Constitution

Endeavour Foundation Limited ACN 009 670 704

A Public Company Limited by Guarantee

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1. Name and nature of the Foundation

1.1 The name of the Foundation is ENDEAVOUR FOUNDATION LIMITED.

1.2 The Foundation is a not-for-profit public company limited by guarantee established to be and continue to be a charity.

1.3 The liability of the Members is limited. Every Member undertakes to contribute two dollars to the assets of the Foundation if it is wound up while the person is a Member or within one year after the person ceases to be a Member.

2. Objects

2.1 The objects of the Foundation are to be a member-based charitable institution that undertakes the following:

(a) to further the interests of people with disabilities, in particular intellectual disabilities;

(b) to harness the resources of the community to make a positive difference in the lives of people with disabilities;

(c) to promote and to advocate for the dignity and general citizenship of people with disabilities;

(d) to enable people with disabilities to achieve their full potential;

(e) to enable people with disabilities and their families to Voice their views, interests and concerns;

(f) through effective community partnership to be the provider of choice for people with disabilities; and

(g) to do all such other things as are incidental or conducive to the operation of the Foundation and otherwise for the attainment of all or any of the above objects of the Foundation.

3. Not for profit

No profits for Members

3.1 Subject to clause 3.2, all of the assets and income of the Foundation must be applied solely in the furtherance of the objects of the Foundation and no portion may be distributed directly or indirectly to any Member.

3.2 Nothing in clause 3.1 prevents the payment, in good faith, of reasonable and proper amount, calculated on arms-length terms, in respect of:

(a) remuneration payable to an employee of the Foundation who is also a Member, for services actually rendered to the Foundation as an employee;

(b) goods or services actually supplied by a Member to the Foundation in the ordinary and usual course of the Member’s business; or

(c) payment to a Member in their capacity as a Director, under clauses 7.18 and 7.19.

Winding up

3.3 Upon the winding up or dissolution of the Foundation or the Foundation ceasing to be a deductible gift recipient for any reason including revocation of its endorsement, whichever first occurs, any remaining property after satisfaction of all debts and liabilities must not be paid to or distributed among the Members or former Members, but must be given or transferred to some other charitable institution or organisation:

(a) which has charitable objects similar to the objects of the Foundation and is endorsed as a charitable institution under Division 50 of the *Income Tax Assessment Act 1997*; and

(b) whose constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 3.1; and

(c) to which gifts and contributions are deductible under Division 30 of the *Income Tax Assessment Act 1997,*

as determined by the Members at or before the time of winding up or dissolution of the Foundation and, in default of any such determination, by the Supreme Court of Queensland.

4. Members

Membership

4.1 The Members of the Foundation comprise:

(a) the Members of the Foundation as at the date of the adoption of this Constitution, excluding Corporate Members; and

(b) such other persons as the Board admits as Members in accordance with this Constitution.

Application for membership

4.2 Membership is open to any individual who:

(a) meets the membership eligibility criteria prescribed from time to time by the Board;

(b) demonstrates to the satisfaction of the Board that the individual is supportive of or has a bona fide interest in the achievement of the objects of the Foundation;

(c) completes and lodges an application for membership:

(i) in the form and manner, and providing such supporting information, as may be from time to time prescribed by the Board; and

(ii) signed by the applicant;

(d) pays the prescribed annual membership fee for Members, if any, when lodging the application for membership; and

(e) is accepted to membership by the Board.

4.3 In respect of each application for membership duly made in accordance with this Constitution:

(a) the Secretary must provide the application to the Board or its duly authorised delegate promptly after receipt of the application;

(b) the Board or its duly authorised delegate must consider the application promptly and, after considering it, determine in the Board's sole and absolute discretion whether to accept or reject the application;

(c) if the application is accepted, the applicant must be admitted forthwith as a Member and the Secretary must:

(i) notify the applicant in writing of the admission to membership;

(ii) issue a receipt for the membership fee, if any, paid by the Member; and

(iii) cause the required details to be entered in the Register;

(d) if the application is rejected:

(i) the Secretary must notify the applicant in writing of the rejection of the application;

(ii) the Secretary must refund in full the membership fee paid, if any, with the application;

(iii) that person may not apply for membership again within one year of the rejection; and

(e) the Board is not required to give reasons for accepting or rejecting any application.

Members' obligations and rights

4.4 The Members agree to be bound by the provisions of this Constitution.

4.5 For so long as a Member abides by the provisions of this Constitution, the Member will enjoy the rights and privileges of membership under the Act, this Constitution and the By-Laws.

4.6 All Members have the right to receive notices of, attend and be heard at any general meeting.

4.7 All Members have the right to:

(a) cast one vote in person or by proxy at any properly convened general meeting of Members; and

(b) cast one vote in any properly held postal or electronic ballot.

Membership fees

4.8 The amount of the annual membership fee shall be determined from time to time by the Board subject to approval by the Members at a general meeting. For the avoidance of doubt:

(a) Life Members and Honorary Life Members shall not under any circumstances be required to pay a membership fee; and

(b) Differential fees may be determined for Members based on approved criteria (e.g. new Members or persons who can demonstrate that they are a direct family member or carer of a client of the Foundation or Members who choose to pay for multiple years of membership in advance) as determined by the Board, and approved by the Members from time to time.

