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Constitution

The 40K Foundation Australia Ltd (operating as Plus Education)

DOCUMENT DETAILS

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Constitution

The 40K Foundation Australia Limited

A company limited by guarantee

1 Company's name

The name of the company is the 40K Foundation Australia Limited.

2 Company's purposes

- a) The company is established for the public charitable purposes of
- b) executing innovative solution to poverty-related problems in developing communities around the world through tangible projects.
- c) creating and maintaining partnerships with local organizations in developing communities; advocating its approach to its international development work on the principals of interactivity, science, and adventure; and
- d) acting as trustee of the 40K Australia Overseas Aid Fund.

3 Company's powers

Solely for carrying out the company's purposes, the company may:

- a) raise funds or encourage contributions by way of gifts (by will or otherwise), grants, sponsorships or otherwise, by personal or public appeals or in any other manner.
- b) provide funds, facilities, or other material benefits.



- c) accept and hold funds or property of any kind on or for any charitable trusts, objects or purposes specified or to be specified by any person or to be selected by the directors from a class of charitable trusts, objects or purposes specified by any person;
- d) engage or dismiss any employee, agent, contractor or professional person.
- e) accept and undertake trusteeships, administration and management of trusts and funds, whether as trustee or as agent for the trustee or otherwise, and charge and accept fees, commission or other remuneration for doing so;
- f) purchase, take on lease or in exchange, hire or otherwise acquire real or personal property, and any rights or privileges;
- g) control, manage, lease, exchange, mortgage, charge, sell, transfer, surrender, dispose of, develop, carry on business or otherwise deal with any real or personal property of any kind or any estate or interest in that property.
- h) invest, deal with and lend money and otherwise provide financial accommodation to, and guarantee or otherwise secure loans to, charitable objects or purposes;
- i) construct, improve, maintain, develop, work, manage and control real or personal property;
- j) enter into contracts and deeds;
- k) appoint an attorney or agent with the powers (including the power to sub- delegate) and on the terms the company thinks fit and procure registration or recognition of the company in any other country or place:
- l) enter into arrangements with any government or authority;
- m) borrow, raise or secure the payment of money and secure the repayment or performance of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge or overdraft or by the issue of debentures or debenture stock (perpetual or otherwise) charged on all or any of the company's property (both present and future) and purchase, redeem or pay off those securities;



- n) make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments;
- o) print and publish information in hard copy or by electronic means.
- p) accept any gift of real or personal property, whether subject to any special trust or not, and decline to accept any gift;
- q) appoint patrons of the company;
- r) make donations for charitable purposes;
- s) arrange conferences, meetings, and other forums; and
- t) do all other things that are incidental or conducive to carrying out the company's purposes.

4 Not for profit

4.1. Application of the company's income and property

- a) The company's income and property must be applied solely towards promoting the company's purposes.
- b) No part of the income or property may be paid, transferred, or distributed, directly or indirectly, by way of dividend, bonus, or other profit distribution, to any member or director.
- c) This rule 4 does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any director to the extent permitted by law and this constitution.

4.2. Payments of directors' fees

No directors' fees may be paid to the directors.



4.3. Other payments to directors

All other payments to directors must be approved by the directors including, but not limited to:

- a) out-of-pocket expenses incurred by a director in performing a duty as a director
- b) of the company; or
- c) a service rendered to the company by a director in a professional or technical capacity or as an employee, other than in the capacity as a director of the company, where:
- d) the provision of the service has the prior approval of the directors; and
- e) the amount payable is not more than an amount that commercially would be reasonable payment for the service.

5 Membership

5.1. Application

- a) The members are:
 - 1. the persons who consent to be the initial members.
 - 2. the directors; and
 - 3. any other persons the directors admit to membership in accordance with this constitution.
- b) Every applicant for membership of the company (except the initial members and the directors) must apply in the form and manner decided by the directors.
- c) After the receipt of an application for membership, the directors (or a delegate approved by the directors) must consider the application and decide whether to admit or reject the admission of the applicant. The directors need not give any reason for rejecting an application.



