
Constitution

14 May 2009

**ACON Health Limited (ACON Health)
A Public Company Limited By Guarantee**

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1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary; and
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this Constitution.

2 Nature of company and liability

2.1 Nature of Company

ACON Health is a public company limited by guarantee.

2.2 Liability of each Member

- (a) The liability of each Member is limited and the liability of each class of Member is limited, depending upon the category of their membership, as provided in clauses 2.2(b) and 5 of this Constitution.
 - (b) Each Member undertakes to contribute to the assets of ACON Health, if it is wound up while they are a Member, or within one year afterwards, an amount of money not exceeding the limit of liability of the relevant class of membership they hold and at the time of winding up the debts and liabilities of ACON Health exceed its assets.
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3 Objects and activities of ACON Health

3.1 Objects of ACON Health

- (a) To promote the health and wellbeing of lesbian, gay, bisexual, transgender and other sexuality, sex and gender diverse people (collectively, LGBT).
- (b) To promote the health and well-being of all people living with HIV/AIDS (regardless of sex, sexuality, gender, race/ethnicity or age) and other affected communities, which includes LGBT people, people who inject drugs, sex workers and Aboriginal and Torres Strait Islanders.
- (c) To promote the prevention and control of disease among LGBT people and people with HIV/AIDS.
- (d) To reduce disadvantage and discrimination experienced by LGBT people and people with HIV/AIDS.
- (e) To eliminate disparities in health outcomes of LGBT people and communities including differences that occur by sexual and/or gender orientation, identity and/or

presentation, gender, race/ethnicity, education or income, disability, nationality, geographic location, and/or age.

- (f) To advocate for and increase availability of, access to, and quality of physical, mental and behavioural health and related services for LGBT people and people with HIV/AIDS.
- (g) To directly provide care and education services to all people living with HIV/AIDS, those directly affected by HIV or at risk of HIV infection.
- (h) To develop the capacity of Members to promote the health and wellbeing of LGBT people, including the development of health intelligence, networking opportunities, financial resources and workforce development.
- (i) To provide information and training to health professionals, service providers, businesses, the LGBT community and the general public on:
 - (i) the promotion of health and wellbeing for LGBT people and people with HIV/AIDS; and
 - (ii) the prevention and control of disease for LGBT people and people with HIV/AIDS.
- (j) To undertake, participate in, raise funds for and/or promote research that could contribute to:
 - (i) the health and wellbeing of LGBT people and people with HIV/AIDS; and
 - (ii) the prevention and control of disease in LGBT people and people with HIV/AIDS.
- (k) To engage and collaborate with those organisations, institutions or bodies, which in the opinion of ACON Health support and uphold ACON Health's Objects, to encourage initiatives, and assist in development of innovative programs aimed at promoting community awareness of LGBT health issues and health issues for people living with HIV/AIDS.
- (l) To influence public and private sector policy and programs regarding, HIV/AIDS, LGBT health and related issues.
- (m) To make known and further the Objects and activities of ACON Health by the publication and distribution of papers, journals, leaflets and other publications and by advertising in any medium or by any means thought desirable.
- (n) To pursue charitable purposes and apply any income only for the purposes of pursuing those purposes.

3.2 Activities of ACON Health

Activities performed in furtherance of, or in carrying out the stated Objects of, ACON Health are authorised activities of ACON Health.

4 Legal capacity and powers of ACON Health

ACON Health has all of the powers of a natural person and of a body corporate, including those set out in the Corporations Act, including the power to borrow and invest the assets of ACON Health as may be decided by the Board from time to time under clause 14.

5 Membership

5.1 Classes of membership

- (a) The Board may by Ordinary Resolution create classes of membership with such eligibility criteria, rights and obligations and other terms as it may decide from time to time, subject to the requirements of the Corporations Act.
- (b) For the avoidance of doubt, the Directors may (without limitation) admit natural persons, corporations and other legal entities to the membership of ACON Health.

5.2 Fees

- (a) The Board may determine that a Membership Fee is payable in respect of a Member's membership, the amount of such fee being determined by the Board from time to time (**Membership Fee**).
- (b) Membership Fees are non-refundable and Membership Fees are payable by the Member on 1 July of each year (or in the case of first admission to membership, on the date of first admission to membership) unless otherwise determined by the Board.
- (c) In determining an amount of the Membership Fee, the Board may determine a different rate as between different classes of membership but may not discriminate between members of the same class of membership.
- (d) The Board may determine that Membership Fees may be payable by instalments and may revoke or postpone Membership Fees or extend the time for payment of Membership Fees.
- (e) ACON Health must give Members at least 30 Business Days' notice of Membership Fees payable by them. A notice of Membership Fees must be in writing and:
 - (i) specify the amount of the Membership Fee payable by the relevant Member;
 - (ii) the time by which the fee must be paid;
 - (iii) and acceptable methods of payment of the Membership Fee.

An Membership Fee is not invalid if a Member does not receive notice of the Membership Fee.

- (f) A Member must pay to ACON Health the amount of any Membership Fee payable by the Member at the times and places specified in the notice of the Membership Fee. If an Membership Fee is payable in one or more fixed amounts on one or more fixed dates, the Member must pay to ACON Health those amounts on those dates.
- (g) The debt due in respect of an amount payable under clause 5.2(f) is sufficiently proved by evidence that the name of the Member is entered in the Register.

5.3 Limits of liability

- (a) The limits of liability of ACON Health's Members at the date of incorporation are set out in Schedule 2 and on a winding up of ACON Health, the liability of Members shall not exceed the amounts stated in that Schedule.

- (b) The limits of liability of Members other than those referred to in 5.3(a) must be set out in the resolution pursuant to which the classes to which those Members belong were created. The liability of such Members shall not exceed the amounts stated in that resolution.

5.4 Membership – generally

The Members of ACON Health are the Members at the date of incorporation of ACON Health and those Members who:

- (a) are individuals (at least 18 years of age at the date of application) or legal entities; and
- (b) have been admitted by the Board to membership of ACON Health as Members after making an application for membership, in accordance with clause 6.