4.9 Members are required to pay the annual membership fee within two months of its due date. A Member will cease to be entitled to any of the rights or privileges of Membership if the annual membership fee of a Member remains unpaid for two months after it becomes payable. These rights and privileges will be reinstated upon payment of all arrears.

4.10 A Member who resigns or is removed from Membership or otherwise ceases to be a Member is not entitled to any refund of any annual membership fees.

Register of Members

4.11 A Register of Members must be kept in accordance with the Act.

4.12 The following details must be entered and kept current in the Register in respect of each Member:

(a) the Member's full name, residential address, postal address, telephone number and email address;

(b) the date of admission to and cessation of membership; and

(c) such other information as the Board requires.

4.13 The Register must be open for inspection by Members in accordance with the Act.

4.14 Each Member must notify the Secretary in writing of any change in that Member's name, residential address, postal address, telephone number or email address within one month after the change.

Resignation from membership

4.15 A Member may resign from membership by giving written notice to the Secretary.

4.16 A Member's resignation takes effect at the time the notice is given to the Secretary or such later date as may be specified in the notice.

4.17 A Member's liability for any fees, subscriptions or other moneys in arrears at the date of resignation continues until discharged by payment.

Expulsion of membership

4.18 If any Member:

(a) willfully refuses or neglects to comply with the provisions of this Constitution; or

(b) is guilty of any conduct which, in the absolute opinion of the Board, is unbecoming of a Member or prejudicial to the interest of the Foundation;

the Board may resolve to expel the Member from the Foundation and to remove the Member's name from the Register of Members.

4.19 At least 14 days before the meeting of the Board at which a resolution of the nature referred to in clause 4.18 is passed the Board must give to the Member notice of:

(a) the meeting;

(b) what is alleged against the Member; and

(c) the intended resolution.

4.20 At the meeting and before the passing of the resolution, the Member must have an opportunity of giving orally or in writing any explanation or defence the Member sees fit.

4.21 A Member may, by notice in writing lodged with the Secretary within 48 hours after the meeting at which the resolution is considered by the Board, elect to have the question dealt with by the Foundation in general meeting and in that event, a general meeting of the Foundation must be called for that purpose.

4.22 If at the general meeting of the Foundation a resolution to the same effect as the resolution which was to be considered by the Board is passed by a majority of those present and voting (and the vote must be taken by secret ballot), the Member concerned must be expelled and the Member's name must be removed from the Register of Members.

Other cessation of membership

4.23 A Member ceases to be a Member if the Member:

(a) dies;

(b) becomes bankrupt; or

(c) is convicted of an indictable offence.

5. General meetings

Calling of general meetings

5.1 General meetings of the Foundation may be called and held at the times and places and in the manner determined by the Board.

5.2 The Foundation must provide reasonable means by which Members have an adequate opportunity to raise with the Board bona fide concerns about the governance of the Foundation between general meetings.

5.3 Members may only call or requisition a general meeting in accordance with the Act which shall apply as if the Foundation were not an ACNC Registered Entity.

Notice of general meetings

5.4 Notice of every general meeting must be given to every current Member, Director and the auditor, if any, of the Foundation. No other person is entitled to receive notices of general meetings.

5.5 Notice of a general meeting:

(a) subject to the provisions of the Act permitting short notice and notice for special resolution, must not be given fewer than 21 days prior to the meeting;

(b) may be given by any form of communication permitted by the Act (as if the Foundation was not an ACNC Registered Entity); and

(c) must specify:

(i) the place, the date and the time of the meeting;

(ii) if the meeting is to be held in two or more places, the technology that will be used to facilitate this;

(iii) the general nature of the business to be transacted;

(iv) if it is proposed to move a special resolution at the meeting, the intention to propose the special resolution and the resolution; and

(v) any other matters required by the Act as if the Foundation was not an ACNC Registered Entity.

5.6 The accidental omission to give notice of any general meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.

Business at general meetings

5.7 Except as permitted by the Act the only business to be transacted at an AGM is:

(a) the receipt and consideration of the accounts and reports of the Board and the auditors;

(b) the appointment and payment of an auditor;

(c) the election of Directors; and

(d) any other business which:

(i) the Act requires to be transacted; or

(ii) the Board has approved by resolution at a properly constituted Board meeting.

Adjournment of general meetings

5.8 The Chair of any general meeting at which a quorum is present may, with the consent of the meeting, and must if so directed by the meeting, adjourn the meeting to another time and to another place.

5.9 The only business that may be transacted at any adjourned general meeting is the business left unfinished at the meeting from which the adjournment took place.

5.10 When a general meeting is adjourned under clause 5.8 for 30 days or more notice of the adjourned meeting must be given in the same manner as in the case of an original meeting.

5.11 When a general meeting is adjourned under clause 5.8 for less than 30 days, it is not necessary to give a further notice of the adjourned meeting.