6 When membership ceases

6.1. Death, resignation, and other events

A person immediately ceases to be a member if the person:

- a) dies;
- b) resigns as a member by giving written notice to the company;
- c) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health;
- d) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
- e) is expelled under rule 6.2; or
- f) becomes, if the directors so decide in their absolute discretion, an untraceable member because the person has ceased to reside at, attend or otherwise communicate with his or her Registered Address.

6.2. Expulsion

- a) The directors may by resolution expel a member who is not a director from the company if, in their absolute discretion, they decide it is not in the interests of the company for the person to remain a member.
- b) If the directors intend to consider a resolution under rule 6.2(a), at least one week before the meeting at which the resolution is to be considered, they must give the member written notice:
 - 1) stating the date, place and time of the meeting;
 - 2) setting out the intended resolution and the grounds on which it is based;
 - 3) and



- 4) informing the member that he or she may attend the meeting and may give an oral or written explanation or submission before the resolution is put to the vote.

7 Liability of member

The liability of the members is limited to the amount of the guarantee given in rule 8.

8 Guarantee by member

Every member must contribute an amount not more than \$10 to the property of the company if it is wound up while the person is a member or within one year after the person ceases to be a member, for:

- a) payment of the company's debts and liabilities contracted before the time he or she ceased to be a member; and
- b) the costs, charges, and expenses of winding up.

9 Winding up

- a) If, on the winding up or dissolution of the company, any property remains after satisfaction of all its debts and liabilities, this property must only be given or transferred to an institution:
 - 1) that is charitable at law; and
 - 2) whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as is outlined in rule 4.
- b) The identity of the institution referred to in rule 9(a) must be decided by the directors, or if the directors do not wish to decide or do not decide, it must be decided by the members by ordinary resolution at or before the time of winding up of the company and, if the members do not decide, by the Supreme Court of the state or territory in which the company is registered.



10 Altering this constitution

10.1. Expulsion

The company must not pass a special resolution altering the constitution, if, as a result, the company will cease to be a charity.

10.2. Notice to Commissioner

The company must give written notice to the Commissioner if:

- a) a special resolution is passed materially altering rule 2; or
- b) the company ceases to be entitled to be endorsed as a tax concession charity as a result of a change in its constitution or activities or otherwise.
- c) The notice must be given as soon as practicable after the passing of the special resolution or of the cessation.

11 General Meetings

11.1. Calling General Meetings

1.1 A **general meeting**, called the annual **general meeting**, must be held:

- (a) within 18 months after registration of the **company**, and
- (b) after the first annual **general meeting**, at least once in every calendar year.

1.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:

- (a) a review of the **company's** activities
- (b) a review of the **company's** finances
- (c) any auditor's report
- (d) the election of directors, and
- (e) the appointment and payment of auditors, if any.



1.3 Before or at the annual **general meeting**, the directors must give information to the members on the **company's** activities and finances during the period since the last annual **general meeting**.

1.4 The chairperson of the annual **general meeting** must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

11.2. Notice of general meetings

- a) Notice of every general meeting must be given in any manner authorized by rule 16 to each person who is at the date of the notice:
 - 1) a member;
 - 2) a director; or
 - 3) the Auditor.
- b) A notice of a general meeting must:
 - 1) specify the date, time and place of the meeting.
 - 2) except as provided by the Act, state the general nature of the business to be transacted at the meeting; and
 - 3) specify a place, fax number or electronic address for the receipt of proxies.
- c) A person may waive notice of a general meeting by written notice to the company.
- d) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting does not invalidate anything done or resolution passed at the general meeting if:
 - 1) the non-receipt or failure occurred by accident or error: or
 - 2) before or after the meeting, the person has notified or notifies the company of the person's agreement to that thing or resolution.
- e) A person's attendance at a general meeting waives any objection that person may have to:



- 1) a failure to give notice, or the giving of a defective notice, of the meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
- 2) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

11.3. Quorum at general meetings

- a) No business may be transacted at a general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- b) A quorum consists of:
 - 1) if there is only one member entitled to vote and be present at the meeting, that member; and
 - 2) in any other case, 3 members entitled to vote and present at the meeting, unless the members have fixed a higher number of members entitled to vote.
- c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - 1) where the meeting was convened on the requisition of members, the meeting must be dissolved; or
 - 2) in any other case the meeting stands adjourned to the day, and at the time and place, that the directors decide or, if the directors do not make a decision, to the same day in the next week at the same time and place.
- d) If at the adjourned meeting under rule 11.3(c)(2), a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.



