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# Constitution

ACON Health Limited  
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.

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## 2 Transitional

- (a) Everything done prior to any amendments to this Constitution of ACON Health continues to have the same operation and effect after the adoption of those amendments to this Constitution as if those things were properly done under this Constitution as so amended. In particular (without limitation):
    - (i) every Director, alternate Director and Secretary in office immediately before the adoption of this Constitution is taken to have been appointed and continues in office under this Constitution; and
    - (ii) for the avoidance of doubt, clause 10.5(a) applies to a director who was elected either at the AGM held 2 November 2022 or elected prior to the closure of the AGM held 2 November 2023.
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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, queer and other sexuality, sex and gender diverse people (collectively, LGBTQ).
- (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 communities who are affected by HIV, which includes LGBTQ people, people who inject drugs, sex workers and Aboriginal and Torres Strait Islanders.
- (c) To promote the prevention and control of disease among LGBTQ people and people living with HIV/AIDS.
- (d) To reduce disadvantage and discrimination experienced by LGBTQ people and people living with HIV/AIDS.
- (e) To eliminate disparities in health outcomes of LGBTQ people and LGBTQ 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 LGBTQ people and people living with HIV/AIDS.
- (g) To directly provide health, care and education services to LGBTQ people, all people living with HIV/AIDS, people directly affected by HIV and people at risk of HIV infection.
- (h) To develop the capacity of Members to promote the health and wellbeing of LGBTQ people and people living with HIV/AIDS , 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 LGBTQ community and the general public on:
  - (i) the promotion of health and wellbeing for LGBTQ people and people living with HIV/AIDS; and
  - (ii) the prevention and control of disease for LGBTQ people and people living 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 LGBTQ people and people living with HIV/AIDS; and
  - (ii) the prevention and control of disease in LGBTQ people and people living with HIV/AIDS.
- (k) To engage and collaborate with natural persons, companies, organisations, institutions or bodies whose objects or activities, in the opinion of ACON Health, support and uphold ACON Health's Objects, including by encouraging their initiatives and assisting in the development of programs aimed at promoting community awareness of LGBTQ health issues and health issues for people living with HIV/AIDS.
- (l) To influence public and private sector policy and programs regarding, HIV/AIDS, LGBTQ 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 aligned with the above Objects and apply any income only for the purposes of pursuing those purposes.

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## 4 Membership

### 4.1 Classes of membership

- (a) The Board may, by Ordinary Resolution, create classes, or vary any existing 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.
- (c) The Board may at any time and from time to time transfer any Member (with or without that member's consent) from Membership of one class to Membership of another class, provided that ACON Health does not require any additional amounts from the Member in respect of the current annual membership period as a result of the transfer of Membership class.

#### 4.2 Fees

- (a) The Board may determine that a membership fee is payable in respect of a Member's membership, the amount and terms of payment of such fee being determined by the Board from time to time (**Membership Fee**).
- (b) Membership Fees are non-refundable and, unless otherwise determined by the Board from time to time, are payable annually and, subject to clause 4.2(c), are due and payable:
  - (i) in respect of a successful applicant for Membership, within seven days of the date the Secretary notifies that applicant of their successful application; and
  - (ii) in respect of all other Members, on 1 July of each year (**due date**),
 to cover their Membership for the following period until 30 June.
- (c) If a new Member is required to pay the Membership Fee under clause 4.2(b)(i) within the period 1 April to 30 June, that Member will not be obliged to pay the Membership Fee due under clause 4.2(b)(ii) for the immediately successive 1 July to 30 June year.
- (d) In determining an amount of the Membership Fee, the Board may determine a different rate as between different classes of membership but, except as contemplated by clause 4.2(e), may not discriminate between Members of the same class of membership.
- (e) For any class of membership, the Board may determine that different Membership Fee amounts are payable by Members that are organisations and Members that are natural persons.
- (f) ACON Health must give Members notice of Membership Fees payable by them (**Notice of Membership Fee**) at least 30 days before the date by which the Membership Fee must be paid under clause 4.2(b). A Notice of Membership Fee must be in writing and:
  - (i) specify the amount of the Membership Fee payable by the relevant Member;
  - (ii) that (other than in the case of a successful applicant for Membership), the Membership Fee must be paid by 1 July of that year; and
  - (iii) acceptable methods of payment of the Membership Fee.
- (g) A Member must pay to ACON Health the amount of any Membership Fee for any year payable by the Member by 1 July of that year, using the acceptable methods of payment specified in the Notice of Membership Fee.
- (h) The obligation for a Member to pay a Membership Fee is not invalidated if the Member does not receive a Notice of Membership Fee.



### **4.3 Limits of liability**

- (a) The liability of each Member is limited.
- (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 after they cease to be a Member, for payment of the debts and liabilities of ACON Health and of the costs, charges and expenses of winding up, for an amount of money not exceeding \$2.

### **4.4 Membership – generally**

- (a) Two or more persons cannot be registered as holding a single membership interest, whether as joint tenants or as tenants in common.
- (b) A Member of ACON Health is a person whose name is included in the Register as a current member of ACON Health, having satisfied, and continuing to satisfy, the following criteria:
  - (i) they are an individual (who is at least 18 years of age at the date of application) or a legal entity; and
  - (ii) they have been admitted by the Board to membership of ACON Health as Members after making an application for membership in accordance with clause 6;
  - (iii) in respect of a new Member, they have paid their Membership Fee in accordance with clause 4.2(b)(i); and
  - (iv) their membership has not been terminated by the Board pursuant to clauses 6.2(a) or 6.2(b).