Cancellation of general meetings

5.12 The Board may cancel or postpone any general meeting (other than a meeting which has been called or requisitioned by Members) at any time prior to the date on which it is to be held.

5.13 If a general meeting has been cancelled or postponed, notice of the cancellation or postponement must be given in the same manner as in the case of the original meeting.

Attendance at general meetings

5.14 A person, whether or not a Member, who is invited or requested by the Board to attend a general meeting is entitled to attend that general meeting.

Quorum at general meetings

5.15 No business may be transacted at a general meeting unless a quorum of Members is present.

5.16 A quorum for the purposes of a general meeting is 20 Members being present either personally or by proxy at all times during the general meeting.

5.17 If a quorum is not present within 30 minutes from the time appointed for the meeting or a longer period allowed by the Chair:

(a) if the meeting was called or requisitioned by Members, it must be dissolved; or

(b) in any other case, it must be adjourned to the same day in the next week at the same time and place, or to another day, time and place determined by the Board.

5.18 Notwithstanding any other provision of this Constitution, if a general meeting is adjourned under sub-clause 5.17(b):

(a) a quorum for the purpose of the adjourned meeting is 20 Members being present in person or by proxy at all times during the adjourned meeting; and

(b) if a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting must be dissolved.

Chair of general meetings

5.19 The Chair or, in their absence, the Deputy Chair, if any, is entitled to chair every general meeting and is responsible for the conduct of the general meeting, and for this purpose must give Members a reasonable opportunity to make comments and ask questions, including of the auditor (if any).

5.20 The Directors present at a general meeting must elect one of the Directors present to chair the meeting if any of the following apply:

(a) there is not then a Chair or Deputy Chair;

(b) neither the Chair nor the Deputy Chair is present within 30 minutes after the time appointed for the holding of the meeting; or

(c) neither the Chair nor the Deputy Chair is willing to act.

5.21 The Members present at a general meeting must elect one of the Members present to chair the meeting if either of the following applies:

(a) there are no Directors present within 30 minutes after the time appointed for the holding of the meeting; or

(b) all Directors present decline to chair the meeting.

5.22 Except as provided by the Act, the general conduct of each general meeting and the procedures to be adopted at the meeting are as determined by the Chair.

5.23 The Chair of a general meeting may, in their discretion, refuse admission to, or expel from, the meeting any person:

(a) using a recording device;

(b) in possession of a placard or banner;

(c) in possession of an object considered by the Chair to be dangerous, offensive or liable to cause disruption;

(d) who refuses to produce or to permit examination of any object, or the contents of any object or container, in the person's possession;

(e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner;

(f) whose conduct, in the reasonable opinion of the Chair, is inappropriate; or

(g) who is not a Member, Director or auditor of the Foundation.

6. Voting at general meetings

6.1 At a general meeting, a resolution put to the vote of the meeting, must be decided by a majority vote of the Members present or represented and entitled to vote at the meeting. If the votes are equal, the question is decided in the negative.

6.2 The Chair of a general meeting is not entitled to a second or casting vote on any resolution, whether by show of hands or on a poll.

6.3 A Member whose membership fees (if any) are more than two months in arrears at the date of a general meeting is not entitled to vote at that meeting.

Show of hands

6.4 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 in accordance with clause 6.8.

6.5 On a show of hands, every Member present and entitled to vote on the resolution has one vote.

6.6 If a poll is not duly demanded, a declaration by the Chair that a resolution has on a show of hands been carried, or not carried and an entry to that effect in the book containing the minutes of the proceedings of the Foundation, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

6.7 For the avoidance of doubt, a person appointed as a proxy shall not be entitled to vote that proxy on a show of hands.

Poll

6.8 A poll may be demanded in respect of a resolution at a general meeting by:

(a) at least three voting Members entitled to vote on the resolution; or

(b) the Chair.

6.9 A poll may be demanded in respect of a resolution at a general meeting:

(a) before the vote on that resolution is taken;

(b) before the voting result on a show of hands is declared; or

(c) immediately after the voting result on a show of hands is declared.

6.10 A poll may not be demanded on the election of a Chair for the meeting.

6.11 Every Member present in person or by proxy has:

(a) the right to join in the demand for a poll; and

(b) one vote in the poll.

6.12 The demand for a poll may be withdrawn.

6.13 If a poll is duly demanded, it must be:

(a) secret;

(b) taken in the manner directed by the Chair;

(c) if on a question of adjournment of a meeting, taken immediately; and

(d) on any other question, taken either at once or after an interval or adjournment or otherwise as directed by the Chair and does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll is demanded.

6.14 In the case of any dispute as to the admission or rejection of a vote, the Chair's determination in respect of the dispute is final.

6.15 The result of the poll will be regarded as the resolution of the matter which was the subject of the poll.

Postal or electronic ballot

6.16 Notwithstanding any other provision of this Constitution, to the extent permitted by law, a resolution of the Members decided by postal or electronic ballot conducted in accordance with this Constitution is as valid and effective as if it had been passed at a general meeting duly called and constituted.

6.17 Without limiting the purposes for which the Board may conduct a postal or electronic ballot amongst the Members, a postal or electronic ballot may be held for the election of Elected Directors under clause 7.7(e) and the results declared at the relevant AGM.

