointment for a further term of up to three (3) years (as determined by the Appointor), provided that a Deputy-Chairperson shall not hold office beyond their retirement or removal from the Board as a Director.

27 Performance Review

- (a) The Appointor shall conduct a performance review of the Board every twenty-four (24) months.
- (b) The performance review will consider at least the following matters:
 - (i) legal compliance;
 - (ii) whether each Director still has adequate time capacity for the role;
 - (iii) individual and collective roles within the governance system;
 - (iv) the effectiveness of Board and Committee meetings;

- (v) the relationship between the Board and other Officers;
 - (vi) areas for training and development;
 - (vii) effectiveness of the Board's strategic thinking and decision-making; and
 - (viii) Board composition.
- (c) The Board will complete a report of each performance review, including the factors set out in **clause 27(b)**, for approval at a Board meeting.

28 Appointor

28.1 Appointor

Doctor Karen Abbey shall be the Appointor of the Company at Registration.

28.2 Vacation of Appointor

The position of the Appointor shall become vacant if the Appointor:

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with creditors generally;
- (c) 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; or
- (d) resigns by notice in writing to the Company.

28.3 Change in Appointor

If the Appointor ceases to be the Appointor, then:

- (a) the vacating Appointor shall have the power to appoint a new Appointor to the Company, with the choice of that new Appointor being within the full and unfettered discretion of the vacating Appointor;
- (b) if the vacating Appointor has died, then his or her legal personal representative shall have the power to appoint a new Appointor to the Company; or
- (c)
 - (i) if the vacating Appointor has not died but does not or is unable to appoint a new Appointor pursuant to **clause 28.3(a)**; or
 - (ii) if the legal personal representative of the vacating Appointor does not or is unable to appoint a new Appointor to the Company,

then the Board will appoint a new Appointor to the Company, the choice of that new Appointor being within the full and unfettered discretion of the Board.

29 General Right to Appoint Directors

The Board may act despite any vacancy in their body, but if the number falls below the minimum fixed in accordance with **clause 26.1**, the Board may act for the purpose of:

- (a) convening a general meeting;
 - (b) increasing the number of Directors to the minimum; or
 - (c) in emergencies,
- but for no other purpose.

30 Vacation of Office

- (a) Any Director may resign from office on giving written notice to the Company at the Office of his or her intention to resign, and the resignation shall take effect at the time expressed in the notice (provided that 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) is an Appointed Director and is removed from the Board by the Appointor (and such removal can occur at any time and within the full and unfettered discretion of the Appointor);
 - (iii) becomes bankrupt or makes any arrangement or composition with creditors generally;
 - (iv) becomes prohibited from being a director of, or managing, a company by reason of any order made under the Corporations Act;
 - (v) has been disqualified by the Australian Charities and Not-for-Profits Commissioner, at any time during the preceding twelve (12) months, from being a responsible entity of a registered entity under section 45.20(4) of the ACNC Regulation;
 - (vi) 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;
 - (vii) is removed from office by the Company in general meeting;
 - (viii) resigns by notice in writing to the Company; or
 - (ix) is absent without permission of the Board from at least seventy-five per cent (75%) of Board meetings in any given twelve (12) month period.

31 Filling of Vacancies on the Board

- (a) In the event of a casual vacancy occurring on the Board:
 - (i) in relation to an Appointed Director vacancy, the Appointor can appoint any person to fill that vacancy in accordance with **clause 26.4**; and
 - (ii) in relation to a Co-opted Director vacancy, the Board can appoint any person in accordance with **clause 26.5**.
- (b) Any Director appointed pursuant to **clause 31(a)** shall hold office for a full new term.
- (c) Any time served as a Director pursuant to **clause 31(b)** will count toward the respective maximum term permitted by **clause 26.6**.

32 Acting Office Bearers

- (a) If any Office Bearer is temporarily absent or temporarily unable to perform his or her duties, the Appointor may authorise another Director to act in the vacant position during the absence or inability of the Office Bearer.
- (b) If any Office Bearer role becomes vacant, the Appointor may appoint another Appointed Director to fulfil that role.

- (c) Any Appointed Director appointed as an Office Bearer pursuant to **clause 32(b)** shall hold office in the Office Bearer role for a full new term, or until such time as he or she ceases to be a Director, whichever is earlier.
- (d) Any time served as an Office Bearer pursuant to **clause 32(c)** will count toward the maximum term permitted by **clause 26.7(d)** and **26.7(e)**.
- (e) Nothing in this **clause 32** permits any person simultaneously to hold more than one position of Office Bearer.