11.4. General meetings by technology

- a) The contemporaneous linking together by telephone or other electronic means of a sufficient number of the members in person, to constitute a quorum constitutes a meeting of the members, provided each member has a reasonable opportunity to participate at the meeting.
- b) All the provisions in this constitution relating to meetings of the members apply, so far as they can and with any necessary changes, to meetings of the members by telephone or other electronic means.
- c) A member who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- d) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the members involved was at that place for the duration of the meeting.

11.5. Chairperson of general meetings

- a) The chairperson of directors must preside as chairperson at a general meeting if present within 15 minutes after the time appointed for the meeting and willing to act.
- b) If there is no chairperson of directors or both the conditions in rule 11.S(a) have not been met, the members present must elect another chairperson of the meeting.
- c) A chairperson elected under rule 11.S(b) must be:
 - 1) another director who is present and willing to act; or
 - 2) if no other director present at the meeting is willing to act, a member who is present and willing to act.



11.6. Conducting and adjourning general meetings

- a) A question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting, whose decision is final.
- b) The chairperson of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
- c) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- d) Except as provided by rule 11.6(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- e) Where a meeting is adjourned, the directors may change the venue of, or postpone or cancel, the adjourned meeting, unless the meeting was called and arranged to be held by the members or the court under the Act. If a meeting is called and arranged to be held under section 2490 of the Act, the directors may not postpone it beyond the date by which section 2490 requires it to be held and may not cancel it without the consent of the requisitioning member.

11.7. Decisions at general meetings

- a) Except whereby law a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the meeting. Such a decision is for all purposes a decision of the members.
- b) Where the votes on a proposed resolution are equal:
 - 1) the chairperson of the meeting does not have a second or casting vote; and
 - 2) the proposed resolution is taken as lost.



- c) A resolution put to the vote of a general meeting must be decided on a show of hands unless, before the vote is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:
- 1) the chairperson of the meeting;
 - 2) at least 2 members present and with the right to vote on the resolution; or
 - 3) a member or members present at the meeting and representing at least 5% of the total voting rights of all the members entitled to vote on the resolution on a poll.
- d) A demand for a poll does not prevent a general meeting continuing for the transaction of any business except the question on which the poll has been demanded.
- e) Unless a poll is duly demanded, a declaration by the chairperson of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favor of or against the resolution.
- f) If a poll is duly demanded at a general meeting, it must be taken in such manner, and either at once or after an interval or adjournment or otherwise, as the chairperson of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- g) A poll demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.
- h) The demand for a poll may be withdrawn.
- i) If the company has only one member, the company may pass a resolution by the member recording it and signing the record.



11.8. Voting rights

- a) Subject to this constitution and to any rights or restrictions attached to any class of membership, at a general meeting every member present has one vote.
- b) A proxy, attorney or representative is entitled to a separate vote for each member the person represents, in addition to any vote the person may have as a member in his or her own right.
- c) An objection to the qualification of a person to vote at a general meeting must be:
 - 1) raised before or at the meeting at which the vote objected to is given or tendered;
and
 - 2) referred to the chairperson of the meeting, whose decision is final.
- d) A vote not disallowed by the chairperson of a meeting under rule 11.8(c) is valid for all purposes.

11.9. Representation at general meeting

- a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
 - 1) in person or, where a member is a body corporate, by its representatives.
 - 2) by one proxy; or
 - 3) by one attorney
- b) A proxy, attorney or representative may, but need not, be a member of the company.
- c) A proxy, attorney or representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.