6.18 All postal or electronic ballots must be held in such a manner as to provide a reasonable opportunity for the Members to cast a vote and otherwise in the manner prescribed from time to time by the Board.

Proxies

6.19 A Member entitled to vote at a general meeting may appoint one other Member or Director as their proxy, to attend and vote in their place at a general meeting.

6.20 The proxy must be appointed in writing, in the form from time to time required by the Board, and signed by the Member appointing the proxy.

6.21 A person attending a general meeting as proxy has all the rights and powers of the relevant Member, except where expressly stated to the contrary in:

(a) the document appointing the proxy;

(b) this Constitution; or

(c) the Act.

6.22 If the document appointing a proxy specifies the manner in which the proxy is to vote in respect of a particular resolution, the proxy is not entitled to vote on the resolution except in the manner specified in the document.

6.23 A document appointing a proxy is valid at any adjournment of a meeting to which the proxy relates, unless otherwise specified in the document.

6.24 A document appointing a proxy is invalid unless the document appointing the proxy is received by the Foundation:

(a) at the Foundation's registered office (or other address including electronic address, specified for that purpose in the notice convening the meeting); and

(b) at least 48 hours (or lesser period specified in the notice convening the meeting) before the time for holding the meeting or adjourned meeting at which the proxy is proposed to vote.

6.25 A vote made under a proxy is valid despite any of the following facts, unless the Foundation receives written notice of the fact before the commencement of the meeting at which the vote is cast:

(a) the Member has died; or

(b) the proxy or authority under which the proxy was signed has been revoked.

6.26 A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

7. Board of Directors

Number of Directors

7.1 The number of Directors must not be fewer than four and not more than 10.

7.2 In furtherance of clause 7.1, the Board must comprise:

(a) a minimum of four and up to five Elected Directors; and

(b) up to five Appointed Directors;

provided the number of Appointed Directors does not exceed the number of Elected Directors.

7.3 If the number of Elected Directors is reduced below the minimum number prescribed by this Constitution in clause 7.2(a), the continuing Director or Directors may act only to:

(a) appoint additional Directors to the minimum number prescribed by this Constitution; or

(b) convene a general meeting.

7.4 The Foundation may, by ordinary resolution, increase the maximum number of Directors and may determine in what rotation the Directors appointed as the result of any such alteration are to go out of office.

Board composition

7.5 A person shall only be eligible for election or appointment to the Board if they comply with the following eligibility criteria:

(a) The person is a Member of the Foundation;

(b) the person is not an employee of the Foundation or any related entity;

(c) at the time of their election or appointment, they have not within the last six years, completed more than eight continuous years as a Director;

(d) notwithstanding clause 7.5(c) a person who will have served more than eight continuous years at the expiry of their then current term, and was elected by the Board as Chair for the first time during their then current term, will be eligible to stand for election or appointment for only one further three-year term on the recommendation of an ordinary resolution of the Board;

(e) the person is not prohibited by law from being a director of a company and, for so long as the Foundation is an ACNC Registered Entity, has not at any time in the preceding 12 months been disqualified by the Commissioner; and

(f) the election or the appointment of the person is considered by the Board on advice from the committee, formed pursuant to clause 12.5 to meet any additional eligibility requirements determined by the Board and contained in the By-Laws available to all Members.

7.6 Upon the adoption of this Constitution, the Directors who were elected or appointed to the Board pursuant to the prior Constitution of the Foundation (the **Incumbent Directors**) shall continue in office as Elected Directors or Appointed Directors, as the case requires, and:

(a) for the avoidance of doubt, their then current terms of office shall, subject to the following sub-clauses, be deemed for the purposes of this Constitution to have commenced when they were last elected or appointed;

(b) any Incumbent Director who, at the date of adoption of this Constitution, has then served more than nine years on the Board shall retire from office no later than the AGM occurring in 2025; and

(c) the provisions of clause 7.5(c) shall apply to the Incumbent Directors (including those retiring in accordance with clause 7.6(b)) for all subsequent elections or appointments with all terms of office served by them prior to the adoption of this Constitution counted for the purposes of that clause.

7.7 An Elected Director is appointed at an AGM in accordance with the following requirements:

(a) the Board must call for nominations not more than six months, and not less no earlier than three months, before the meeting;

(b) any two Members may nominate a person to be appointed as an Elected Director;

(c) the nomination must be:

(i) in the form prescribed by the Board;

(ii) signed by the nominee and each proposer; and

(iii) given to the Board in the manner and within the time prescribed by the Board;

(d) an election of Elected Directors must be held in accordance with paragraph (e), whether or not the number of eligible candidates exceeds the number of vacancies;

(e) for the purposes of the election of Elected Directors:

(i) a list of the names of all candidates who are eligible for appointment in accordance with this Constitution must be provided to all voting Members at least 21 days before the meeting;

(ii) the Board may hold:

(A) a postal or electronic ballot for the election of Elected Directors, to be completed at least seven days before the meeting; or

(B) the election of Elected Directors by ordinary resolution at the AGM;

(iii) each voting Member who is eligible to vote may vote for such number of candidates as there are vacant positions of Directors; and

(f) at the meeting, the Secretary must announce which persons have been appointed as Elected Directors under this clause.

