

# **CONSTITUTION OF MSBASE FOUNDATION LIMITED**

Australian Company Number (ACN) 109 714 310

Australian Business Number (ABN) 23 109 714 310

A company limited by guarantee

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# **CONSTITUTION OF MSBASE FOUNDATION LIMITED**

A COMPANY LIMITED BY GUARANTEE

## **1. Preliminary**

### **1.1. Company name**

The name of the company is MSBase Foundation Limited.

### **1.2. Charitable institution**

The Foundation is a not-for-profit public company limited by guarantee which is established to be and must remain a charitable institution for the purposes of item 1.1.6 of Section 30-20 of the *Income Tax Assessment Act 1997* (Cth).

### **1.3. Limited liability of Members**

The liability of Members is limited to the amount of the guarantee in clause 1.4.

### **1.4. The guarantee**

Each Member must contribute an amount not more than \$1 (the guarantee) to the property of the Foundation if the Foundation is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:

- (a) debts and liabilities of the Foundation incurred before the Member stopped being a Member; or
- (b) costs of winding up.

## **2. Charitable Purposes and Powers**

### **2.1. Object of the Foundation**

The objects of the Foundation are to:

- (a) promote the prevention and/or the control of diseases in human beings including, without limitation, the disease of multiple sclerosis, and other neuroimmunological diseases;
- (b) create, maintain and provide information technology to facilitate research into such prevention and/or control including, without limitation, tracking and evaluating outcomes data;
- (c) facilitate and at the behest of the SLG conduct research using the information technology mentioned in paragraph (b);

- (d) raise funds for the objects referred to in this clause 2.1; and
- (e) any other objects consistent with the object specified in clause 2.1(a) which are determined by the Foundation from time to time.

## **2.2. Powers of the Foundation**

Subject to clause 2.3, the Foundation has the following powers, which may only be used to carry out its purpose(s) set out in clause 2.1:

- (a) the powers of an individual; and
- (b) all the powers of a company limited by guarantee under the Law.

## **2.3. Not-for-profit**

- (a) The Foundation must not distribute any income or assets directly or indirectly to its Members or Directors, except as provided in clause 2.3(b) and 16.2.
- (b) Clause 2.3(a) does not stop the Foundation from doing the following things, provided they are done in good faith:
  - (i) paying a Member or Director for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Foundation; or
  - (ii) making a payment to a Member or Director in carrying out the Foundation's charitable purpose(s).

# **3. Members**

## **3.1. Register of Members**

- (a) The Foundation must establish and maintain a register of Members. The register of Members must be kept by the Secretary and must contain:
  - (i) for each current Member:
    - (A) name;
    - (B) address;
    - (C) any alternative address nominated by the Member for the service of notices; and
    - (D) date the Member was entered on to the register.
  - (ii) for each person who stopped being a Member in the last 7 years:
    - (A) name;
    - (B) address;
    - (C) any alternative address nominated by the Member for the service of notices; and
    - (D) dates the Membership started and ended.

- (b) The Foundation must give current Members access to the register of Members.
- (c) Information that is accessed from the register of Members must only be used in a manner relevant to the interests or rights of Members.

### **3.2. Who can be a Member**

- (a) A person who supports the purposes of the Foundation is eligible to apply to be a Member of the Foundation under clause 3.3.
- (b) In this clause, 'person' means a natural person.

### **3.3. How to apply to become a Member**

Provided that the person has been invited to apply for Membership by a Director, a person (as defined in clause 3.2(b)) may apply to become a Member of the Foundation by writing to the Secretary stating that they:

- (a) want to become a Member;
- (b) support the purpose(s) of the Foundation; and
- (c) agree to comply with the Foundation's Constitution, including paying the guarantee under clause 1.4 if required.

### **3.4. Directors decide whether to approve Membership**

- (a) The Directors must consider an application for Membership within a reasonable time after the Secretary receives the application.
- (b) If the Directors approve an application, the Secretary must as soon as possible:
  - (i) enter the new Member on the Register; and
  - (ii) write to the applicant to tell them that their application was approved, and the date that their Membership started (see clause 3.5).
- (c) If the Directors reject an application, the Secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- (d) For the avoidance of doubt, the Directors may approve an application even if the application does not state the matters listed in clauses 3.3(a), 3.3(b) or 3.3(c). In that case, by applying to be a Member, the applicant agrees to those three matters.