11.10. Authority of a proxy, attorney, or representative

- a) Unless otherwise provided in the instrument, an instrument appointing a proxy, attorney or representative is to be taken to confer authority:



- 1) to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution; and
 - 2) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than the period of notice required by the Act has been given.
- b) Even though the instrument (appointing a proxy, attorney or representative) may refer to specific resolutions and may direct the proxy, attorney or representative how to vote on those resolutions, unless otherwise provided, it is taken to confer authority:
- 1) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - 2) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
 - 3) to act generally at the meeting.
- c) An instrument appointing a proxy, attorney or representative may direct the manner in which the proxy, attorney or representative is to vote in respect of a particular resolution and, where an instrument so provides, the proxy, attorney or representative is not entitled to vote on the proposed resolution except as directed in the instrument.
- d) Subject to rule 11.10(e), an instrument appointing a proxy, attorney or representative need not be in any particular form as long as it is in writing, legally valid and signed by or on behalf of the appointer or the appointer's attorney.
- e) A proxy, attorney or representative may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy, attorney or representative, and the authority under which the instrument is signed or a certified copy of the authority, are:
- 1) received at the registered office of the company, a fax number at the company's registered office or at another place, fax number or electronic address specified



for that purpose in the notice convening the meeting before the time specified in the notice;

- 2) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote;
or
 - 3) in the case of a poll, produced when the poll is taken.
- f) The directors may waive all or any of the requirements of rules 11.10(d) and 11.10(e) and in particular may, on the production of such other evidence as the directors require to prove the validity of the appointment or a proxy, attorney or representative, accept:
- 1) an oral appointment of a proxy, attorney or representative;
 - 2) an appointment of a proxy, attorney or representative which is not signed in the manner required by rule 11.10(d); and
 - 3) the deposit, tabling, or production of a copy (including a copy sent by fax) of an instrument appointing a proxy, attorney or representative or of the power of attorney or other authority under which the instrument is signed.
- g) A vote given in accordance with the terms of an instrument appointing a proxy, attorney or representative is valid despite the revocation of the instrument or of the authority under which the instrument was executed, if no written notice of the revocation has been received by the company by the time and at one of the places at which the instrument appointing the proxy, attorney or representative is required to be deposited, tabled or produced under rule 11.10(e).
- h) The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution, the person acting as proxy or attorney for the appointer is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.



12 Directors

12.1. Appointing and removing directors

- a) The minimum number of directors is 5. The maximum number of directors is to be fixed by the directors, but may not be more than 12, unless the company in general meeting resolves otherwise. The directors must not fix a maximum which is less than the number of directors in office at the time.
- b) The first directors are those named as directors in the application for registration of the company.
- c) The members may appoint any individual as a director by a special resolution, as an addition to the existing directors, provided:
 - 1) the number of directors does not exceed the maximum number fixed under rule 12.1(a); and
 - 2) before appointing the director, the individual signs a consent to act as a director.
- d) The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
 - (1) is a member of the **company**, or a representative of a member of the **company** (appointed under clause 24)
 - (2) gives the **company** their signed consent to act as a director of the **company**, and
 - (3) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- e) A person is eligible for election as a director of the company if they:
 - (1) are a member of the company, or a representative of a member of the company (appointed under clause 24)
 - (2) are nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a director at a general meeting and has been a director since that meeting),



- (3) give the company their signed consent to act as a director of the company, and
 - (4) are not ineligible to be a director under the Corporations Act or the ACNC Act.
- f) At each annual general meeting any director appointed by the directors to fill a casual vacancy or as an additional director must retire, and at least one-third of the remaining directors must retire.
- g) The directors who must retire at each annual general meeting will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.
- h) A director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- i) Each director must retire at least once every three years.
- j) A director who retires under clause 41.1 may nominate for election or re-election, subject to clause 41.6.
- k) A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a special resolution

12.2. Vacation of office

The office of a director becomes vacant:

- (a) give written notice of resignation as a director to the **company**
- (b) die
- (c) are removed as a director by a resolution of the members
- (d) stop being a member of the **company**
- (e) are a representative of a member, and that member stops being a member
- (f) are a representative of a member, and the member notifies the **company** that the representative is no longer a representative
- (g) are absent for [3] consecutive directors' meetings without approval from the directors, or



(h) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**.