Rotation of Elected Directors

7.8 Each Elected Director will serve for a term of approximately three years commencing from the AGM at which they are elected and expiring at the AGM held in the third calendar year following, and subject to clause 7.5, is eligible to be re-elected to the Board at the expiry of their term.

Appointed Directors

7.9 Subject to clauses 7.2 and 7.5 the Board may, in its discretion, and from time to time, appoint up to a maximum of five Appointed Directors to serve at any one time, on the basis that they are persons whose background, skills and/or experience may be thought prudent or necessary to enhance the ability of the Board to better discharge its role and the legal duties and responsibilities of the Board.

7.10 Each Appointed Director will serve for a term of three years, or such lesser period as the Board may determine, but is eligible for re-appointment as a Director if not then disqualified by this Constitution or the law from being re-appointed.

Resignation from office

7.11 A Director may resign from office by giving written notice to the Secretary.

7.12 A Director's resignation takes effect at the time the notice is given to the Secretary or such later date as may be specified in the notice.

Removal from office

7.13 The Foundation may, by ordinary resolution, remove any Director from office.

7.14 At any general meeting at which it is proposed to remove a Director under clause 7.13, the Director must be given the opportunity to present their case, orally or in writing or by both of those means.

7.15 A Director who is removed under clause 7.13 retains office until the dissolution or adjournment of the general meeting at which the Director is removed.

Vacation of office

7.16 Without limiting any other provision of this Constitution, the office of a Director becomes vacant if required by the Act or the ACNC Act or if the Director:

(a) dies;

(b) is convicted of an indictable offence;

(c) becomes prohibited from being a director of a company by reason of the Act or the ACNC Act, any order made under the Act or otherwise at law;

(d) becomes bankrupt or makes any arrangement or composition with their creditors generally;

(e) becomes an employee of the Foundation or any related entity; or

(f) the Foundation resolves that the office of that Director be vacated.

Casual vacancies

7.17 If a casual vacancy arises in relation to an Elected Director:

(a) in circumstances whereby, as a result of the casual vacancy, the minimum of four Elected Directors required by clause 7.2(a) is not achieved, the Board may appoint a person who is eligible for appointment in accordance with this Constitution as a Director to fill the casual vacancy, subject to the Members confirming the appointment of the person as a Director at the next following AGM;

(b) in circumstances whereby, as a result of the casual vacancy, the minimum of four Elected Directors is still achieved as required by clause 7.2(a) but the number of Appointed Directors exceeds the number of Elected Directors, the Directors may continue to act notwithstanding there being a majority of Appointed Directors contrary to the requirements of clause 7.2, provided that the casual vacancy is filled by an election of Members in accordance with clause 7.7, held no later than the next following AGM after the casual vacancy arises; and

(c) in either case, a person appointed or elected pursuant to either of the preceding two paragraphs shall continue to serve until the AGM at which the person who vacated office early would have been required to retire, pursuant to this Constitution, if he or she had not vacated office early, and thereafter the person so appointed or elected shall be eligible for re-election subject to the provisions of this Constitution.

Directors' remuneration

7.18 Directors may be remunerated for their role as Directors provided that the total of fees paid to Directors does not exceed the total amount approved by Members in general meeting, from time to time.

Directors' expenses

7.19 Directors may be paid or reimbursed for all reasonable travelling, accommodation, and other expenses properly incurred by them, and

evidenced by promptly furnished receipts, in relation to attending and returning from meetings of the Board or any of its committee or general meetings or otherwise in the execution of their duties as Directors.

8. Chair and Deputy Chair

8.1 At the first Board meeting held after the vacation of office of the Chair under clause 8.4, the Board must elect a Director as Chair.

8.2 If there is no Deputy Chair, the Board may elect a Director as Deputy Chair at any time.

8.3 The election of the Chair and Deputy Chair (if any) may be held by any means determined by the Board.

8.4 A Director elected by the Board as Chair or Deputy Chair holds that office until:

(a) the expiration of that Director's current term of office as Director;

(b) the Director ceases to be a Director in accordance with this Constitution;

(c) the Director resigns from the office of Chair or Deputy Chair (as the case may be) by written notice to the Secretary; or

(d) the Board, by ordinary resolution excluding the relevant Director, removes the Director from the office of Chair or Deputy Chair (as the case may be).

8.5 A Director who is re-appointed as a Director following expiration of the term during which the Director was elected as Chair is eligible for re-election as Chair.

8.6 The Chair or, in their absence, the Deputy Chair (if any) is entitled to preside as Chair at every Board meeting.

8.7 The Directors present at a Board meeting must elect one of the Directors present to chair the meeting if any of the following apply:

(a) there is not then a Chair or Deputy Chair;

(b) neither the Chair nor the Deputy Chair is present within 15 minutes after the time appointed for the holding of the meeting; or

(c) neither the Chair nor the Deputy Chair is willing to act.