5.5 Form of application

Any person may apply in writing to be a member of ACON Health. A person's application for Membership must:

- (a) include (without limitation) the following information in respect of the applicant:
 - (i) the full name of the applicant;
 - (ii) such contact details for the applicant which the Board may specify are required from time to time;
 - (iii) details of the applicant's representative or other contact person, where applicable; and
 - (iv) such other information relating to the applicant as the Board may require from time to time;
- (b) be signed by the applicant or on behalf of the applicant by its duly authorised representative(s) as the case may be;
- (c) be accompanied by such documents or evidence of the applicant's eligibility to apply for membership as the Board may require from time to time; and
- (d) be in whatever form, including electronic form, as the Board may require from time to time.

5.6 Membership not transferable

No membership interest, benefit or right of any Member is capable of being sold or transferred in any manner whatsoever and a membership interest shall automatically lapse if there is any such purported sale or transfer or agreement to effect same.

6 Admission to membership

6.1 Consideration of application by the Board

- (a) If a person makes an application that complies with clause 5.5 and pays the requisite fee under clause 5.2 the Board must consider that application for membership as soon as practicable after its receipt and determine, in their discretion, whether to accept or reject that application for membership.

- (b) Applicants for membership may be required to provide to ACON Health evidence of such matters as it may require to determine the eligibility of such persons to become members of ACON Health and any other evidence reasonably requested by ACON Health from time to time.
- (c) A determination of the Board in relation to an application for membership must be ratified by way of Ordinary Resolution of the Board.

6.2 Acceptance or rejection of membership application

- (a) If an application for membership is accepted:
 - (i) the Secretary must notify the applicant of admission; and
 - (ii) the name and details of the applicant must be entered in the Register as the membership details of the applicant in accordance with clause 6.3(b).
- (b) If an application for membership is rejected the Secretary must notify the applicant that the application has been rejected.
- (c) The Directors do not have to give reasons for rejecting or accepting an application for membership.

6.3 Register of Members

- (a) A register of the Members of ACON Health must be kept in accordance with the Corporations Act.
- (b) The following must be entered in the Register in respect of each Member:
 - (i) the full name of the Member;
 - (ii) the address, telephone and facsimile number, and electronic mail address if any, of the Member;
 - (iii) the date of admission to and cessation of membership; and
 - (iv) such other information as the Board may require.

6.4 Change of Member details

Each Member must notify the Secretary in writing of any change in that Member's name, address, telephone, facsimile number, or electronic mail address (or those relevant details of their representative or other contact person, if applicable) within one month after the change.

6.5 Reclassification of Members

The Board may at any time and from time to time:

- (a) create any new class of Member;
- (b) define limit, restrict or alter the rights, obligations and privileges attaching to Membership of any class; and
- (c) transfer any Member (with or without that member's consent) from Membership of one class to Membership of another class.

7 Cessation of membership

7.1 Resignation by Member

- (a) Any Member may resign from ACON Health by giving notice in writing to the Secretary, subject to the payment of any monies which prior to the date of such resignation were owing by the member to ACON Health.
- (b) Where a Member has paid any monies to ACON Health in respect of any period subsequent to the date of resignation, ACON Health may retain such monies and shall not be liable to refund the same.

7.2 Termination by Board

- (a) If the membership fee of a Member remains unpaid one calendar month after a notice of renewal of the Member's membership has been sent to the Member, the Board may by resolution terminate the membership of that Member and thereupon its name shall be removed from ACON Health's register.
- (b) Subject to this Constitution and the Corporations Act, the Board may at any time and from time to time remove the name of any Member from the Register:
 - (i) If, in the opinion of the Board, the Member ceases to be eligible for membership of ACON Health;
 - (ii) if the Member being a company or corporation resigns or goes into liquidation whether voluntarily or compulsory except for the purposes of reconstruction or amalgamation;
 - (iii) if the Member's interests or primary business is, in the opinion of the Board, contrary to the interests of ACON Health or its Members or contrary to the Objects of ACON Health (or the Member becomes controlled by such person(s), as the case may be); or
 - (iv) if the Board is of the opinion that the Member has wilfully and persistently refused to perform its obligations towards ACON Health or conducted itself so as to bring discredit on ACON Health or to disrupt the activities of ACON Health and to make continued membership undesirable in the interest of the other Members,

and in the case of (i), (iii) and (iv), the Board shall not deliberate upon any motion for the expulsion of a Member until at least 7 days after the Member has been notified of the Board's intention to terminate the Member's membership. The Member shall be entitled to answer either in writing delivered to the Secretary prior to the date on which the Board is to deliberate on such motion or by appearing before the Board at the appropriate time, after which the Board shall determine whether to terminate the Member's membership in its absolute discretion.

- (c) Upon the termination of membership of any member the name of such Member shall be removed from the Register and it shall thereupon cease to have the rights and privileges of membership.
- (d) A Member whose membership has been cancelled shall not be eligible for membership at any later date unless the Board so resolves.

7.3 Other cessation of membership

A person ceases to be a Member on any Termination Event occurring in respect of the Member. The Secretary must amend the Register accordingly as soon as practical after that event.

8 No profits for Members

8.1 Transfer of income or property

- (a) Subject to the operation of clauses 8.2 and 20, the assets and income of ACON Health shall be applied solely in furtherance of the Objects of ACON Health and in the performance of the Authorised Activities of ACON Health and no portion of the income or assets of ACON Health may be paid or transferred, directly or indirectly to any Member, except as bona fide compensation for services rendered or expenses incurred on behalf of ACON Health.
- (b) Notwithstanding (a), from time to time Members may be contracted to conduct or render certain services for or on behalf of ACON Health for which they will be entitled to be compensated from the assets and income of ACON Health.

8.2 Payments, services and information

Nothing in clause 8.1 prevents the payment in good faith of:

- (a) remuneration to any officers or employees of ACON Health for services actually rendered to ACON Health;
- (b) an amount to any Member in return for any services actually rendered to ACON Health (whether by the Member or any corporation or partnership in which the Member has an interest or is a member) or for goods supplied in the ordinary and usual course of business;
- (c) reasonable and proper interest on money borrowed from any Member; or
- (d) reasonable and proper rent for premises let by any Member to ACON Health.

9 General meetings

9.1 Convening of meetings

- (a) AGMs of ACON Health shall be held in accordance with the provisions of the Corporations Act.
- (b) General meetings may be convened by the Board whenever it thinks fit or by requisition as provided by the Corporations Act.