12.3. Directors may contract with the company and hold other offices

- a) The directors may make regulations requiring the disclosure of interests that a director, and any person considered by the directors as related to or associated with the director, may have in any matter concerning the company or a related body corporate. Any regulations made under this constitution bind all directors but no act, transaction, agreement, instrument, resolution or other thing with a third party is invalid or voidable only because a director fails to comply with the regulations.
- b) Unless the Act permits, a director who has a material personal interest in a matter that is being considered at a directors' meeting must not:
 - 1) be present while the matter is being considered at the meeting; or
 - 2) vote on the matter.
- c) A director is not disqualified from contracting or entering into an arrangement with the company as vendor, purchaser or in another capacity, merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- d) A contract or arrangement entered into by or on behalf of the company in which a director is in any way interested is not invalid or voidable merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- e) A director who is interested in any arrangement involving the company is not liable to account to the company for any profit realised under the arrangement merely because the director holds office as a director or because of the fiduciary obligations arising from that office, provided that the director complies with the disclosure requirements



applicable to the director under any regulations adopted by the directors, and under the Act regarding that interest.

- f) A director may be or become a director or other officer of, or interested in, any related body corporate or any other body corporate associated with the company, and, with the consent of the directors of the company, need not account to the company for any remuneration or other benefits the director receives as a director or officer of, or from having an interest in, that body corporate.
- g) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the company in the manner in all respects that they think fit.

12.4. Powers and duties of the directors

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company
- (b) to act in good faith in the best interests of the company and to further the charitable purpose(s) of the company set out in clause 6
- (c) not to misuse their position as a director
- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 48
- (f) to ensure that the financial affairs of the company are managed responsibly, and
- (g) not to allow the company to operate while it is insolvent.



12.5. Proceedings of directors

- a) The directors may meet together and adjourn and otherwise regulate their meetings as they think fit.
- b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of the directors to constitute a quorum constitutes a meeting of the directors. All the provisions in this constitution relating to meetings of the directors apply, so far as they can and with any necessary changes, to meetings of the directors by telephone or other electronic means.
- c) A director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- d) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the directors involved was at that place for the duration of the meeting.
- e) If, before or during the meeting, any technical difficulty occurs as a result of which one or more directors cease to participate, the chairperson may adjourn the meeting until the difficulty is remedied or may, where a quorum of directors remains present, continue with the meeting.

12.6. Convening meetings of directors

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

12.7. Notice of meetings of directors

The minimum number of meetings of directors – 2 meetings in a year.



- a) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice a director, except a director on leave of absence approved by the directors.
- b) A notice of a meeting of directors:
 - 1) must specify the time and place of the meeting;
 - 2) need not state the nature of the business to be transacted at the meeting;
 - 3) may be given immediately before the meeting; and
 - 4) may be given in person or by post, telephone, fax or other electronic means.
- c) A director may waive notice of a meeting of directors by notifying the company to that effect in person or by post, telephone, fax or other electronic means.
- d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any thing done or resolution passed at the meeting if:
 - 1) the non-receipt or failure occurred by accident or error;
 - 2) the director has waived or waives notice of that meeting under rule 12.8(c) before or after the meeting;
 - 3) the director has notified or notifies the company of his or her agreement to that thing or resolution personally or by post, telephone, fax or other electronic means before or after the meeting; or
 - 4) the director attended the meeting.
- e) Attendance by a person at a meeting of directors waives any objection which that person may have to a failure to give notice of the meeting.

12.8. Quorum at meetings of directors

- a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- b) A quorum consists of:



- 1) if the directors have fixed a number for the quorum greater than 3, that number of directors present at the meeting; and
 - 2) in any other case, 3 directors present at the meeting.
- c) If there is a vacancy in the office of a director then, subject to rule 12.9(c), the remaining directors may act.
 - d) If the number of directors in office at any time is not sufficient to constitute a quorum, or is less than the minimum number of directors fixed under this constitution, the remaining directors must act as soon as possible to appoint additional directors, as required, and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

12.9. Chairperson of directors

- a) The directors may elect one of the directors as chairperson of directors and one of the directors as deputy chairperson of directors and may decide the period for which those directors are to be the chairperson and deputy chairperson.
- b) The chairperson or deputy chairperson of directors will preside as chairperson at each meeting of directors if present within 10 minutes after the time appointed for the meeting and willing to act.
- c) If there is no chairperson or deputy chairperson of directors or both the conditions in rule 12.9(b) have not been met, the directors present must elect one of the directors as chairperson of the meeting.