33 Alternate Directors

Alternate Directors shall not be permitted.

POWERS AND DUTIES OF DIRECTORS

34 Duties of Directors

- (a) Each Director is subject to, and must comply at all times with, the duties set out in governance standard 5 in section 45.25 of the ACNC Regulation if the Company is legally required to comply with that regulation.
- (b) In accordance with governance standard 4 in section 45.20 of the ACNC Regulation, the Board will take reasonable steps to ensure that the Board does not at any time include a Director who is disqualified from managing a corporation under the Corporations Act or from being a responsible entity under subsection 45.20(4) of the ACNC Regulation.

35 Powers of Directors

- (a) The control, 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 Corporations Act, the ACNC Act, the ACNC Regulation or by this Constitution required to be exercised in any other manner.
- (b) A Director is, pursuant to section 187 of the Corporations Act, taken to have acted in good faith in the best interests of the Company even if that Director is acting in the best interests of the Member if the following conditions are satisfied:
 - (i) the Director acts in good faith in the best interests of the Member;
 - (ii) the Company is not insolvent at the time the Director acts and does not become insolvent because of the Director's act; and
 - (iii) the Director's actions are not inconsistent with anything contained in this Constitution, including, but not limited to, the Objects and **clause 5.2**.

36 Negotiable Instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, requests or arrangements for electronic fund transfers and receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by two (2) people authorised by resolution of the Board. The Board may authorise:

- (a) a Director(s);
- (b) the Secretary; or

- (c) another staff member of the Company or the Member,
to sign such instruments.

37 Conferment of Powers

- (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 **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.

DIRECTORS' DISCLOSURE OF INTEREST

38 Contracts

- (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 which apply to such contracts or arrangements.
- (b) Any interest of a Director must be dealt with in accordance with the relevant legislation, being either:
 - (i) the Corporations Act; or
 - (ii) the ACNC Regulation,which shall include disclosing an interest and having the Secretary record all declarations in the minutes of the relevant meeting.
- (c) Subject to **clause 38(b)**, a Director who has an interest in a contract or arrangement made by the Company with another company or body and has disclosed this interest to the Board shall:
 - (i) not be present while the matter is being considered at a meeting;
 - (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) not vote on the matter;
 - (iv) not sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (v) not vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- (d) 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.
- (e) 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

39 Meetings of Directors

- (a) The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings and proceedings as it thinks fit, provided that the Board must meet not fewer than four 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, provided that the Director or Secretary must have used their best endeavours to ensure that the notice was properly provided.
- (c) Notice of a meeting of the Board must be in writing by any means including paper, email or digital messaging, provided that proof of service can be provided upon request.
- (d) Subject to **clause 39(e)**, a Board meeting may be convened or held using any technology consented to by a majority of 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) The particular technology used to convene or hold a Board meeting, pursuant to **clause 39(d)**, must be of a type that is available and accessible to all Directors who wish to attend the Board meeting.
- (f) 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 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. Attendance by a Director at a meeting of Directors waives any objection which that Director may have to a failure to give notice of the meeting.

40 Quorum

- (a) Subject to **clause 40(b)**, the quorum necessary for the transaction of the Board's business is at least four (4) Directors being personally present (or in conference in accordance with **clause 39**).
- (b) If Doctor Karen Abbey is the Chairperson, then in order for there to be the necessary quorum for the transaction of the Board's business, Doctor Karen Abbey must be one (1) of the Directors who is personally present (or in conference in accordance with **clause 39**).
- (c) A quorum must be present at all times during the meeting in order for business to be transacted.
- (d) A Director who is disqualified from voting on a matter pursuant to **clause 38** shall be counted in the quorum despite that disqualification.

- (e) For the avoidance of doubt, if Doctor Karen Abbey is disqualified from being present for and/or voting on a resolution due to **clause 38(c)** but is still present at the meeting, then she will still be treated as being present for the purposes of determining whether there is a quorum pursuant to **clause 40(b)**.