### **4.5 Form of application**

Any person may apply in writing to be a member of ACON Health by submitting an application for Membership to the Secretary. 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) contact details of the applicant which the Board may specify are required from time to time;
  - (iii) full name and contact details of the applicant's representative or other contact person, where applicable;
  - (iv) that the applicant has not been declared bankrupt or insolvent (as relevant); and
  - (v) 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 a statement that the applicant agrees to:
  - (i) support the Objects of ACON Health,

- (ii) be bound by the rules outlined in this Constitution; and
  - (iii) pay any applicable Membership Fee that becomes due if their application is successful.
- (d) be accompanied by:
- (i) such documents or evidence of the applicant's eligibility to apply for membership as the Board may require from time to time; and
  - (ii) details regarding the applicant's proposed method of payment of the Membership Fee, for example, credit card details (using the acceptable methods of payment specified by ACON Health from time to time), which Membership Fee will become due and payable within seven days of the date the Secretary notifies the applicant of their successful application; and
- (e) be in whatever form, including electronic form, as the Board may require from time to time.

#### **4.6 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.

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## **5 Admission to membership**

### **5.1 Consideration of application by the Board**

- (a) If a person makes an application that complies with clause 4.5, the Board must consider that application for membership as soon as practicable after its receipt and determine, in their absolute discretion, whether to accept or reject that application for membership.
- (b) A determination of the Board in relation to an application for membership must be ratified by way of Ordinary Resolution of the Board.

### **5.2 Acceptance or rejection of membership application**

- (a) If an application for membership is accepted:
  - (i) the Secretary must notify the applicant of their successful application;
  - (ii) the applicant must pay any Membership Fee in accordance with clause 4.2(b)(i), using an acceptable method of payment specified by ACON Health from time to time;
  - (iii) as soon as practicable after payment of the Membership Fee or, if there is no Membership Fee, as soon as practicable after the Board decides to admit the applicant as a Member, the Secretary must enter or procure the entry of, the name and details of the applicant in the Register as the membership details of the applicant in accordance with clause 5.3(b);
  - (iv) the applicant will become a Member immediately when the name and details of the applicant are entered in the Register; and

- (v) the Secretary must notify the applicant as soon as possible after they become a Member.
- (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.

### **5.3 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 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 from time to time.

### **5.4 Change of Member details**

- (a) Each Member must notify the Secretary in writing of any change in that Member's name, address, telephone number or electronic mail address (or those relevant details of their representative or other contact person, if applicable) within one month after the change.
- (b) If a Member informs the Secretary of any changes under clause 5.4(a), the Secretary will enter such changes in the register of Members. The latest address in the register of Members is deemed to be the Member's registered address.

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## **6 Cessation of membership**

### **6.1 Resignation by Member**

- (a) Any Member may resign from ACON Health by giving notice in writing to the Secretary.
- (b) The resignation will be effective from the date it is received by the Secretary, unless a later date is specified by the Member.
- (c) 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.

### **6.2 Ceasing to be a Member**

- (a) Unless the Board otherwise determines, a Member's membership terminates automatically if:
  - (i) the Member, being a natural person, dies;

- (ii) the Member, being a natural person, is convicted of an indictable offence, is declared bankrupt or becomes a person of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
  - (iii) where a Member is required to pay the Membership Fee under clause 4.2, a Member's Membership Fee for the then-current membership year remains unpaid as at the 1 September after the 1 July date on which that Membership Fee was due.
- (b) Subject to this Constitution and the Corporations Act, the Board may at any time and from time to time determine, at its sole discretion and without having to give reasons for its determination, to terminate a Member's membership and remove the name of that Member from the Register if:
- (i) in the opinion of the Board, the Member ceases to be eligible for membership of ACON Health;
  - (ii) if the Member being a body corporate goes into liquidation whether voluntarily or compulsory except for the purposes of reconstruction or amalgamation, or an order is made by a court for the winding up or deregistration of the Member;
  - (iii) the Member's actions, interests or primary business is, in the opinion of the Board, contrary, prejudicial or detrimental to the interests or reputation of ACON Health or its Members or contrary to the Objects of ACON Health (or the Member becomes controlled or influenced by, or connected to, any such person(s), as the case may be); or
  - (iv) the Board is of the opinion that the Member has persistently refused to perform its obligations to 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 interests of ACON Health or the other Members.
- (c) In the case of clause 6.2(b)(i), (iii) and (iv), the Board shall not deliberate upon any motion for the removal of a Member until at least 7 days after the Member has been notified of the Board's intention to consider terminating the Member's membership. The Member shall be entitled to respond 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 immediately prior to the meeting of Directors to deliberate on such motion, after which the Board shall determine whether to terminate the Member's membership in its absolute discretion.

### **6.3 Consequences of cessation of membership**

- (a) Upon the termination of membership of any member the name of such Member shall be removed from the Register as soon as practical after that event and the person shall thereupon cease to have the rights and privileges of membership.
- (b) A Member whose membership has been terminated pursuant to clause 6.2(a)(ii) or clause 6.2(a)(iii) above shall be eligible to re-apply for admission to membership at any later date in accordance with clause 5.
- (c) A Member whose membership has been terminated pursuant to clause 6.2(b) above shall not be eligible to re-apply for admission to membership at any later date unless the Board so resolves.

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## 7 No profits for Members

### 7.1 Transfer of income or property

- (a) Subject to the operation of clauses 7.2 and 18, the assets and income of ACON Health shall be applied solely 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.

### 7.2 Payments, services and information

Nothing in clause 7.1 prevents the payment in good faith of:

- (a) remuneration to any officers or employees of ACON Health for services actually rendered to ACON Health or arising out of any of its activities;
- (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.