12.10. Decisions of directors

- a) A meeting of directors at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the directors under this constitution.
- b) Questions arising at a meeting of directors must be decided by a majority of votes cast by the directors present. Such a decision is for all purposes a decision of the directors.



- c) Where the votes on a proposed resolution are equal:
 - 1) the chairperson of the meeting does not have a second or casting vote; and
 - 2) the proposed resolution is taken as lost.

12.11. Written resolutions of directors

- a) A resolution is taken to have been passed by a meeting of directors if:
 - 1) all of the directors (other than any director on leave of absence approved by the directors, any director who disqualifies himself or herself from considering the resolution in question and any director who would be prohibited by the Act from voting on the resolution in question) sign or consent to a written resolution; and
 - 2) the directors who sign or consent to the resolution would have constituted a quorum at a meeting of directors held to consider that resolution.
- b) A director may consent to a resolution by:
 - 1) signing the document containing the resolution (or a copy of that document);
 - 2) giving to the company at its registered office a written notice (including by fax or other electronic means) addressed to the secretary or to the chairperson of directors signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
 - 3) telephoning the secretary or the chairperson of directors and signifying assent to the resolution and clearly identifying its terms.

12.12. Minutes of meetings and minutes of resolutions

- a) The directors must ensure minutes of proceedings and resolutions of general meetings and of meetings of directors (including committees of directors) are recorded in books kept for the purpose, within one month after the relevant meeting is held.



- b) The directors must ensure minutes of resolutions passed by directors (and committees of directors) without a meeting are recorded in books kept for that purpose within one month after the resolution is passed.
- c) The minutes of a meeting must be signed within a reasonable time by the chairperson of the meeting or the chairperson of the next meeting.

12.13. Committee of directors

- a) The directors may delegate any of their powers to one or more committees consisting of the number of directors they think fit.
- b) A committee to which any powers have been delegated must exercise the powers delegated in accordance with any directions given by the directors.
- c) The provisions of this constitution that apply to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of directors.

12.14. Delegation to individual directors

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

12.15. Validity of acts

An act done by a person acting as a director, a meeting of directors, or a committee of directors attended by a person acting as a director, is not invalidated merely because of one of the following circumstances, if that circumstance was not known by the person, the directors or the committee (as applicable) when the act was done:

- 1) a defect in the appointment of the person as a director;
- 2) the person being disqualified to be a director or having vacated office; or



- 3) the person not being entitled to vote.

13 Establishment and operation of The 40K Australia Overseas

Aid Fund

13.1. Introduction

The company must comply with this rule 13 if it operates The 40K Australia Overseas Aid Fund declared by the Treasurer to be a relief fund as described in item 9.1.1 of the table in section 30-80 of the ITAA 97.

13.2. Purposes of The 40K Australia Overseas Aid Fund

The company must maintain a public fund to be known as The 40K Australia Overseas Aid Fund for the purposes of the company outlined in rule 2 insofar as those purposes are for the relief of persons in countries declared to be developing by the Minister for Foreign Affairs.

13.3. Maintaining the 40K Australia Overseas Aid Fund

The company must ensure that:

- 1) The 40K Australia Overseas Aid Fund receives all Gifts and Deductible Contributions;
- 2) all money (including interest, income or money from the realisation of property) derived from Gifts and Deductible Contributions in The 40K Australia Overseas Aid Fund is paid into The 40K Australia Overseas Aid Fund;
- 3) The 40K Australia Overseas Aid Fund does not receive any money or property other than Gifts and Deductible Contributions described in rules 13.3(a) and 13.3(b);



- 4) The 40K Australia Overseas Aid Fund is only used to further the purposes of The 40K Australia Overseas Aid Fund in rule 13.2;
- 5) a separate bank account is established and maintained for The 40K Australia Overseas Aid Fund into which all money in The 40K Australia Overseas Aid Fund will be paid and that the members of the committee referred to in item 13.4(b) who are permanently located in Australia are the only signatories to the account;
- 6) the Australian Taxation Office is notified of any material changes to rule 13; and
- 7) the public is invited to make Gifts or Deductible Contributions to The 40K Australia Overseas Aid Fund for the purposes of The 40K Australia Overseas Aid Fund in rule 13.2.