9. Powers of the Board

9.1 The governance of the Foundation is the responsibility of the Board duly appointed under and in accordance with this Constitution.

9.2 The Board may exercise all the powers of the Foundation which are not, by the Act or by this Constitution, required to be exercised by the Foundation in general meeting.

9.3 If the Foundation holds or owns membership, shares or other interests in another body corporate, trust or other entity, the Board may exercise any and all voting rights conferred by the membership, shares or interests in any manner it considers fit.

10. Board meetings

Convening of Board meetings

10.1 Subject to the provisions of the Act and this Constitution, the Board may meet for the dispatch of business and regulate its meetings as it thinks fit.

10.2 The Board must meet at least six times in each financial year.

10.3 Any Director may request the Secretary to convene a Board meeting at any time, subject to meeting notice requirements, and the Secretary must comply with such request.

Notice of Board meetings

10.4 Reasonable notice of each Board meeting must be given to each Director before the meeting or otherwise as determined by the Board, except all Directors may waive in writing the required period of notice for a particular meeting.

10.5 Notice of Board meeting may be given to a Director by:

(a) mail or delivery to the usual place of residence of the Director; or

(b) mail, delivery, or email to any other address, or email address given by the Director to the Secretary for that purpose (unless and until the Director informs the Secretary that he or she may not be contacted at that other address, or email address).

Mode of Board meetings

10.6 A Board meeting may be called or held using any technology consented to by all Directors. The consent may be a standing one. A Director may only withdraw his or her consent within a reasonable time before the meeting.

10.7 If a Directors' meeting is held using any technology and all the Directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.

10.8 The following provisions apply to a technology meeting:

(a) each of the Directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part in the meeting; and

(b) at the commencement of the meeting each Director must announce their presence to all the other Directors taking part in the meeting.

10.9 If the Secretary is not present at a technology meeting, one of the Directors present must cause minutes of the meeting to be taken.

10.10 A Director may not leave a technology meeting by disconnecting their link to the meeting unless that Director has previously notified the Chair of the meeting.

10.11 A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that Director has previously obtained the express consent of the Chair to leave the meeting. A meeting by electronic communications shall not be invalidated by a voluntary or involuntary disconnection of a participant provided that there shall remain or be reconnected sufficient Directors able to communicate with each other as constitutes a quorum.

Quorum at Board meetings

10.12 A quorum for the purposes of a Board meeting is half the number of Directors then on the Board, rounded up to the nearest whole number.

10.13 The quorum must be present at all times during the meeting.

10.14 If a quorum is not present within 30 minutes from the time appointed for a Board meeting or a longer period allowed by the Chair:

(a) the meeting must be adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Chair may determine; and

(b) if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the meeting lapses.

Voting at Board meetings

10.15 Questions arising at a Board meeting must be decided by a majority vote of Directors present and voting. If the votes are equal, the question is decided in the negative.

10.16 The Chair does not have a second or casting vote at Board meetings.

Resolution in writing

10.17 A resolution in writing signed by all Directors is as valid and effectual as if it had been passed at a Board meeting duly convened and held.

10.18 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.

10.19 In relation to a resolution in writing:

(a) a document generated by electronic means which purports to be a resolution of the Board is to be treated as a resolution in writing; and

(b) a resolution bearing an electronic copy of a signature is to be treated as signed.

Validity of acts

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

Conflicts of interest

10.21 The Board must manage all conflicts in accordance with law.

11. Duties of Directors

11.1 The Directors must comply with their duties as directors under legislation of the Australian Parliament and the general law, and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

(a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Foundation;

(b) to act in good faith in the best interests of the Foundation and to further the charitable purpose(s) of the Foundation set out in clause 2;

(c) not to misuse their position as a Director;

(d) not to misuse information they gain in their role as a Director;

(e) to disclose any perceived or actual material conflicts of interest;

(f) to ensure that the financial affairs of the Foundation are managed responsibly; and

(g) not to allow the Foundation to operate while it is insolvent.

12. Committees

12.1 The Board may appoint one or more committees consisting of such Directors or other persons as the Board thinks fit.

12.2 The Board may appoint any Director on a Committee as Chair of that Committee.

12.3 In the exercise of any powers delegated to it, a Committee must:

(a) conform to the directions of the Board;

(b) report to the Board; and

(c) otherwise conduct its meetings and proceedings in accordance with the provisions of this Constitution, as far as practicable, as if they were meetings and proceedings of the Board.

12.4 The Board may delegate any of its powers, except this power to delegate, to a Committee.

12.5 Without limiting clause 12.1, the Board must establish a committee to assist the Board to implement the By-Laws contemplated by clause 7.5(f). The rules for the composition and responsibilities of the committee must be set out in By-Laws available to all Members.

13. Establishment of Advisory Groups

13.1 The Foundation must establish and maintain one or more Advisory Groups to support the Foundation in its work.

13.2 The purpose of the Advisory Groups is to ensure that the Foundation is aware of the views of a range of clients, families, carers and advocates. Advisory Groups are to be appropriately representative of the geographic locations and service-offerings of the Foundation.