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## 8 General meetings

### 8.1 Convening of meetings

- (a) AGMS and general meetings may be convened by the Board whenever it thinks fit or by requisition as provided by the ACNC Act and the Corporations Act.
- (b) General meetings may be convened at a time and:
  - (i) at one or more physical venues;
  - (ii) at one or more physical venues and using virtual meeting technology; or
  - (iii) using virtual meeting technology only,provided that, in each case, Members as a whole are given a reasonable opportunity to participate in the meeting.
- (c) If virtual meeting technology is to be used for a general meeting, the Board will determine the type of virtual meeting technology to be used, which may include any combination of telephone, video conferencing, messaging, smartphone application or any other audio or visual device which permits instantaneous communication.

## **8.2 Notice of meetings**

- (a) Subject to the provisions of the Corporations Act relating to special resolutions and consent to short notice, at least 3 weeks' notice shall be given to Members of a general meeting or AGM.
- (b) The notice pursuant to clause 8.2(a) shall specify the physical venue or venues or virtual meeting technology that is to be used (as applicable), the day and the time of meeting, and the nature of any business to be conducted at the meeting.
- (c) The accidental giving of, or omission to give, notice of a general meeting or an AGM by ACON Health to any Member, or the non-receipt of notice of a meeting by any Member shall not invalidate proceedings or any resolution passed at a general meeting or an AGM.

## **8.3 Cancellation of general meetings**

- (a) The Board may cancel or postpone 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 in writing 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. Any failure to give notice of cancellation or postponement to any person entitled to receive notice of the meeting does not invalidate the cancellation or postponement.

## **8.4 Quorum at general meetings**

- (a) Business may not be transacted at a general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) A quorum is constituted by the lesser of:
  - (i) 12 Members Present entitled to vote at the relevant meeting; and
  - (ii) the Members Present being equal to or more than 10% of all Members entitled to vote at the relevant meeting (rounded down to the nearest whole number).
- (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 date, time and physical venue(s) or virtual meeting technology (as applicable) determined by the Chair. If no quorum is present at any adjourned meeting within half an hour after the time for the meeting, the meeting is dissolved.

## **8.5 Appointment of Chair**

- (a) If the Board has 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 despite being so present is unable or unwilling to act as chair of the meeting.
- (c) The Members Present and entitled to vote at that meeting must elect one of their number to chair the meeting if:
  - (i) there are no Directors present within 15 minutes after the time appointed for the holding of the meeting; or
  - (ii) no Director present is willing to take the chair.

## **8.6 Chair's powers**

- (a) The general conduct of each general meeting and the procedures to be adopted at the meeting are as determined at, during or prior to, the meeting by the Chair of that meeting.
- (b) The ruling of the Chair on all matters relating to the order of business, procedure, voting and conduct of a general meeting shall be final and no motion of dissent from a ruling of the Chair may be accepted. If at any time the Chair of a meeting of Members considers it necessary or desirable for the proper and orderly conduct of the meeting, that Chair may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members Present and eligible to vote.
- (c) The Chair of a general meeting may make rulings or determinations without putting the question (or any question) to a vote if that Chair considers action is required to ensure the orderly conduct of the meeting. Any challenge to a right to vote (whether on a show of hands or on a poll) or to a determination to allow or disregard a vote may only be made at the meeting and may be determined by the Chair of the meeting whose decision is final.
- (d) The Chair, in its sole 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. Without in any way limiting the foregoing, 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.
- (e) The Chair, in their discretion, may expel any person who is not a Member or Director from a general meeting.
- (f) If a person purports to cast a vote at a meeting in contravention of law or this Constitution, the Chair may determine that the vote be disregarded and treated as not having been cast.
- (g) Nothing contained in this clause limits the powers conferred on a Chair of a meeting by law.

## **8.7 Adjournment of meetings**

- (a) During the course of a meeting, the Chair may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or debate or discussion either to a later time during the same meeting or to an adjourned meeting to be held at another time and physical venue(s) or virtual meeting technology as determined by the Chair.
- (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) Where a meeting is adjourned for less than 30 days, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

## **8.8 Voting at a general meeting**

- (a) Subject to any rights or restrictions attached to any class of Member and subject to the requirements of any law, at any general meeting a resolution put to the vote of the meeting is to be decided by a simple majority of votes validly cast on the question at the meeting and must be decided, in the first instance:
  - (i) where the meeting is being conducted in person only, by a show of hands of the Members Present and entitled to vote; or
  - (ii) where the meeting is being conducted by virtual meeting technology either in whole or in part:
    - (A) by a show of hands of the Members Present who are physically present at the meeting; and
    - (B) by such other similar method as determined by the chairperson for those Members Present who are not physically present at the meeting,unless a poll is properly demanded and the demand is not withdrawn.
- (b) Unless a poll is demanded, a declaration by the Chair of a meeting following a vote on a show of hands at the meeting that a resolution has been passed or lost is conclusive, without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (c) No person may move at any general meeting either any resolution (except in the form set out in the notice of meeting) or any amendment of any resolution, except (i) with the approval of the Board, or (ii) with the permission of the Chair of the meeting, or (iii) under the Corporations Act.

## **8.9 Demand for a poll**

A poll may be demanded by:

- (a) the Chair;
- (b) at least 5 Members Present who are entitled to vote on the relevant resolution; or
- (c) Members Present with at least 5% of the votes that may be cast on the relevant resolution on a poll.



### **8.10 Procedure for polls**

- (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) A demand for a poll may be withdrawn, but only if the poll has not been taken pursuant to the following sub-clause.
- (c) If a poll is duly demanded and not withdrawn, 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.
- (d) The result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) that the Chair considers appropriate.
- (e) A poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.