13.4. Management of The 40K Australia Overseas Aid Fund

- a) For the purposes of this clause 13.4, Responsible Person means an individual who:
 - 1) performs a significant public function;
 - 2) is a member of a professional body having a code of ethics or rules of conduct;
 - 3) is officially charged with spiritual functions by a religious institution;
 - 4) is a director of a company whose shares are listed on the Australian Securities Exchange;
 - 5) has received a formal recognition from government for services to the community;or
 - 6) is approved as a Responsible Person by the Commissioner.
- b) At a particular time, the directors may administer The 40K Australia Overseas Aid Fund if a majority of the directors are then Responsible Persons. If at that time that is not the case, the directors must delegate the power to administer The 40K Australia Overseas Aid Fund to a committee of at least 3 persons, a majority of whom are Responsible Persons permanently located in Australia.



- c) The directors or the committee, as the case may be, must authorise the release of money from The 40K Australia Overseas Aid Fund, manage the investment of The 40K Australia Overseas Aid Fund, and authorise the sale of its assets.
- d) The directors may appoint the members of The 40K Australia Overseas Aid Fund committee and remove members of The 40K Australia Overseas Aid Fund committee.
- e) Subject to this rule 13.4, the directors may specify:
 - 1) the manner in which proceedings of the committee are to be conducted;
 - 2) that the release of money from The 40K Australia Overseas Aid Fund is authorised by the committee in accordance with the annual operating plan and budget, as it may be amended from time to time to reflect updates and changes in operational priority prepared by the directors;
 - 3) the matters which the committee must have regard to in carrying out its functions; and
 - 4) any other matters concerning the committee or its functions that the directors decide.

13.5. Winding Up

- a) At the first occurrence of:
 - 1) the winding up of The 40K Australia Overseas Aid Fund;
 - 2) The 40K Australia Overseas Aid Fund ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of ITTAA 97; or
 - 3) the company ceasing to be endorsed as a deductible gift recipient for the operation of The 40K Australia Overseas Aid Fund,
- b) any surplus assets or property of The 40K Australia Overseas Aid Fund must be transferred to a public fund:
- c) which is charitable at law; and



- d) gifts to which can be deducted under Subdivision 30-B due to it being characterized as a public fund declared by the Treasurer to be a relief fund as described in item 9.1.1 of the table in section 30-80 of the ITAA 97,

as the members decide.

13.6. Bank accounts and receipts

- a) The company must maintain a separate bank account for The 40K Australia Overseas Aid Fund.
- b) Receipts for The 40K Australia Overseas Aid Fund must include the:
 - 1) Australian Business Number and name of the company;
 - 2) name of The 40K Australia Overseas Aid Fund on behalf of the company;
 - 3) date the Gift or Deductible Contribution was received;
 - 4) fact that the receipt is for a Gift or Deductible Contribution;
 - 5) signature of a person authorized to act on behalf of The 40K Australia Overseas Aid Fund;
 - 6) name of the donor; and
 - 7) type of Gift or Deductible Contribution (money or property) and value.

14 Indemnity and Insurance

14.1. Persons to whom indemnity and insurance apply

The indemnity and insurance referred to in this rule 15 apply to Indemnified Officers.

14.2. Indemnity

- a) The company must indemnify, on a full indemnity basis and to the full extent permitted by law, each Indemnified Officer against all losses or liabilities (including costs and expenses) incurred by the person as an officer of the company.



- b) This indemnity:
 - 1) is a continuing obligation and is enforceable by an Indemnified Officer even though that person has ceased to be an officer of the company; and
 - 2) operates only to the extent that the loss or liability in question is not covered by insurance.

14.3. Insurance

The company may, to the extent permitted by law, purchase and maintain insurance; or pay or agree to pay a premium for insurance, for any Indemnified Officer against any liability incurred by the person as an officer of the company where the directors consider it appropriate to do so.