9.2 Notice of Meetings

- (a) Subject to the provisions of the Corporations Act relating to special resolutions and consent to short notice, at least 21 days' notice (exclusive of the day on which the notice is served or received or deemed to be served or received and exclusive of the day for which notice is given) specifying the place, the day and the time of meeting, the nature of any general or special business to be conducted at the meeting, shall be given to persons entitled to receive such notices from ACON Health.

- (b) For the purposes of clause 9.2(a), all business that is transacted at a general meeting or an AGM, with the exception of the consideration of accounts, financial statements and the reports of the Board and auditors, shall be special business.
- (c) Accidental omission to give notice of a general meeting or an AGM by ACON Health to, or the non-receipt of notice of a meeting by, any Member shall not invalidate proceedings at a general meeting or an AGM.

9.3 Cancellation of general meetings

- (a) The Board may cancel a general meeting, other than a general meeting which the Board is required to convene and hold under the Corporations Act.
- (b) A meeting may only be cancelled in accordance with this clause if notice of the cancellation is given to all persons entitled to receive notice of the meeting at least 2 Business Days prior to the time of the meeting as specified in notice of meeting.

9.4 Quorum at general meetings

- (a) Business may not be transacted at a general meeting unless a quorum of Members is present.
- (b) A quorum is the presence in person or by proxy or attorney of 10% of the total number of Members who have an entitlement to vote at the relevant meeting and who are then on the register or 20 such members, whichever is fewer.
- (c) If a quorum is not present within half an hour from the time appointed for the meeting, or a longer period allowed by the Chair, the meeting is adjourned until such time determined by the Chair.

9.5 Appointment of Chair

- (a) If the Board have elected one of the Directors as Chair of its meetings, that person is entitled to preside as Chair at every general meeting.
- (b) The Directors present at a general meeting must elect one of their number to chair the meeting if:
 - (i) a Director has not been elected to chair Board meetings; or
 - (ii) the Chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act.
- (c) The Members present at a general meeting and entitled to vote at it must elect one of their number to chair the meeting if:
 - (i) there are no Directors present within fifteen minutes after the time appointed for the holding of the meeting; or
 - (ii) no Director present is willing to take the chair.

9.6 Chair's powers

- (a) The ruling of the Chair on all matters relating to the order of business, procedure and conduct of a general meeting shall be final and no motion of dissent from a ruling of the Chair may be accepted.

- (b) The Chair, in its discretion may expel any Member or Director from a general meeting if the Chair reasonably considers that the Member's or Director's conduct is inappropriate behaviour. The following conduct may be considered inappropriate in a general meeting:
 - (i) the use of offensive or abusive language which is directed to any person, object or thing;
 - (ii) attendance at the meeting while under the influence of alcohol or any kind of illegal drug; or
 - (iii) the use or consumption of any illegal drug by a person at the meeting.

9.7 Adjournment of meetings

- (a) The Chair may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and place.
- (b) The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (d) Except when a meeting is adjourned for 30 days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

9.8 Voting on show of hands

- (a) At a general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded before that vote is taken, before the result is declared or immediately after the result is declared.
- (b) If a poll is not duly demanded, a declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of ACON Health, is conclusive evidence of the fact, without proof, of the number or proportion of the votes recorded in favour of or against the resolution.

9.9 Demand for a poll

A poll may be demanded by:

- (a) the Chair; or
- (b) by at least 5 Members (whether present in person, by proxy or attorney) who are entitled to vote on the relevant resolution;
- (c) Members (whether present in person, by proxy or attorney) with at least 5% of the votes that may be cast on the relevant resolution on a poll.

9.10 The demand for a poll may be withdrawn

- (a) The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.

- (b) If a poll is duly demanded, it must be taken in the manner and, except as to the election of a Chair or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the Chair directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- (c) A poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.

9.11 Voting rights

Unless otherwise provided for by the Directors when creating a class of membership, Members have the following voting rights:

- (a) on a show of hands, every Member present has one vote; and
- (b) on a poll, every Member present in person or by proxy or attorney has one vote.

9.12 Vote of the Chair at general meetings

The Chair of a general meeting is entitled to a second or casting vote.

9.13 Objections to voter qualification

- (a) No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) An objection to the qualification of a voter must be referred to the Chair, whose decision will be final.
- (c) A vote which is not disallowed by the Chair pursuant to this Constitution is valid for all purposes.

9.14 Mode of calling and holding general meetings

A general meeting may be:

- (a) called using any mode of communication which gives a Member written notice of the meeting, including facsimile and electronic mail; and
- (b) held using any technology that gives the Members as a whole a reasonable opportunity to participate.

10 Proxies and representatives

10.1 Proxies and representatives of Members

- (a) Except in relation to the election of Directors by Members at AGM, at meetings of Members each Member eligible to vote may vote in person or by proxy or by attorney.
- (b) Subject to the terms of the appointment, a person attending as a proxy, or as the attorney of a Member, has all the powers of the relevant Member.

10.2 Appointment of proxies

- (a) A Member may appoint another person as the Member's proxy to attend and vote (if allowed) instead of the Member. A proxy need not be a Member.

- (b) A document appointing a proxy must be in writing, in any form permitted by the Corporations Act and signed or otherwise authenticated in a manner allowed by the Corporations Regulations by the Member making the appointment.

10.3 Authority of proxies

- (a) A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document.
- (b) Except as expressly provided by the document appointing a proxy, an appointment of a proxy confers authority to do all things that the Member can do in respect of a general meeting, except that the proxy is not entitled to vote on a show of hands.

10.4 Verification of proxies

- (a) Before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, there must be deposited with ACON Health:
 - (i) the document appointing the proxy; and
 - (ii) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority.
- (b) The documents referred to in paragraph (a) must be received at the Office, at a fax number at the Office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting, not less than 24 hours before the time for holding the meeting.
- (c) If a general meeting has been adjourned, an appointment and any authority received by ACON Health at least 24 hours before the resumption of the meeting are effective for the resumed part of the meeting.

10.5 Validity of proxies

A proxy document is invalid if it is not deposited or produced prior to a meeting in accordance with clause 10.4.

10.6 Revocation of appointment of proxy

A vote given in accordance with the terms of a proxy document or power of attorney is valid despite the occurrence of any one or more of the following events if no intimation in writing of any of those events has been received by ACON Health at the Office before the commencement of the meeting or adjourned meeting at which the document is used:

- (a) the previous death or unsoundness of mind of the principal; or
- (b) the revocation of the instrument or of the authority under which the instrument was executed.