### **8.11 Voting rights**

Unless otherwise provided for by this Constitution or by the Directors when creating a class of membership, each Member Present and entitled to vote has one vote both on a show of hands and by poll.

### **8.12 Vote of the Chair at general meetings**

In the case of an equality of votes on a show of hands or on a poll at a general meeting, the Chair of the general meeting has a casting vote in addition to any vote to which that Chair may be entitled as a Member or as a proxy, attorney or properly appointed representative of a Member. In all other cases, the Chair does not have a casting vote.

### **8.13 Objections to voter Qualifications.**

- (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.

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## **9 Proxies and representatives**

### **9.1 Proxies and representatives of Members**

- (a) Subject to this Constitution and any rights or restrictions for the time being placed on any Member or class or classes of Members, at general meetings each Member eligible to vote may attend and vote in person or be represented and vote by proxy, by attorney pursuant to a Power of Attorney, or (where the Member is a body corporate) by a representative.
- (b) A Member may only vote by one of the permitted methods in clause 9.1(a), although, without limiting clause 9.6(b), a Member may attend and participate in a

meeting even though the Member has previously appointed a proxy or attorney in respect of that meeting.

- (c) Subject to the terms of the appointment, a person attending as a proxy, or as the attorney pursuant to a Power of Attorney of a Member, has all the powers of the relevant Member and is subject to any restrictions applicable to the Member.

## **9.2 Appointment of proxies**

- (a) A Member who is entitled to attend and vote at a general meeting may appoint a person as the Member's proxy to attend and vote for the Member in accordance with the Corporations Act but not otherwise.
- (b) A Member may appoint one proxy. A proxy need not be a Member.
- (c) A document appointing a proxy must be in writing, in any form permitted by the Corporations Act or by the Board and signed or otherwise authenticated in a manner allowed by the Corporations Regulations by the Member making the appointment.
- (d) Where a notice of meeting provides for electronic lodgement of proxy appointments, an appointment lodged at the electronic address or by the electronic means specified in the notice is taken to have been received at the Office and validated by the Member if there is compliance with the requirements set out in the notice.

## **9.3 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.
- (c) Voting instructions given by a Member to a Director or employee of ACON Health who is appointed as proxy (**ACON Proxy**) are valid only if contained in the form of appointment of the ACON Proxy. If a Member wishes to give an ACON Proxy appointed by the Member new instructions or variations to earlier instructions, the new or varied instructions are only valid if either they are received at the Office at least 24 hours before the meeting or adjourned meeting by a notice in writing signed by the Member or they are otherwise validated by the Member in a manner acceptable to the Board in its discretion prior to the commencement of the meeting.

## **9.4 Verification of proxies and powers of attorney**

- (a) Before the time for holding the meeting or adjourned meeting at which a proxy or power of attorney pursuant to a Power of Attorney proposes to attend and/or vote, the Member or their representative must deliver to ACON Health:
  - (i) the document appointing the proxy or Power of Attorney appointing the Member's power of attorney; and
  - (ii) if the appointment of a proxy is signed by the appointor's attorney pursuant to a Power of Attorney, a certified copy of that Power of Attorney.
- (b) The documents referred to in paragraph (a) must be received at the Office or by email 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.

## **9.5 Validity of proxies**

- (a) A proxy document is invalid if it is not deposited or produced prior to a meeting in accordance with clause 9.4.
- (b) If a proxy appointment is not properly executed or validated, or is incomplete or unclear, the following provisions apply. Nothing obliges the Board or ACON Health to do anything referred to in those provisions:
  - (i) If the name of the proxy is not included, the appointment of proxy is taken to be given in favour of the Chair of the meeting.
  - (ii) If the appointment has not been duly signed or validated, ACON Health may:
    - (A) return the appointment to the appointing Member;
    - (B) request that the Member sign or validate the appointment and return it to ACON Health within a period decided by the Board (which may be later than the time specified in the relevant notice of meeting for the receipt of proxy appointments).
  - (iii) If the appointment is otherwise incomplete or unclear, ACON Health may, by written or oral communication, clarify with a Member any instruction on the appointment and complete or amend the contents of any appointment to reflect any clarification in instruction received from the Member (which completion or amendment may occur later than the time specified in the relevant notice of meeting for the receipt of proxy appointments). For this purpose, the Member appoints ACON Health as its attorney.

## **9.6 Revocation of appointment of proxy**

- (a) A vote given in accordance with the terms of a proxy document or power of attorney pursuant to a 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 at least 24 hours before the commencement of the meeting or adjourned meeting at which the document is used:
  - (i) the previous death or unsoundness of mind of the principal; or
  - (ii) the revocation of the instrument or of the authority under which the instrument was executed.
- (b) A proxy appointment or power of attorney (subject to its terms) is not revoked by the principal attending and taking part in the relevant meeting unless the principal actually votes at the meeting on a resolution for which the proxy appointment or power of attorney is proposed to be used.

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# **10 Appointment and retirement of directors**

## **10.1 Number of Directors**

- (a) All Directors are to be natural persons.

- (b) The number of Directors (not including alternate Directors) must be at least 3 and not more than 12, unless otherwise unanimously agreed by the Board provided that the Board may not reduce the number below 3.

## 10.2 Election and appointment of Member Elected Directors

### (a) Number of Directors

Subject to clause 10.1, Members are entitled to elect up to nine Directors (**Member Elected Directors**) in accordance with this clause 10.2.