14.4. Savings

Nothing in this rule 15:

- a) affects any other right or remedy that an Indemnified Officer may have in respect of any loss or liability referred to in this indemnity or insurance; or
- b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom this rule 13 does not apply.

15 Auditor

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



16 Notices

16.1. Notices by the company to members

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

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

16.2. Notices by the company to directors

Subject to this constitution, a notice may be given by the company to any director by:

- a) serving it personally at the director's usual residential or business address.
- b) sending it by post in a prepaid envelope to the director's usual residential or business address; or
- c) by electronic means or fax to such electronic address or fax number, as the director has supplied to the company for giving notices.

16.3. Notices by the members and directors to the company

Subject to this constitution, a notice may be given by a member or director to the company by:

- a) serving it on the company at the registered office of the company;
- b) sending it by post in a prepaid envelope to the registered office of the company; or
- c) by fax or electronic means to the principal fax number or the principal electronic address of the company at its registered office.



16.4. Time of service

- a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
 - 1) in the case of a notice of a general meeting, on the day after the date of its posting;
or
 - 2) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- b) Where a notice is sent by fax, service of the notice is to be taken to be effected if the correct fax number appears on the fax report generated by the sender's fax machine and to have been effected at the time the fax is sent.
- c) Where a notice is sent by electronic means by electronic messaging system that contains a delivery verification function, service of the notice is to be taken to be effected on the generation by the electronic messaging system of a delivery verification notice or log entry, or other confirmation.
- d) Where notice is sent by electronic means by electronic mail or other electronic messaging system (other than those referred to in rule 16.4(c)), service of the notice is to be taken to be effected on the delivery to:
 - 1) where the addressee is a natural person, the addressee's electronic mail or electronic messaging system account; or
 - 2) where the addressee is a corporation, the corporation's computer systems.
- e) If service under rules 16.4(b), 16.4(c) and 16.4(d) is on a day which is not a Business Day or is after 4.00pm (addressee's time), the notice is regarded as having been received at 9.00am on the next following Business Day.
- f) For the purposes of rule 16.4(e), Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in the place concerned.



16.5. Other communications and documents

Rules 16.1 to 16.4 (inclusive) apply, so far as they can and with any necessary changes, to the service of any communication or document.

16.6. Notices in writing

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



17 Definitions and interpretations

17.1. Definitions

The meanings of the terms used in this constitution are set out below.

Term	Meaning
Act	the <i>Corporations Act 2001</i> (Cth).
Auditor	the auditor of the company.
Commissioner	the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of ITAA 97.
Deductible Contribution	means a deductible contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event for the purpose of the company as described in rule 13.2.
Gift	Means a gift of money or property as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97 for the purpose of the company as described in rule 13.2.
Indemnified Officer	<ol style="list-style-type: none">1- each person who is or has been a director or executive officer (within the meaning of rule) of the company; and2- any other officers or former officers of the company as the directors in each case decide.
ITAA 97	the <i>Income Tax Assessment Act 1997</i> (Cth).
Registered Address	a member's address as notified to the company by the member and recorded in the company's records.



17.2. Interpretation

In this constitution:

- a) references to notices include formal notices of meeting and all documents and other communications from the company to its member.
- b) a reference to any legislation or a provision of any legislation includes any amendment to that legislation or provision, any consolidation or replacement of that legislation or provision and any subordinate legislation made under that legislation.
- c) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or representative.
- d) a reference to writing and written includes printing, lithography, and other ways
- e) of representing or reproducing words in a visible form; and
- f) the singular (including defined terms) includes the plural and the plural includes the singular.

17.3. Interpretation

Headings are used for convenience only and do not affect the interpretation of this constitution.

17.4. What parts of the act apply

Unless the contrary intention appears:

- a) an expression used in a rule that deals with a matter dealt with by a provision of the Act has the same meaning as in that provision; and



- b) subject to rule 18.1(a), an expression in a rule that has a defined meaning for the purposes of the Act has the same meaning as in the Act.

17.5. Replaceable rules displaced

- a) The provisions of this constitution displace each provision of a section or subsection of the Act that applies (or would apply but for this rule) to the company.
- b) The replaceable rules do not apply to the company except those which operate as mandatory rules for public companies under the Act.