13.3 The Board must agree and set out in writing in the By-Laws the composition and operation of these Advisory Groups.

14. Secretary

14.1 The Board may appoint (on the terms and conditions it sees fit) and terminate the appointment of one or more Secretaries of the Foundation.

14.2 The Secretary is responsible for carrying out all acts and deeds required by this Constitution or the Act to be carried out by the Secretary of the Foundation.

15. Chief Executive

15.1 The Board may appoint or remove any person to or from the position of Chief Executive of the Foundation by whatever title the Board sees fit (CEO) for the period and on the terms and conditions (including as to remuneration) the Board sees fit.

15.2 The Board may, upon terms and conditions and with any restrictions it sees fit, confer on the CEO any of the powers that the Board can exercise.

15.3 The Board may at any time revoke or vary an appointment of, or any of the powers conferred on, the CEO.

15.4 If the CEO becomes incapable of acting in that capacity, the Board may appoint any other person other than a Director to act temporarily as CEO until such time as the position can be filled permanently.

16. By-Laws

16.1 The Board may make, adopt, amend and repeal By-Laws with respect to any matter or thing for the purposes of giving effect to any provision of this Constitution or generally for the purposes of carrying out the objects of the Foundation, which By-Laws are binding on the Members.

16.2 All By-Laws must be made available and accessible to all Members promptly after their adoption or amendment.

16.3 To the extent of any inconsistency, this Constitution prevails over the By-Laws.

17. Indemnities and insurance

Officers' and past officers' liabilities to third parties

17.1 To the extent permitted by law, the Foundation indemnifies:

(a) every person who is or has been an Officer of the Foundation; and

(b) where the Board considers it appropriate to do so, any person who is or has been an Officer of a related body corporate of the Foundation;

against any liability, including for cost and expenses, incurred by that person in his or her capacity as an Officer of the Foundation or of the related body corporate (as the case may be).

18. Seal and execution of documents

18.1 The Foundation may have a Seal.

18.2 If the Foundation has a Seal:

(a) the Board must provide for its safe custody; and

(b) it may only be used by authority of the Board.

18.3 The Foundation may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:

(a) two Directors;

(b) a Director and the Secretary; or

(c) a Director and some other person appointed by the Board for the purpose.

18.4 The Foundation may execute a document, including a deed, without use of the Seal if the document is signed by:

(a) two Directors; or

(b) a Director and the Secretary.

18.5 Notwithstanding clauses 18.3 and 18.4, any document, including a deed, may be executed by the Foundation in any other manner permitted by law.

19. Notices

Persons authorised to give notices

19.1 A notice given under this Constitution may be given:

(a) on behalf of the Foundation by a solicitor for the Foundation, the Secretary or a Director; or

(b) a solicitor on behalf of a Member.

19.2 The signature of a person on a notice given by the Foundation or a Member may be written, printed or stamped.

Method of giving notices

19.3 A notice by the Foundation or a Member may be given under this Constitution by any of the following means:

(a) by delivering it to the street address of the addressee;

(b) by sending it by prepaid post to the street or postal address of the addressee; or

(c) by sending it by email to the email address of the addressee.

Address for notices

19.4 For the purposes of clause 19.3:

(a) the street and postal address of the Foundation is the registered office of the Foundation, or such other address as was last formally notified by the Foundation to the Member;

(b) the email address of the Foundation are the details last formally notified by the Foundation to the Member; and

(c) the street, postal addresses and email address of a Member are the details last formally notified by the Member to the Secretary.

Time notice is given

19.5 A notice given in accordance with this Constitution is deemed to be given, served and received at the following times:

(a) if delivered to the street address of the addressee, at the time of delivery;

(b) if sent by express post to the street or postal address of the addressee in Australia, on the next business day after posting;

(c) if sent by post other than express post to the street or postal address of the addressee, on the fifth business day after posting; or

(d) if sent by email, at the time transmission is completed.

Proof of giving notices

19.6 The time of sending a notice by email may be proved conclusively by production of a printout of an acknowledgement of receipt of the e-mail or equivalent proof that the email was successfully transmitted.

20. Amendment of Constitution

20.1 Subject to clause 20.2, the Constitution may be amended by a resolution passed by at least 75% of the votes cast by the Members present in person, by representative, or by proxy and entitled to vote on the resolution.

20.2 The Members must not pass a resolution to amend this Constitution if passing this resolution causes the Foundation to cease to be an ACNC Registered Entity for so long as the ACNC Act is on foot.

21. Formalities omitted

21.1 If some formality required by this Constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the Board that the omission has directly prejudiced any Member financially. The decision of the Board is final and binding on all Members.

22. Dispute resolution

22.1 The dispute resolution procedure in this clause applies to disputes (disagreements) in relation to the matters provided by this Constitution between a Member or Director and:

(a) one or more Members;

(b) one or more Directors; or

(c) the Foundation.

22.2 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it, failing which they must within a further 10 days:

(a) tell the Board about the dispute in writing;

(b) agree or request that a mediator be appointed; and

(c) attempt in good faith to settle the dispute by mediation.

22.3 The mediator must:

(a) be chosen by agreement of those involved; or

(b) where those involved do not agree:

(i) for disputes between Members, a person chosen by the Board, or

(ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state of Queensland.