### (b) Procedure for elections.

- (i) The Board shall determine the procedures for the election and appointment of Member Elected Directors (**Election Procedures**), with the objective for such procedures being that the election and appointment of Member Elected Directors is carried out fairly for the Members as a whole and in a transparent manner (**Election Procedure Objectives**).
- (ii) The Board may, in its absolute discretion, determine to amend the Election Procedures, provided that:
  - (A) the Election Procedures are not amended within four months immediately preceding an AGM; and
  - (B) any amendments must be in accordance with the Election Procedure Objectives.
- (iii) A copy of the Election Procedures shall be publicly accessible at all times (as far as practicable) on ACON Health's website.

## 10.3 Powers of the Board to appoint Directors

- (a) The Board may resolve to appoint Directors to fill casual vacancies of Member Elected Directors arising from resignation, removal or vacation of office by a Member Elected Director pursuant to clauses 10.6, 10.7 or 10.8. Casual vacancy appointments remain effective until the next AGM. casual vacancies
- (b) Subject to clause 10.1 and clause 10.4, the Board may resolve to appoint up to three further Directors (who are not Member Elected Directors) (each a **Board Appointed Director**), including (without limitation) in circumstances where it seeks to ensure that at least one Director is a person living with HIV.
- (c) Only the Board has the power to appoint Directors under this clause 10.3.

## 10.4 Eligibility of Directors

A person seeking to be elected or appointed as a Director (including a Member Elected Director) must:

- (a) be eligible under the ACNC Act and Corporations Act to be a Director;
- (b) be a Member;
- (c) be up to date with payment of their Membership Fee;
- (d) have consented in writing to be a Director; and
- (e) not be ineligible by reason of clause 10.6 below.

## 10.5 Term of Office

- (a) A Member Elected Director:
  - (i) shall serve for a term ending at the closure of the third AGM following their appointment (unless they resign or are otherwise removed from office in accordance with this Constitution); and
  - (ii) must retire at that AGM but, subject to clause 10.6 below], may offer themselves for re-election as a Member Elected Director.
- (b) A Board Appointed Director who is appointed pursuant to clause 10.3(a) to fill a casual vacancy:
  - (i) shall serve until the next AGM at which time they must automatically retire; and
  - (ii) subject to clause 10.6 below], is, subject to them ceasing in their role as a Board Appointed Director, eligible for election as a Member Elected Director,
- (c) A Board Appointed Director who is appointed pursuant to clause 10.3(b):
  - (i) 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; and
  - (ii) subject to clause 10.6 below], may offer themselves for re-appointment by the Board under clause 10.3 and are also, subject to them ceasing in their role as a Board Appointed Director, eligible for election as a Member Elected Director,

## 10.6 Period of Service

- (a) Notwithstanding clause 10.4 above, unless the Board (excluding the Director in respect of whom that resolution would be) resolves otherwise:
  - (i) A Director is not eligible for re-election or re-appointment if their continuous period of service as a Director exceeds the Period set out in sub-clause 10.6(b) below.
  - (ii) A Member who became ineligible for re-election by reason of sub-clause 10.6(a)(i) and has not been a Director for at least 2 years thereafter, is once more eligible for election or appointment as a Director.
- (b) In this clause:
  - (i) The Period referred to in sub-clause 10.6(a)(i) is:
    - (A) for any Director whose continuous term of service commences on or after the AGM held on 2 November 2023: 9 years commencing on that term of service;
    - (B) for any Director whose continuous term of service as at the AGM held on 2 November 2023 is 4 years or less: 9 years commencing on that term of service;
    - (C) for any Director whose continuous period of service as at the AGM held on 2 November 2023 is more than 4 years: 9 years commencing after the 4<sup>th</sup> year of that period of service.

- (ii) The phrase “continuous period of service” refers to the single continuous period at any time that a Director has served as a Director immediately before the next AGM.
- (iii) In calculating a continuous period of service:
  - (A) for any period that of a Member Elected Director: a year is the period starting on an AGM and finishing on the next AGM.
  - (B) For the period of service of a Board Appointed Director appointed pursuant to clause 10.3(a) to fill a casual vacancy, a year includes the period between their appointment and the next AGM if that period is more than 6 months, but not if that period is less than 6 months.
  - (C) For any period of service of a Board Appointed Director appointed pursuant to clause 10.3(b); a year includes:
    - the period between their initial appointment and the next AGM if that period is more than 6 months; and
    - any periods of continuous service between an AGM and finishing on the next AGM; and
    - any period between the termination of the Director's 12 month Term of Office and reappointment by the Board if such reappointment occurs at the first Board meeting after that termination.

## **10.7 Voluntary resignation of Directors**

A Director may resign from office by leaving at the Office a notice in writing to ACON Health of that Director's intention to resign. 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.

## **10.8 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.

## **10.9 Vacation of office**

- (a) In addition to the circumstances in which the office of a Director becomes vacant by virtue of the ACNC Act, the Corporations Act or another provision of this Constitution, the office of Director becomes vacant if:
  - (i) the Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (ii) the Director ceases to be a Member;
  - (iii) the Director dies;
  - (iv) is absent without the consent of the Board from meetings of the Board held during a continuous period of six months;

- (v) the Director becomes prohibited from being a Director by reason of an order made under the Corporations Act; or
  - (vi) 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.
- (b) The office of a Director who is an employee of ACON Health is terminated on the Director ceasing to be employed by ACON Health, but that person is eligible for reappointment or re-election as a Director.

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## 11 Officeholders

### 11.1 President and Vice-President

(a) **Appointment**

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

- (i) the appointment of the President or Vice-President will automatically terminate upon that person ceasing in their role as a Director (excluding cessation for any insubstantial period of time between automatic retirement and re-appointment);
- (ii) the maximum term of appointment of the President or Vice-President (as relevant) must not exceed a period of 3 years; and
- (iii) the President or Vice-President (as relevant) must not hold that position for more than 2 consecutive terms,

unless the Board resolves otherwise. Subject to the terms of any agreement entered into in a particular case, the Board may at any time revoke such appointment, with or without cause.