11 Appointment and retirement of directors

11.1 Initial Directors

The initial Directors of ACON Health will be the individuals named as such in the application to register ACON Health (**Initial Directors**).

11.2 Number of Directors

The number of Directors must be not more than 16 (taking into account the appointments provided for under clauses 11.4, 11.5 and 11.6), unless otherwise unanimously agreed by the Board.

11.3 Election and appointment of Directors

(a) Number of Directors

12 Directors shall be appointed by election of the Members in accordance with this clause 11.3.

(b) Timing and method for nominations

(i) Nominations for Directors will occur before the AGM of ACON Health each year and the appointment and retirement of Directors will be announced at each AGM.

(ii) At least 10 days before the notice of AGM is sent to Members, the Secretary must send a notice to Members, calling for nominations for Directors to be appointed.

The notice must provide a period of no less than 10 days during which the relevant Members who are eligible to elect Directors may nominate candidates for election as Directors.

The notice must provide a date that nominations are to reach the Secretary at the Office, either by post or facsimile.

(iii) Nominations and elections of Directors will only be required for those Directors due for retirement at the following AGM.

(iv) In order to be valid, nominations must:

- be in writing;
- be signed by the nominee indicating their consent to nomination; and
- contain the personal details of the candidate which are required by the Corporations Act.

(c) Process for election

(i) Election of Directors by Members must occur by ballot.

(ii) Within 4 days after the close of the period for acceptance of nominations, the Secretary must arrange for the preparation of ballot papers containing for each candidate, the personal details of the candidate which are required by the Corporations Act, as well as any biographical information the candidate wishes to include, although such information should not exceed 250 words.

(iii) Separate ballot papers should be prepared and sent to Members entitled to vote on the election of Directors.

(iv) Ballot papers must be sent to Members by post, facsimile or electronic mail, at least 21 days before the AGM, unless 95% of the Members entitled to attend and vote at the AGM agree otherwise beforehand.

- (v) The ballot papers must provide a period of no less than 10 days during which the relevant Members may vote for the named candidates for election as Directors.
 - (vi) A Member votes by indicating their choice for Director in the manner prescribed on the ballot paper. In the case of a ballot paper which has been incorrectly completed, the Secretary may decide in her or his absolute discretion how to interpret the voting intentions of the relevant Member with reference to the intentions recorded on the relevant ballot paper or may disregard the ballot paper in its entirety.
 - (vii) It is the duty of the Member to return the completed ballot paper in the ballot envelope by mail, addressed to the Secretary at the Office, by the date provided on the ballot paper.
 - (viii) The ballot envelope should be addressed to the Secretary, but should otherwise be unmarked. Before being returned to the Secretary, the ballot envelope should be placed in a further envelope also addressed to the Secretary, but bearing the Member's name and address.
 - (ix) Upon receipt of the nomination, the Secretary must satisfy themselves that the person named on the exterior envelope is entitled to vote, and thereafter the Secretary must remove the interior ballot envelope and place it in the ballot, ensuring that the envelope is unmarked and the voter cannot be identified, placing the envelopes in an appropriately sealed container.
 - (x) The ballot is to close no later than 3 days prior to the AGM and all ballot papers must be received by the Secretary at the Office by that date.
 - (xi) The Secretary shall be responsible for retaining full and verifiable records such that the number of ballot papers distributed to Members can be reasonably reconciled with the number of ballot papers retained.
 - (xii) Following the close of the ballot and prior to the AGM the Secretary must appoint 2 scrutineers (not being candidates in the election) who, together with the Secretary, are to count the votes cast. If any question arises as to a Member's entitlement to vote, or as to the propriety of any vote, this question will be determined by the Secretary.
 - (xiii) If a candidate dies or withdraws from the ballot after ballot papers have been issued to Members, then the ballot shall proceed and all votes for that candidate shall be disregarded.
- (d) If a candidate dies or withdraws from the ballot before ballot papers have been issued to Members, the ballot must proceed with reprinted ballot papers deleting the name of the deceased or withdrawn candidate, unless the number of remaining candidates is equal to or less than the number required to be elected, in which case the remaining candidates are to be declared elected unopposed.
- (e) Declaration of result
- (i) Following completion of counting of votes the Secretary must make a written return of the election, showing the number of votes cast for each candidate and must forward a copy of the return to the Board and to each candidate and must arrange notification of the result at the AGM.
 - (ii) If more than one candidate receives the same number of votes, the Secretary must decide by lot in the presence of 2 scrutineers which of the candidates is to be elected.

(iii) The results of the election will be announced at the AGM, at which time the appointment takes effect.

(f) Term

A Director appointed under this clause 11.3 shall serve for a term of 2 years (unless they leave or are removed from office in accordance with this Constitution) and must retire at the AGM 2 years following their appointment.

11.4 Powers of the Board to appoint Directors

- (a) The Board has the power to appoint Directors to fill casual vacancies. A Director appointed by the Board to fill a casual vacancy must only serve for the remaining term of office of the Director they are replacing, that is, until the AGM at which that Director is due to retire.
- (b) Subject to clauses 11.7(a) and 11.7(b), the Board also has the power, by resolution or written notice signed by all of them, to appoint up to 2 further Directors including (without limitation) in circumstances where it is satisfied that a person with HIV is not already a Director.
- (c) Any Director appointed under this clause 11.4 shall serve for a term of 12 months (unless that Director resigns or is removed from office in accordance with this constitution before the end of the relevant term), at which time they must automatically retire.
- (d) Only the Board has the power to appoint Directors under this clause.
- (e) Directors appointed under this clause 11.4 are eligible for reappointment by the Board under this clause 11.4 and are eligible for election by members under clause 11.3(a).

11.5 Requirement for CEO to be a Director

- (a) The CEO is eligible to become a Director by virtue of that person's employment as CEO.
- (b) The CEO must be a Director and must promptly do all things necessary to give effect to that appointment.
- (c) The CEO shall serve as a Director until that person is no longer employed by ACON Health in that role, resign as Director or are removed from office in accordance with this Constitution (whichever happens first).
- (d) The CEO must resign from the position of CEO if that person resigns as a Director, unless otherwise agreed by the other members of the Board.