41 Chairperson

41.1 Doctor Karen Abbey

- (a) If Doctor Karen Abbey is the Chairperson then she shall preside as chair of every meeting of the Board.
- (b) If Doctor Karen Abbey is the Chairperson, if a meeting of the Board is held and she:
 - (i) if present, does not wish to chair the meeting; or
 - (ii) is not present for a portion of the meeting pursuant to **clause 38(c)(i)**, then the Deputy-Chairperson shall preside as chair of the meeting, or portion of the meeting, as appropriate. If the Deputy-Chairperson is:
 - (iii) not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
 - (iv) if present, does not wish to chair the meeting; or
 - (v) is not present for a portion of the meeting pursuant to **clause 38(c)(i)**, then the other Directors present shall elect one of their number to preside as chair of the meeting, or portion of the meeting, as appropriate.

41.2 Other Chairperson

- (a) If anyone other than Doctor Karen Abbey is the Chairperson, then that Chairperson shall, if present, preside as chair of every meeting of the Board.
- (b) If anyone other than Doctor Karen Abbey is the Chairperson, if a meeting of the Board is held and the Chairperson is:
 - (i) not present within fifteen (15) minutes after the time appointed for the holding of the meeting not present; or
 - (ii) if present, does not wish to chair the meeting; or
 - (iii) is not present for a portion of the meeting pursuant to **clause 38(c)(i)**, then the Deputy-Chairperson shall preside as chair of the meeting, or portion of the meeting, as appropriate. If the Deputy-Chairperson is:
 - (iv) not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
 - (v) if present, does not wish to chair the meeting; or
 - (vi) is not present for a portion of the meeting pursuant to **clause 38(c)(i)**, then the other Directors present shall elect one of their number to preside as chair of the meeting, or portion of the meeting, as appropriate.

42 Voting

- (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 of the meeting is entitled to a casting vote in addition to a deliberative vote.

43 Resolutions by Directors

- (a) The Board may pass a resolution without a Board meeting being held if a majority of the total number of Directors sign a document containing a statement that they are in favour of the resolution set out in that 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) A vote made by a Director using an online voting platform operated or commissioned by the Company shall for the purposes of this **clause 43** be taken to be in writing and signed by that Director at the time the vote was received by the online voting platform.
- (e) Any decisions made under **clauses 43(a) to 43(d)** shall be tabled at the next Board meeting.

44 Committees

- (a) The Board may form and delegate any of its powers to a Committee consisting of such Directors and/or other persons as it thinks fit and may from time to time revoke such delegation.
- (b) The Board has the power to require any Committee to have all decisions made by that Committee ratified by the Board.
- (c) 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.
- (d) 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.
- (e) 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 Corporations Act and this Constitution to be made entered and signed. A copy of such Committee minutes shall be tabled at the next Board meeting.

45 Validation of Acts of Directors

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.

MINUTES

46 Minutes

- (a) The Board must cause minutes to be kept in such a manner as is required by the Corporations Act (notwithstanding the application of section 111L of the Corporations Act) for the purposes of recording:
 - (i) the names of the Directors present at each meeting of the Board and of Directors present at each meeting of any Committee;
 - (ii) all orders, resolutions and proceedings of general meetings and of meetings of the Board and of Committees; and
 - (iii) such matters as are required by the Corporations Act or the ACNC Act or the ACNC Regulation to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of his or her 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 Director presiding over the meeting, or the Director presiding over 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

47 Appointment and Tenure

- (a) There must at all times be at least one Secretary appointed by the Board for a term and on conditions determined by the Board.
- (b) The Board may replace any Secretary so appointed.
- (c) The Secretary appointed under **clause 47(a)** shall be the Company Secretary for the purposes of the Corporations Act.

BY-LAWS

48 By-Laws

- (a) The Board may from time to time make such By-Laws as are in its opinion necessary and desirable for the proper control, administration and management of the Company's affairs, operations, finances, interests, effects and property and to amend and repeal those By-Laws from time to time.
- (b) A By-Law must be subject to this Constitution and must not be inconsistent with any provision contained in this Constitution.
- (c) When in force, a By-Law is binding on the Member and has the same effect as this Constitution.
- (d) The Board will adopt such measures as it deems appropriate to bring to the notice of the Member all By-Laws, amendments and repeals.

EXECUTION OF DOCUMENTS

49 Execution of Documents

- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Corporations Act, the Company may execute any agreement, deed or other document by:
 - (i) two (2) Directors signing the same; or
 - (ii) one (1) Director and one (1) 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

50 Accounts and Inspection

The Board shall:

- (a) cause proper financial records to be kept and must, if required by the Corporations Act or the ACNC Act or the ACNC Regulation, prepare and distribute copies of the financial reports of the Company and a Directors' report;
- (b) where required by the Corporations Act or ACNC Act, cause the financial records to be audited or reviewed by a properly qualified auditor or other entity authorised by the ACNC Act or the Corporations Act; and
- (c) 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 the Member.