(b) **Duties**

- (i) The President shall act as chair of the Board (unless provided otherwise by the Board) and have such other duties as the Board may decide from time to time.
- (ii) The Vice-President shall be responsible for:
  - (A) performing the duties required to be performed pursuant to the provisions of clause 11.1 in the event of a casual vacancy in the position of President; and
  - (B) performing such other duties as the Board 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 (with the same duties) for the remainder of the term of the previous President, unless otherwise agreed by the Board.

## 11.2 Secretary

(a) **Appointment**

- (i) The Board must 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 ACNC Act, 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 the ACNC Act and the Corporations Act are established and properly maintained;
  - (B) to ensure that all returns required to be lodged with the Australian Securities and Investments Commission and Australian Charities and Not-for-Profits 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 determined by the Board as necessary for the running of the Board.

## 11.3 Other Officeholders

The Board may, from time to time, create or remove additional offices and appoint or terminate the appointment of Directors to those positions on such terms and with such powers and responsibilities as they may decide from time to time.

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# 12 Directors' remuneration

## 12.1 Directors fees and reimbursement for expenses

- (a) No Director is entitled to any fees for their service as a Director of ACON Health or any subsidiary or related entity.
- (b) Subject to clause 7, a Director who is engaged to provide a service to ACON Health in any professional or technical capacity (other than auditor), 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 12.1(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 12.1(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 12.1(e), unless required by the Corporations Act or any other legal or regulatory requirement.

- (e) For the avoidance of doubt, the Chief Executive Officer and any staff representative who is also a Director may be paid the salaries they are entitled to as employees of ACON Health.
- (f) Each Director may be reimbursed for their reasonable out of-pocket expenses properly incurred by them in performing directors' duties.

## **12.2 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 12.1(f)) can be made by ACON Health to a Director until that payment is unanimously approved the Directors entitled to vote on that matter.

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# **13 Powers of directors**

## **13.1 General**

- (a) 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 ACNC Act, the Corporations Act or by this Constitution, required to be exercised by the Members in general meeting or otherwise.
- (b) The Board may, on the terms and conditions and with any restrictions as it determines, delegate to the Chief Executive Officer any of the powers exercisable by it and may at any time withdraw, suspend or vary any of those powers conferred on the Chief Executive Officer. Giving powers to the Chief Executive Officer does not prevent the exercise of those powers by the Board.

## **13.2 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.

## **13.3 Investment power**

The Board may exercise all the power of ACON Health to 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.

### **13.4 Appointment of Chief Executive Officer**

- (a) The Board may appoint a person to the office of Chief Executive Officer of ACON Health, for such period and on such terms as it determines.
- (b) Subject to the terms of any agreement entered into in a particular case, the Board may at any time revoke any such appointment, with or without cause.

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## **14 Proceedings of the board**

### **14.1 Convening of Board meetings**

- (a) Prior to the commencement of each calendar year, the Board may approve a schedule for its meetings in the upcoming calendar year.
- (b) In addition to the meetings scheduled pursuant to clause 14.1(a), the President or two other Directors may at any time request that a meeting of the Directors be convened, and the Secretary must, upon such a request, convene a meeting of the Directors.
- (c) In respect of each Board meeting, reasonable notice must be given to each Director of:
  - (i) the physical venue or venues of, or virtual meeting technology that is to be used at, the upcoming meeting (as applicable); and
  - (ii) the date and time of the upcoming meeting.
- (d) Notice of a meeting of the Board may be given by mail (electronic or otherwise), personal delivery or other electronic means to the usual place of business or residence of the Director or at any other address given to a Secretary by the Director or by any technology agreed by all the Directors.

### **14.2 Proceedings of the Board**

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

### **14.3 Meetings by virtual meeting technology**

- (a) For the purposes of the Corporations Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Board meeting:
  - (i) video;
  - (ii) telephone;
  - (iii) any other technology that permits each Director to communicate with every other Director; or
  - (iv) any combination of these technologies.

A Director may withdraw the consent given under this clause in accordance with the Corporations Act.

- (b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:
  - (i) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Board, taken to be assembled together at a meeting and to be present at that meeting; and
  - (ii) all proceedings of the Board conducted in that manner are as valid and effective as if conducted at a meeting at which all of the participating Directors were physically present in the one location.
- (c) Where a Board meeting is held using technology in accordance with this clause 14.3, each Director's participation must be made known to all other Directors. A Director intending to leave or disconnect from the meeting must inform all other participating Directors. Unless such intention to leave is explicitly communicated, the Director is deemed present and will count towards the quorum.

#### **14.4 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 at any particular Board meeting 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. This power of appointing additional directors is in addition to the power conferred on Members by clause 10.2.

#### **14.5 Voting at Board meetings**

- (a) Without limiting clause 14.14, a meeting of the Board of which notice has been given to all Directors and at which a quorum is present, is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board. Nothing in this clause 14.5(a) limits the exercise of any authority, power or discretion of the Board that has been delegated by the Board in accordance with law or this Constitution.
- (b) Subject to this Constitution, questions arising at a meeting of the Board must be decided by a majority of votes of Directors present and voting and A decision of the majority is for all purposes a decision of the Board. Each Director shall have one vote.
- (c) In the case of an equality of votes at a meeting of the Board, the Chair of the meeting has a casting vote in addition to that Chair's deliberative vote.

#### **14.6 Appointment of Chair at Board meetings**

If a Chair has not been elected, or if at any meeting the Chair is not present within 15 minutes after the time appointed for holding the meeting or despite being so present is unable or unwilling to act as chair of the meeting, the Board may choose another Director to chair the meeting.