11.6 Director appointed by staff

- (a) A person selected by ACON Health's staff shall be eligible to become a Director. ACON Health's staff may select a candidate for this purpose annually, in a manner approved by the CEO, subject to the requirements of the Corporations Act and any other applicable laws.
- (b) Any Director appointed under this clause shall serve for a term of 12 months unless that person resigns, is no longer employed as a member of ACON Health's staff or is removed from office in accordance with this Constitution (whichever happens first).

11.7 Eligibility of Directors

A person seeking to be elected or appointed as a Director must:

- (a) be eligible under the Corporations Act to be a Director;
- (b) be a Member; and
- (c) have consented in writing to be a Director.

11.8 Retirement of Directors at AGM

- (a) Subject to paragraphs (b) and (c) below, half of the total number of Directors must retire at each AGM of ACON Health and may offer themselves for re-election.
- (b) The Directors who must retire will be determined according to which Directors have held their position as Directors for the longest period. If 2 or more Directors eligible for retirement under this paragraph were appointed on the same day, those Directors must draw lots to determine the order in which those Directors will be retired under this paragraph.
- (c) Notwithstanding any other provision of this Constitution:
 - (i) half of the number of Initial Directors, randomly selected, must retire at the first AGM and may offer themselves for re-election; and
 - (ii) the other Initial Directors must retire at the second AGM and may offer themselves for re-election,

despite the fact that the term served by them may not be 2 years.

11.9 Voluntary retirement of Directors

A Director may retire from office by leaving at the Office a notice in writing to ACON Health of that Director's intention to retire. A notice of resignation takes effect at the time which is the later of:

- (a) the time of leaving the notice at the Office; or
- (b) the expiration of the period, if any, specified in the notice.

11.10 Removal from office

ACON Health may by Ordinary Resolution of a general meeting remove a Director from office and may by Ordinary Resolution appoint another person as a replacement in accordance with the procedure set out in the Corporations Act.

11.11 Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act or another provision of this Constitution, the office of Director becomes vacant if:

- (a) the Director becomes prohibited from being a Director by reason of an order made under the Corporations Act; or

- (b) all other Directors (aside from the Director for whom the vacation of office is proposed) unanimously resolve that, due to performance reasons, or a significant change in circumstances, that that Director should resign.
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12 Officeholders

12.1 President

(a) Appointment

The Board may appoint a Director elected under clause 11.3 to hold the position of President. The appointment of a President may be for the period and on the terms determined by the Board provided that:

- (i) the term of appointment of the President does not exceed a period of 2 years; and
- (ii) the President does not hold that position for more than 2 consecutive terms,

unless the Board resolves otherwise.

(b) Duties of the President

The President shall act as chair of the Board (unless provided otherwise by the Board) and have such other duties as the President and other Directors may decide from time to time.

(c) Casual Vacancy

In the event of a casual vacancy in the position of President, the Vice-President shall hold that position for the remainder of the term of the previous President unless otherwise agreed by the Board.

12.2 Vice-President

(a) Appointment

The Board may appoint a Director elected under clause 11.3 to hold the position of Vice-President. The appointment of a Vice-President may be for the period and on the terms determined by the Board provided that:

- (i) the term of appointment of the Vice-President does not exceed a period of 2 years; and
- (ii) the Vice-President does not hold that position for more than 2 consecutive terms,

unless the Board resolves otherwise.

(b) Duties of the Vice-President

- (i) The Vice-President shall be responsible for:
 - (A) performing the duties required to be performed pursuant to the provisions of clause 12.1(c) in the event of a casual vacancy in the position of President; and

- (B) performing such other duties as agreed between the Vice-President and the other Directors may decide from time to time.

(c) Casual Vacancy

In the event of a casual vacancy in the position of Vice-President, the Board may elect one of their members to hold that position for the remainder of the term of the previous Vice-President.

12.3 Chair

- (a) The President shall act as chair of the Board, as provided by clause 12.1(b), unless otherwise determined by the Board.
- (b) In the event of the temporary absence or casual vacancy in the position of the President, the Vice-President shall act as chair of the Board unless otherwise determined by the Board.
- (c) In the event of the temporary absence or casual vacancy in the position of the Vice-President in the circumstances referred to in (b) above, another Director appointed by the Board shall act as chair until otherwise decided by the Board.

12.4 Treasurer

(a) Appointment

The Board may appoint a Director elected under clause 11.3 to hold the position of Treasurer. The appointment of a Treasurer may be for the period and on the terms determined by the Board provided that:

- (i) the term of appointment of the Treasurer does not exceed a period of 2 years; and
- (ii) the Treasurer does not hold that position for more than 2 consecutive terms,

unless the Board resolves otherwise.

(b) Duties of Treasurer

The duties of the Treasurer are to oversee and report on ACON Health's finances by:

- (i) reporting annually to the Members about ACON Health's finances; and
- (ii) occupying such position in any committee established by the Board in relation to the finances of ACON Health as the board may decide from time to time (whether as chair, co-chair or otherwise).

(c) Casual Vacancy

In the event of a casual vacancy in the position of Treasurer, the Board may elect one of their members to hold that position for the remainder of the term of the previous Treasurer.

12.5 Secretary

(a) Appointment

- (i) The Board may appoint one or more Secretaries and may at any time terminate the appointment or appointments. Any Secretary appointed by the Board shall not be a Director.
 - (ii) The Board may determine the terms and conditions of appointment of a Secretary, including remuneration.
 - (iii) Any one of the Secretaries appointed by the Board may carry out any act or deed required by this Constitution, the Corporations Act or by any other statute to be carried out by the Secretary of ACON Health.
- (b) Secretary's duties
- (i) The duties of the Secretary include, but are not limited to, the following:
 - (A) to ensure that the necessary registers required to be kept by Corporations Act are established and properly maintained;
 - (B) to ensure that all returns required to be lodged with the Australian Securities and Investments Commission are prepared and filed within appropriate time limits;
 - (C) to organise and attend meetings of the Members and the Board, including the sending out of notices, the preparation of agenda and the compilation of minutes; and
 - (D) to carry out any other administrative functions that are necessary for the running of the Board.

12.6 Other Officeholders

The Board may create additional offices and appoint Directors to those positions on such terms and with such responsibilities as they may decide from time to time.