NOTICES

51 Service of Notices

- (a) A notice may be given by the Company to the Member by:
 - (i) 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;
 - (ii) facsimile to the facsimile number supplied by the Member to the Company for the giving of notices;
 - (iii) sending it to the electronic address supplied by the Member to the Company for the giving of notices; or
 - (iv) using any of the methods in **clause 51(a)(i) to 51(a)(iii)** but in relation to a Representative appointed under **clause 8** rather than in relation to the Member itself.
- (b) Where the Member has not left at or sent to the Office its address for inclusion in the Register as the place at which notices may be given, 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 second day after the date of posting. Service of a notice to the Member shall be taken to have been effected on the sixth Business Day after it is sent.
- (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.
- (e) 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.

WINDING UP

52 Winding Up

52.1 Surpluses Arising from Deductible Donations

- (a) If any surplus arising from deductible gifts and contributions, and any money received in respect of such gifts and contributions, remains following the winding up of the Company, that surplus will not be paid to or distributed to the Member, but will be given or transferred to another institution(s) or corporation(s) which has (have):
 - (i) objects which are similar to the Objects and is charitable;
 - (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) DGR endorsement.
- (b) The identity of the corporation(s) or institution(s) referred to in **clause 52.1(a)** is to be determined:
 - (i) by the Appointor; or
 - (ii) if the Appointor does not decide or does not wish to decide, then by the Board;

in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of New South Wales for determination.
- (c) 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 which is charitable at law.
- (d) The identity of the DGR referred to in **clause 52.1(c)** is to be determined:
 - (i) by the Appointor; or
 - (ii) if the Appointor does not decide or does not wish to decide, then by the Board,

and failing such determination being made by either the Appointor or the Board, by application to the Supreme Court of New South Wales for determination.

52.2 Other Surpluses

- (a) Any surplus remaining which is not within the ambit of **clause 52.1(a)** will not be paid or distributed to the Member, but will be paid to or distributed to another institution(s) or corporation(s) which has:
 - (i) objects which are similar to the Objects and is charitable;
 - (ii) a constitution which requires its income and property to be applied solely in promoting its objects; and
 - (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)**.
- (b) The identity of the corporation(s) or institution(s) referred to in **clause 52.2(a)** is to be determined:
 - (i) by the Appointor; or
 - (ii) if the Appointor does not decide or does not wish to decide, then by the Board;

in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of New South Wales for determination.

INDEMNITY

53 Indemnity

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 in that person's capacity as an Officer or employee of the Company (or former Officer or employee of the Company). However, no such Officer or employee (or former Officer or employee) shall be indemnified out of the funds of the Company under this clause 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 Corporations Act.

54 Payment of Indemnity Policy Premium

- (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;
 - (ii) if the Company is a Charity, a liability arising out of conduct that contravenes the governance standards in sections 45.5 to 45.25 of the ACNC Regulation; or
 - (iii) if the Company is not a Charity, a contravention of sections 182 or 183 of the Corporations Act.
- (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 or her 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.

55 Indemnity to Continue

The indemnity granted by the Company contained in **clauses 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.

The sole Member, whose signature appears hereunder, hereby agrees to the foregoing constitution:

EXECUTED by Nutrition & Catering)
Consultancy Pty Ltd (ACN 084 734 145) in)
accordance with section 127(1) of the)
Corporations Act 2001)

.....
Signature of Karen Abbey
Sole Director/Sole Company Secretary

Form of Appointment of Proxy

Nutrition & Catering Institute (NACI) Limited
(incorporated under the *Corporations Act 2001*)

PROXY FORM

1. Your details

(Please print your name and address)

Name: _____

ACN/ABN/Company Number (if applicable): _____

Address: _____

City: _____

State: _____

Postcode: _____

Country: _____

Telephone: _____

2. Appoints

Name: _____

(Please print name of proxy)

or failing the person so named, or if no person is named, the **Chairperson of the Meeting** to vote in accordance with the following directions or, if no directions have been given, as the proxy or the Chairperson sees fit at the (Annual) General Meeting of Nutrition and Catering Institute (NACI) Limited to be held on *[insert date]* commencing at *[insert time]* and at any adjournment thereof.

3. Directions

4. Signature

5. Date