#### **14.7 Material Personal Interests of Directors**

- (a) In relation to a contract or arrangement in which a Director has a material personal interest:

- (i) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
  - (ii) a contract or arrangement made by ACON Health or any related body corporate with a Director may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
  - (iii) the Director will not be liable to account to ACON Health for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.
- (b) Nothing in this clause 14.7 affects the duty of a Director:
- (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as a Director, to declare at a meeting of the Board, the fact and the nature, character and extent of the conflict; or
  - (ii) to comply with the Corporations Act or any other law.

#### **14.8 Declarations of Interest**

- (a) Subject to clause 14.7 and the Corporations Act, a Director:
- (i) who has an interest in a matter may vote in respect of that matter if it comes before the Board and be counted as part of the quorum;
  - (ii) may enter into contracts with, or otherwise have dealings with, ACON Health;
  - (iii) may hold any other office or place of profit in ACON Health, except as auditor; and
  - (iv) may hold any other office or place of profit in any other company, body corporate, trust or entity promoted by ACON Health or in which ACON Health has an interest of any kind.
- (b) A Director is not disqualified from the Director's office by contracting with ACON Health in any capacity by reason of holding the office of Director.
- (c) A Director is not liable to account to ACON Health for any profit realised by any contract, dealings, office or place of profit contemplated by clause 14.8(a), by reason only of holding the office of Director or of the fiduciary relationship established by the office of Director.
- (d) Despite having an interest in any contract or arrangement a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing or otherwise.

#### **14.9 Alternate directors**

- (a) Subject to this Constitution and 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 their 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) The appointment takes effect on approval by a majority of the other Directors or, where the approval has been granted, at any later time specified in the appointment.
- (c) 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 (except the power to appoint an alternate or substitute director) of the appointor in their place, to the extent that the Director by whom the alternate or substitute director was appointed has not exercised or performed them or they have not been limited by the instrument appointing the alternate or substitute director. 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 receipt at the Office of a notice in writing signed by the appointor.
- (d) An alternate director who is also a Director in their own right shall be entitled to vote in their own capacity as Director and again for each alternate directorship held.
- (e) An alternate director of a Director who is the Chair is by that reason alone entitled to act as Chair.
- (f) An alternate director is entitled to be reimbursed under clause 12 as if the alternate director were a Director.
- (g) An alternate director is not to be taken into account in determining the number of Directors or rotation of Directors.
- (h) An alternate director is, while acting as a Director, responsible to ACON Health for the alternate director's own acts and defaults and is not the agent of the Director by whom the alternate director was appointed.

#### **14.10 Delegation of powers to committee**

- (a) The Board may delegate any of its powers to committees consisting of any one or more Directors or any other person or persons as it thinks fit to act in Australia or elsewhere and may revoke that delegation.
- (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.
- (d) The Chair will be an ex-officio member of each committee of Directors appointed by the Board to act on its behalf.
- (e) Nothing in this clause 14.10 limits the power of the Board to delegate.

#### **14.11 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. Nothing in this clause limits the power of the Board to delegate.

#### **14.12 Validity of acts of the Board**

- (a) All acts at any meeting of the Board or by committee of Directors or by any other person or persons acting as Directors are valid, even if it is later discovered that there was some 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.
- (b) If the number of Directors is reduced below the minimum number fixed under this Constitution, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of ACON Health but for no other purpose.

#### **14.13 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 or electronic database 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.

#### **14.14 Resolution in writing**

- (a) The Board may pass a resolution without a Board meeting being held if all Directors, or a majority of the Directors (where notice of the resolution has been given to all Directors), who are entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Board) assent to a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A Director may signify assent to a document under this clause by signing the document or by notifying a Secretary of the assent of the Director by any technology including email. The resolution is passed when the last Director, or the last of the Directors constituting a majority (as applicable), has assented to the document.
- (c) Separate copies of a document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy.
- (d) Where a Director signifies assent to a document under clause 14.14(b) other than by signing the document, the Director must by way of confirmation sign the document before or at the next meeting of the Board attended by that Director. The resolution the subject of a document is not invalid if a Director does not comply with this requirement.
- (e) For the purpose of this clause 14.14, the references to Directors include any alternate director appointed by a Director who is not available to assent to the document or is otherwise unable to assent to the document within a reasonable time, but do not include any other alternate directors.

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## **15 Indemnity and insurance**

### **15.1 Indemnity**

- (a) Every person who is or has been a Director or Secretary of ACON Health is entitled to be indemnified out of the property of ACON Health to the relevant extent against:

- (i) liability incurred by the person in or arising out of the conduct of the business of ACON Health or in or arising out of the discharge of their duties as a Director or Secretary (except a liability for legal costs); and
- (ii) 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.

- (b) Where the Board considers it appropriate, ACON Health may execute a documentary indemnity in any form in favour of any director or Secretary of ACON Health, provided that such terms are not inconsistent with this clause 15.1.

## 15.2 Insurance

Where the Board considers it appropriate, 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.

## 15.3 Access

Where the Board considers it appropriate, ACON Health may:

- (a) give a former Director access to certain papers, including documents provided or available to the Directors and other papers referred to in those documents; and
- (b) bind itself in any contract with a Director or former Director to give the access.

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# 16 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 7; and
- (c) which is a fund, authority or institution to which income tax deductible gifts can be made for the purposes of any Commonwealth taxation law.

Where it furthers the objects of ACON Health to amalgamate with any one or more other charitable organisations having similar objects to the objects of ACON Health, the other organisation or organisations must have rules prohibiting the distribution of its income and property to Members.