13 Directors' remuneration

13.1 Directors fees and reimbursement for expenses

- (a) The Directors are not entitled to any fees for their services as directors.
- (b) Subject to clause 8, a Director who is called upon to provide a service to ACON Health in any professional or technical capacity, may be paid an amount for providing that service if the provision of that service has the prior approval of the Board, the amount proposed to be paid has been approved by a resolution of the Board and the amount reflects reasonable commercial terms.
- (c) Any amount referred to in clause 13.1(b) which is proposed to be made to a particular Director may be paid either by fixed sum or otherwise, as determined by the other members of the Board.
- (d) Amounts paid under clause 13.1(b) must be reported to Members at least once a year, irrespective of whether such disclosure is or is not required by any applicable law or regulation.

For the avoidance of doubt, this requirement does not (and must not be construed to apply) to any payments referred to in clause 13.1(e) unless required by the Corporations Act or any other legal or regulatory requirement.

- (e) For the avoidance of doubt, the CEO and any staff representative appointed as a Director may be paid the salaries they are entitled to as employees of ACON Health.
- (f) Each Director may be reimbursed for his or her reasonable out-of-pocket expenses incurred in performing directors' duties provided that the Board has previously approved such reimbursement.

13.2 Prior Approval by Directors

Notwithstanding anything else in this Constitution, no payment of any kind which is permitted to be paid to a Director by this Constitution (apart from a reimbursement under clause 13.1(f)) can be made by ACON Health to a Director until that payment is unanimously approved the Directors entitled to vote on that matter.

14 Powers of directors

14.1 General

The business, affairs and property of ACON Health shall be managed by the Board, and the Board may exercise all those powers of ACON Health as are not, by the Corporations Act or by this Constitution, required to be exercised by the Members in general meeting or otherwise.

14.2 Borrowing power

The Board may exercise all the power of ACON Health to borrow money and to mortgage or charge its undertaking or assets and to issue debentures, debenture stock and other securities whether outright or as a security for any debt, contract, guarantee, engagement, obligation or liability of ACON Health and on such terms and conditions as the Board thinks fit, having regard to the Objects of ACON, their duties as Directors and any applicable laws.

14.3 Investment power

The Board may exercise all the power of ACON Health invest the assets of ACON Health on such terms and conditions as the Board thinks fit, having regard to the Objects of ACON, their duties as Directors and any applicable laws.

15 Proceedings of the board

15.1 Convening of Board meetings

A Director may at any time, and the Secretary must upon the request of a Director, convene a meeting of the Directors.

15.2 Proceedings of the Board

The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.

15.3 Meetings by Technology

- (a) If:

- (i) the Directors confer by radio, telephone, closed circuit television, internet or other electronic means of audio or audio-visual communications;
- (ii) all the Directors who for the time being are entitled to receive notice of a meeting of the Directors receive notice of the conference and have access to the means by which the conference is to take place (whether or not they use the access); and
- (iii) each of the Directors taking part in the conference is able to hear each of the other Directors taking part in the conference,

then all the provisions of this Constitution relating to meetings of the Board shall apply to the conference as if such conference were a meeting of the Board and as if the Directors taking part in the conference were physically present together at a meeting, and any resolution passed by such conference shall be deemed to have been passed at a meeting of the Board held on the day on which and at the time at which the conference was held.

- (b) The fact that a Director is taking part in the conference shall be made known to all the other Directors taking part, and no Director may disconnect or cease to have access to his or her means of communication or otherwise cease to take part in the conference unless they make known to all other Directors taking part that they are ceasing to take part in the conference. Until a Director makes it known that they are ceasing to take part in the conference they shall be deemed to continue to be present and to continue to form part of the quorum.

15.4 Quorum at Board meetings

- (a) At a meeting of the Board, the number of Directors whose presence is necessary to constitute a quorum is 5 or such other number determined by the Board from time to time.
- (b) If the number of Directors is reduced below the number necessary for a quorum of the Board, the continuing Director or Directors may act only to appoint additional Directors to the number necessary for a quorum or to convene a general meeting of ACON Health. This power of appointing additional directors is in addition to the power conferred on Members by clause 11.4.

15.5 Voting at Board meetings

Questions arising at a meeting of the Board must be decided by a majority of votes of Directors present and voting. A decision of the majority is for all purposes a decision of the Board. Each Director shall have one vote.

15.6 Appointment of Chair at Board meetings

If a Chair has not been elected, or if at any meeting the Chair is not present within 10 minutes after the time appointed for holding the meeting or is unwilling to act, the Board may choose another Director to chair the meeting.

15.7 Limitations on Director's contracts with ACON Health

- (a) If a Director is interested, directly or indirectly, in an actual or proposed contract or arrangement with ACON Health:
 - (i) that Director shall be disqualified from holding office as Director;
 - (ii) the relevant contract or arrangement shall be voided; and

- (iii) the relevant Director shall be liable to account to ACON Health for a profit realised from the relevant contract or arrangement by reason of the Director holding that office,

unless the financial benefit to the Director under the relevant contract or arrangement is permitted or not prohibited by the Corporations Act.

- (b) A Director and a firm in which the Director is interested may act in a professional capacity for ACON Health. The Director and that firm are entitled to remuneration for professional services subject to the requirements of clause 13.1, this clause 15.7 and any applicable provisions of the Corporations Act.
- (c) Nothing in this clause authorises a Director or a firm in which the Director is interested to act as auditor of ACON Health.

15.8 Declarations of Interest

- (a) A Director may not be counted in any quorum considering any contract or proposed contract with ACON Health in which they are interested nor vote in respect of any such contract or proposed contract.
- (b) In addition to the requirements of clause 15.8(a), if a Director has a material personal interest in a matter being considered by the Board, the requirements of the Corporations Act must be satisfied.

15.9 Alternate directors

- (a) With the prior approval of the Board any Director may appoint:
 - (i) any person or another Director to be an alternate or substitute director in his or her place during such period as they think fit; and
 - (ii) a second person or Director to be an alternate or substitute director to replace the first appointed alternate or substitute director if they are unable or unwilling to act.
- (b) Any alternate or substitute director shall be entitled to notice of meetings of Directors, to attend and vote at such meetings and to exercise all the powers of the appointor in his or her place. An alternate or substitute director immediately vacates office if the appointor vacates or is removed from office. Any appointment or removal under this clause shall be effected by notice in writing signed by the appointor and left at the Office.
- (c) An alternate director who is also a Director in his or her own right shall be entitled to vote in his or her own capacity as Director and again for each alternate directorship held.
- (d) An alternate director of a Director who is the Chair is by that reason alone entitled to act as Chair.