22.4 A mediator chosen by the Board under clause 22.3(b)(i):

(a) may be a Member or former Member of the Foundation;

(b) must not have a personal interest in the dispute; and

(c) must not be biased towards or against anyone involved in the dispute.

22.5 When conducting the mediation, the mediator must:

(a) allow those involved a reasonable chance to be heard;

(b) allow those involved a reasonable chance to review any written statements;

(c) ensure that those involved are given natural justice; and

(d) not make a decision on the dispute.

23. Interpretation

23.1 In this Constitution, unless the context requires otherwise:

(a) a reference to any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation and a reference to a specific provision of such legislation is a reference to the equivalent provision in any later amended, re-enacted or replacement legislation;

(b) a reference to this Constitution, where amended, means this Constitution as so amended;

(c) a reference to a clause, sub-clause or schedule is a reference to a clause, sub-clause or schedule of this Constitution;

(d) a word which denotes:

(i) the singular denotes the plural and vice versa;

(ii) any gender denotes the other genders; and

(iii) a person denotes an individual and a body corporate;

(e) where a word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;

(f) an expression used but not defined in this Constitution has the same meaning as given in the Act;

(g) writing includes any mode of representing or reproducing words in a visible form; and

(h) a reference to 'dollars' or '$' means Australian dollars.

23.2 Headings and any table of contents must be ignored in the interpretation of this Constitution.

Calculation of time

23.3 In this Constitution, unless the context requires otherwise:

(a) a reference to a time of day means that time of day in the state of Queensland;

(b) a reference to a business day means a day during which banks are open for general banking business in the state of Queensland;

(c) for the purposes of determining the length of a period (but not its commencement) a reference to:

(i) a day means a period of time commencing at midnight and ending 24 hours later; and

(ii) a month means a calendar month which is a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of that next month;

(d) where a period of time is specified and is to be calculated before or after a given day, act or event it must be calculated without counting that day or the day of that act or event; and

(e) a provision of this Constitution, except that specifying the time for deposit of proxies with the Foundation, which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

Replaceable rules

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

24. Definitions

24.1 In this Constitution, unless the context requires otherwise:

(a) **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012*;

(b) **ACNC Governance Standards** means the governance standards prescribed by Division 45 of the *Australian Charities and Not-for-profits Commission Regulation 2013*;

(c) **ACNC Registered Entity** means an entity which is registered with the Australian Charities and Not-for-profits Commission pursuant to the ACNC Act;

(d) **Act** means the *Corporations Act 2001*;

(e) **Advisory Group** means any group established by the Board under clause 13. At the date of the adoption of this Constitution the Advisory Groups are the Client Advisory Groups, the Area Advisory Groups and the National Chairs Advisory Group, which are operated in accordance with the relevant By-Laws;

(f) **AGM** means the annual general meeting of the Foundation's Members;

(g) **Appointed Director** means a Director appointed to the Board in accordance with clause 7.9;

(h) **Board** means the Board of Directors of the Foundation;

(i) **By-Laws** means by-laws made or adopted under clause 16;

(j) **CEO** means the chief executive of the Foundation, appointed under clause 15.1;

(k) **Chair** means the chair of the Board, elected from time to time under clause 8.1;

(l) **Chair** means the person entitled to preside as chair at a particular:

(i) Board meeting, as determined under clauses 8.6 and 8.7; or

(ii) general meeting, as determined under clauses 5.19 to 5.21;

(m) **Commissioner** means the Commissioner of the *Australian Charities and Not-for-profits Commission* as established by the ACNC Act;

(n) **Committee** means a committee appointed by the Board under clause 12.1;

(o) **Corporate Member** means an organisation which was a member of the Foundation prior to the adoption of this Constitution;

(p) **Deputy Chair** means the deputy chair of the Board, if any, elected from time to time under clause 8.2;

(q) **Director** means a person appointed or elected in accordance with this Constitution to perform the duties of a director of the Foundation;

(r) **Elected Director** means a director appointed to the Board in accordance with clause 7.7;

(s) **Foundation** means Endeavour Foundation Limited ACN 009 670 704;

(t) **Honorary Life Member** means a person who was an honorary life member of the Foundation prior to this Constitution being adopted;

(u) **Initial Member** means a person who was a member of the Foundation immediately prior to this Constitution being adopted;

(v) **Life Member** means a person who was a life member of the Foundation immediately prior to this Constitution being adopted;

(w) **Member** means a person who, at the relevant time, is a member of the Foundation in accordance with this Constitution;

(x) **Officer** means an officer as defined by section 9 of the Act;

(y) **Register** means the register of Members kept by the Foundation under the Act;

(z) **Seal** means the common seal of the Foundation (if any);

(aa) **Secretary** means the person or persons appointed as secretary of the Foundation under clause 14.1; and

(bb) **Voice** means the expression of opinions, preferences, and feedback by clients whether communicated verbally or non-verbally and encompasses all forms of communication. It includes communication through spoken language, written messages, body language, facial expressions, gestures, or other non-verbal cues.