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## 17 Accounts, audit and records

### 17.1 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.

### 17.2 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.

### 17.3 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.

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## 18 Gift fund

### 18.1 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.

### 18.2 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.

### 18.3 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.

### 18.4 Bank account

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



## 18.5 Winding up

If ACON Health is wound up or if the endorsement of ACON Health as a deductible gift recipient is revoked, the following assets remaining after the payment of ACON Health's liabilities shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made:

- (a) gifts of money or property held for the objects and activities of ACON Health;
- (b) contributions made in relation to an eligible fundraising event held for the objects and activities of ACON Health; and
- (c) money received by the organisation because of such gifts and contributions.

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## 19 Inadvertent omission

If some formality required by this Constitution is inadvertently omitted or is not carried out the omission or failure to carry out does not invalidate any resolution, act, matter or thing which but for the omission would have been valid, unless the Board resolves 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.

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## 20 Notices

### 20.1 Persons authorised to give notices

- (a) A notice (including a document) 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.

### 20.2 Method of giving notices

- (a) ACON Health may give a document to a Member or Director or any other person is required to give notice to under the ACNC Act or Corporations Act:
  - (i) personally;
  - (ii) by sending it by post to or leaving it at the address for the Member or Director in the Register or an alternative address nominated by the Member, Director or relevant person;
  - (iii) by sending it electronically to the email address nominated by the Member, Director or relevant person;
  - (iv) by serving it in any manner contemplated by this clause 20.2 on a Member, Director or relevant person's attorney as specified by that person in a notice given under this clause 20.2; or
  - (v) by any other method of service provided by the Corporations Act, including by sending the Member sufficient information in electronic form, by means of an electronic communication, to allow the Member to access the document electronically.

- (b) A Member or Director may give a document to ACON Health:
  - (i) by serving it on ACON Health at the Office;
  - (ii) by sending it by post to the Office; or
  - (iii) by sending it to the electronic address nominated by ACON Health.
- (c) A Member may elect to receive notice of documents that are required or permitted to be sent to a Member by ACON Health under the Corporations Act in accordance with any of the methods of service referred to in clause 20.2(a).
- (d) A notice sent under clause 20.2 is taken to be duly give or made and received:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, on the 7<sup>th</sup> business day after the date of its posting;
  - (iii) in the case of email, at the earliest of:
    - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
    - (B) the time that the intended recipient confirms receipt of the email by reply email; and
    - (C) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three hour period, an automated message that the email has not been delivered,

but if the result is that a notice would be taken to be given or made and received at a time that is later than 5pm or on a day that is not a business day in the place specified by the intended recipient as its postal address, it will be conclusively taken to have been duly given or made and received at the start of business on the next business day in that place.

- (e) if it is given in any other way permitted under the Corporations Act, when it is taken to have been given under the Corporations Act.

### **20.3 Address for giving notices to ACON Health**

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

### **20.4 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.

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## 21 Replaceable rules and exercise of powers

### 21.1 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.

### 21.2 Amendments

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

### 21.3 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.

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## Schedule 1

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### 1 Dictionary

In this Constitution:

**ACNC Act** means the *Australian Charities and Not-for-Profits Commission Act 2013* (Cth).

**ACON Health** means ACON Health Limited (ACN 136 883 915).

**AGM** means each annual general meeting of ACON Health.

**Authorised Activities** means activities performed in furtherance of, or in carrying out, the Objects of ACON Health.

**Board** means the board of Directors of ACON Health.

**Board Appointed Director** has the meaning given to that term in clause 10.3(b).

**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, the person duly appointed as the chairperson of that meeting in accordance with clause 8.5; and
- (b) in respect of a meeting of the Board, means the person duly appointed as the Chairperson of the Board in accordance with clause 11.

**Chief Executive Officer** means the chief executive appointed by the Board under clause 13.4.

**Constitution** means this constitution.

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

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

**Director** means a person appointed or elected to the office of director of ACON Health in accordance with this Constitution and where appropriate, includes an alternate director.

**Election Procedures** are the procedures for the election of Member Elected Directors pursuant to clause 10.2, including nominations, the distribution of ballot papers, the counting of votes if required, and the declaration of results.

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

**Member** means a person whose name is entered in the Register as a current member of ACON Health in accordance with the provisions of this Constitution.

**Member Elected Director** has the meaning given to that term in clause 10.2.

**Membership Fee** has the meaning given to that term in clause 4.2.

**Member Present** means, in connection with a general meeting, a Member present for the meeting, in person or by proxy, by attorney or, where the Member is a body corporate, by representative (and includes any of those persons attending a meeting at the physical venue or venues for the meeting or using virtual meeting technology approved by the Directors in accordance with this Constitution).

**Notice of Membership Fee** has the meaning given to that term in clause 4.2(f).

**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 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 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 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth) (as amended from time to time).

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## 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.

## CHANGE HISTORY

MEETING	DATE	CHANGE	AUTHOR
SGM	17 February 2010	Amendments made to Clauses 18c and 20.5	Nicole O'Brien
AGM	10 November 2011	Amendments made to Clauses 11.3, 11.8 and pagination.	Nicole O'Brien
AGM	8 November 2012	Amendments made to Clauses: 9.6, 11.4, 11.5, 11.6, 11.8 and 15.10	Nicole O'Brien
SGM	15 September 2015	Amendments made to Clauses 11.2, 11.3(a), 11.4(b). 11.8(b). 11.5, 11.6 and 12.4 were deleted in their entirety.	Nicole O'Brien
AGM	8 November 2018	Clause 11.3(f) was replaced. Clause 11.8 was replaced in its entirety.	Sabine D'Haeseleer
AGM	2 November 2023	As per the Schedule of Amendments held by the Company Secretary	Sabine D'Haeseleer