15.10 Delegation of powers to committee

- (a) The Board may delegate any of their powers to committees consisting of Directors or other persons as it thinks fit to act in Australia or elsewhere.
- (b) The exercise of a power by a committee in accordance with this Constitution is to be treated as the exercise of that power by the Board.

- (c) In the exercise of any powers delegated to it, a committee formed by the Board must conform to the directions of the Board.

15.11 Proceedings of committees

Except as provided in a direction of the Board, the meetings and proceedings of a committee formed by the Board is governed by the provisions of this Constitution, in so far as they are applicable, as if meetings and proceedings of the committee were meetings and proceedings of the Board.

15.12 Validity of acts of the Board

All acts done by a meeting of the Board or of a committee of Directors or other persons are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

15.13 Minutes

- (a) The Board must cause minutes of all proceedings of general meetings, of meetings of the Board and of committees formed by the Board to be entered after the relevant meeting is held, in books kept for the purpose.
- (b) The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the Chair of the meeting at which the proceedings took place or by the Chair of the next succeeding meeting.

15.14 Resolution in writing

A resolution in writing signed by all Directors, excluding Directors who have been given leave of absence, is to be treated as a determination of the Board passed at a meeting of the Board duly convened and held.

15.15 Form of resolution in writing

- (a) A resolution in writing may consist of several documents in like form, each signed by one or more Directors and if so signed it takes effect on the latest date on which a Director signs one of the documents.
- (b) In relation to a resolution in writing:
 - (i) a document generated by electronic means which purports to be a facsimile of a resolution of the Board is to be treated as a resolution in writing; and
 - (ii) a document bearing a facsimile of a signature is to be treated as signed.

16 Indemnity and insurance

16.1 Indemnity

Every person who is or has been a director of ACON Health or a Secretary of ACON Health is entitled to be indemnified out of the property of ACON Health against:

- (a) every liability incurred by the person in that capacity (except a liability for legal costs); and

- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

unless ACON Health is forbidden by statute to indemnify the person against the liability or legal costs or an indemnity by ACON Health of the person against the liability or legal costs would, if given, be made void by statute.

16.2 Limitation of Liability

No Director, officer or employee of ACON Health shall be liable for:

- (a) the act, receipt, neglect or default of any other Director, officer or employee;
- (b) any loss or expense arising through the insufficiency of title of any property acquired by order of the Board for or on behalf of ACON Health;
- (c) the insufficiency or deficiency of any security in or upon which any of the moneys of ACON Health shall be invested;
- (d) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any monies, securities or effects shall be deposited;
- (e) any loss occasioned by any error of judgment, omission, default or oversight on his part; or
- (f) any other loss damage or misfortune whatsoever unless caused through his own negligence, default, breach of duty or breach of trust.

16.3 Insurance

ACON Health may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a director or secretary of ACON Health against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) ACON Health is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if ACON Health paid the premium, be made void by statute.

17 Seals and execution of documents

17.1 Custody of Seal

The Board may provide for a common seal of ACON Health and for its safe custody.

17.2 Execution of documents

- (a) ACON Health may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:
 - (i) 2 Directors;
 - (ii) a Director and the Secretary; or
 - (iii) a Director and some other person appointed by the Board for the purpose.

- (b) ACON Health may execute a document without the use of a seal if the document is signed by:
 - (i) 2 Directors;
 - (ii) a Director and the Secretary; or
 - (iii) a Director and some other person appointed by the Board for the purpose.

17.3 Official seals

ACON Health may have for use in place of the Seal outside the jurisdiction where the Seal is kept one or more official seals, to be used in accordance with procedures approved by the Board.

18 Surplus assets on winding up or dissolution

Upon the winding up or dissolution of ACON Health, any assets remaining after satisfaction of all of ACON Health's debts and liabilities, will not be paid to or distributed among the Members, but will be transferred to some other organisation determined by the Board at or before the time of winding up or dissolution of ACON Health and, in default of any determination, by the Supreme Court of New South Wales, Australia:

- (a) which has objects similar to those of ACON Health;
- (b) whose constituent documents prohibit the distribution of its income and property among its Members on terms substantially to the effect of clause 8; and
- (c) which is a public benevolent institution for the purposes of any Commonwealth taxation law.

19 Accounts, audit and records

19.1 Accounts

The Board must cause proper accounting and other records to be kept in accordance with the Corporations Act. The Board must distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) as required by the Corporations Act.

19.2 Audit

A registered company auditor of ACON Health must be appointed. The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Corporations Act.

19.3 Rights of Inspection

Subject to the Corporations Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of ACON Health or any of them are open to the inspection of Members (other than Directors) and a Member (other than a Director) does not have the right to inspect any document of ACON Health except as provided by law or authorised by the Board or ACON Health in general meeting.

20 Gift fund

20.1 Gift Fund of ACON Health

ACON Health must maintain for the carrying out of the Objects and Authorised Activities a gift fund (**Gift Fund**):

- (a) to which gifts of money or property are to be made;
- (b) to which any money received by ACON Health because of those gifts is to be credited; and
- (c) that does not receive any other money or property.

20.2 Receipts for donations to the Gift Fund

Any receipt given by ACON Health for a gift made to the Gift Fund must be issued in the name of ACON Health and include the Australian Business Number of ACON Health.

20.3 Limits on the use of the Gift Fund

ACON Health must use the following only for the Objects and Authorised Activities of ACON Health:

- (a) gifts made to the Gift Fund; and
- (b) any money received because of those gifts.

20.4 Bank account

ACON Health must maintain a separate bank account for the Gift Fund.

20.5 Winding up

For the avoidance of doubt, in the event of the winding up of ACON Health, or ACON Health ceasing to be endorsed as a deductible gift recipient under Division 30 of the Tax Act, any surplus assets of the Gift Fund after payment of the liabilities of ACON Health must be transferred to an organisation in Australia that is a public benevolent institution under any Commonwealth taxation Act as the Board decides.

21 Inadvertent omission

If some formality required by this Constitution is inadvertently omitted or is not carried out the omission does not invalidate any resolution, act, matter or thing which but for the omission would have been valid unless it is proved to the satisfaction of the Board that the omission is contrary to the interests of ACON Health as a whole, oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a Member or Members. The decision of the Board is final and binding on all Members.

22 Rules

22.1 Power to formulate rules of ACON Health

Without limiting the Board's powers under this Constitution or otherwise, the Board may from time to time pass resolutions to make regulations and rules relating to;

- (a) the qualifications of Members and applicants for membership;
- (b) the procedure and timing of an application for admission;
- (c) procedure for nomination of Directors;
- (d) the delegation by the Board of its powers to committees;
- (e) the powers, role and function of any committee members, executive or Directors;
- (f) any other matter not being inconsistent with this Constitution which relates to the operations or conduct of ACON Health.

22.2 Inconsistency

In the event of any inconsistency between rules or regulations formulated pursuant to clause 22.1 and the provisions of this Constitution, the latter shall prevail.

23 Notices

23.1 Persons authorised to give notices

- (a) A notice by either ACON Health or a Member in connection with this Constitution may be given on behalf of ACON Health or Member by a solicitor, Director or company secretary of ACON Health or Member.
- (b) The signature of a person on a notice given by ACON Health may be written, printed or stamped.

23.2 Method of giving notices

In addition to the method for giving notices permitted by statute, a notice by ACON Health or a Member in connection with this Constitution may be given to the addressee by:

- (a) delivering it to a street address of the addressee; or
- (b) sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the addressee; or
- (c) sending it by facsimile or email to the facsimile number or e-mail address of the addressee.

23.3 Addresses for giving notices to Members

- (a) The street address or postal address of a Member is the street or postal address of the Member shown in the Register.
- (b) The facsimile number or email address of a Member is the number which the Member may specify by written notice to ACON Health as the facsimile number or email address to which notices may be sent to the Member.

23.4 Address for giving notices to ACON Health

- (a) The street and postal address of ACON Health is the Office.
- (b) The facsimile number or email address of ACON Health is the number which ACON Health may specify for the time being by written notice to the Members as

the facsimile number or email address to which notices may be sent to ACON Health.

23.5 Time notice of meeting is given

A notice of meeting given in accordance with this Constitution is to be taken as given, served and received:

- (a) if delivered in writing to the street address of the addressee, at the time of delivery; or
- (b) if it is sent by post to the street or postal address of the addressee, on the business day after posting; or
- (c) if sent by facsimile or email to the facsimile number or email address of the addressee, at the time transmission is completed.

23.6 Time other notices are given

A notice given in accordance with this Constitution is to be taken as given, served and received:

- (a) if delivered in writing to the street address of the addressee, at the time of delivery; or
- (b) if it is sent by post to the street or postal address of the addressee, on the second (fifth if outside Australia) business day after posting; or
- (c) if sent by facsimile or email to the facsimile number or email address of the addressee, at the time transmission is completed.

23.7 Proof of giving notices

The sending of a notice by facsimile or email and the time of completion of transmission may be proved conclusively by production of;

- (a) a transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee; or
- (b) a print out of a sent version of the email.

23.8 Persons entitled to notice of meeting

Notice of every general meeting must be given by a method authorised by this Constitution to:

- (a) every Member entitled to such notice;
- (b) every Director;
- (c) the auditor for the time being of ACON Health, (if any).

No other person is entitled to receive notices of general meetings.

24 Replaceable rules and exercise of powers

24.1 Replaceable rules

Each of the provisions of the Corporations Act which would but for this clause apply to ACON Health as a replaceable rule within the meaning of the Corporations Act are displaced and do not apply to ACON Health.

24.2 Amendments

This Constitution may be amended by Special Resolution passed by the Members entitled to vote on such a resolution.

24.3 Exercise of powers

Except as specifically contemplated to the contrary in this Constitution, ACON Health may, in any manner permitted by the Corporations Act:

- (a) exercise any power;
- (b) take any action; or
- (c) engage in any conduct or procedure,

which under the Corporations Act a company limited by guarantee may exercise, take or engage in if authorised by its Constitution.

Schedule 1 — Dictionary

1 Dictionary

In this Constitution:

AGM means the annual general meeting of ACON Health.

Authorised Activities means the activities set out in Clause 3.

Board means the board of Directors of ACON Health.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Sydney, New South Wales.

Chair or Chairperson (as appropriate) means:

- (a) in respect of a general meeting of Member, the person duly appointed as the chairperson of that meeting in accordance with clause 9.5; and
- (b) in respect of the Board, means the person duly appointed as the Chairperson of the Board in accordance with clause 12.

Company means ACON Health Limited.

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

Corporations Regulations means *Corporations Regulations 2001* (Cth).

Director means a person appointed for the time being to perform the duties of a director of ACON Health, whilst ever the person is holding the office of director.

LGBT means lesbian, gay, bisexual, transgender and other sexuality and/or gender diverse people, regardless of their term of self-identification.

Member means a person whose name is entered from time to time in the Register as a member of ACON Health.

Objects has the meaning given in clause 3.1.

Office means the registered office of ACON Health from time to time.

Ordinary Resolution means a resolution passed by at least 50% of the votes cast by Members of the company entitled to vote on the resolution and who vote at the meeting in person or by proxy.

Register means the register of Members kept by ACON Health in accordance with the Corporations Act.

Seal means, if ACON Health has one, the common seal of ACON Health.

Secretary means a person appointed for the time being to perform the duties of a secretary of ACON Health.

Special Resolution means a resolution passed by at least 75% of the votes cast by Members of the company entitled to vote on the resolution and who vote at the meeting in person or by proxy.

Tax Act means the *Income Tax Assessment Act 1997* (Cth) (as amended from time to time).

Termination Event means the death or bankruptcy of the Member concerned.

2 Interpretation

In this Constitution the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Constitution;
 - (vi) this Constitution means this Constitution as amended from time to time and includes all schedules and attachments to it;
 - (vii) a law includes a Constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - (viii) an agreement other than this Constitution includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
 - (ix) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and severally];
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;

- (i) in determining the time of day, where relevant to this Constitution, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this Constitution, the time of day in the place where the party required to perform an obligation is located; and
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Constitution or any part of it.

Schedule 2 — Limits of liability

In the event of a winding up in accordance with clauses 2.2 and 18 of this Constitution, each class of Member set out in the left hand column of the following table shall not be liable to contribute to the assets of ACON Health more than the amount specified in the corresponding right hand column of the table.

Class of Member	Limit of liability
Ordinary Member	\$2