### **3.5. When a person becomes a Member**

An applicant will become a Member when they are entered on the Register.

### **3.6. Cessation of Membership**

Subject to the provisions of the Law, a Member shall cease being a Member:

- (a) if the Member fails to comply with any provision of this Constitution or any by-law of the Foundation and does not remedy such failure within a reasonable period of receiving notice from the Board to do so;

- (b) if the Member resigns their Membership by notice in writing to the Foundation;
- (c) if the Member becomes bankrupt or makes an arrangement or composition with his or her creditors;
- (d) if the Member 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;
- (e) if the Member dies;
- (f) if the Board recommends to the Members that a particular Member should cease to be a Member and the Members resolve by simple majority that the relevant Member should cease to be a Member; or
- (g) have not responded within three months to a written request from the Secretary that they confirm in writing that they want to remain a Member.

## **4. Foundation Code of Funding and Grants**

The Foundation may establish a Code of Funding (Code) to govern the relationships between funders and the Foundation. Amongst other things, the Code may include the following matters:

- (a) all funding must be honest, truthful, legal and in the best interests of the Foundation;
- (b) the terms, conditions and conduct of the funding must be based upon principles of fairness and good faith between all parties to the funding;
- (c) all funders are required to respect the autonomy and self-determination of the Foundation in the management of its own activities and operations, including, without limitation, respect for the creative, scientific and intellectual freedom of the Foundation;
- (d) all funders must take particular care to safeguard the identity, dignity and reputation of the Foundation;
- (e) the Foundation must not enter into any dealings or arrangements for endorsement of a particular product, service or service provider as part of a funding arrangement; and
- (f) all funding contracts, arrangements or undertakings with the Foundation must be specified in a written agreement between the Foundation and the relevant funder which specifies the rights and obligations of each party.

## **5. Directors**

### **5.1. Number of Directors**

The Foundation may, by special resolution of the Members, alter the number of Directors provided that after such alteration the number of Directors is no less than 3 or the minimum number required by Law if greater than 3.



## **5.2. Election, appointment and term of Directors**

Apart from the appointment of Directors upon the incorporation of the Foundation and Directors appointed under clause 5.4, Directors shall be elected at the Annual General Meeting of the Foundation in each year and shall hold office until the second anniversary of the Annual General Meeting at which they were elected, when they shall retire from office but shall be eligible for re-election.

## **5.3. Election of Chairperson**

The Directors must elect a Director as the Foundation's elected Chairperson.

## **5.4. Ability to fill casual vacancies of Directors**

The Board shall have the power at any time and may from time to time to appoint any person as a Director either to fill a casual vacancy or as an addition to the existing office-bearers or other. Any Director so appointed shall hold office until the commencement of the next Annual General Meeting and shall be eligible for re-election.

## **5.5. Vacation of office**

A Director stops being a Director if he or she:

- (a) becomes bankrupt or makes an arrangement or composition with his or her creditors;
- (b) is disqualified from acting as a Director as a consequence of any provision of the Act;
- (c) 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;
- (d) dies;
- (e) gives written notice of resignation as a Director to the Foundation; or
- (f) is absent for more than 6 months without permission from the Board, from meetings of the Board held during that period.

# **6. Powers of the Board**

## **6.1. Powers of the Board**

Subject to the Law and to any other provision in this Constitution, the Board have all powers of direction and management of the Foundation except to the extent required under the Law and this Constitution.

## **6.2. Management of the Foundation**

- (a) Subject to the Law and any other provision of this Constitution, the control, management and conduct of the Foundation shall be managed by the Board, who may pay all expenses incurred in the day-to-day administration and operations of the Foundation out of the Donations (or any other income) received by the Foundation.
- (b) Subject to the Law and to any other provision of this Constitution the investment of the Foundation's funds shall be managed by the Board.

### **6.3. Appointment of staff**

The Board may engage all such officers and employees as it may consider necessary, regulate their duties and fix their salaries.

### **6.4. Delegations of Directors' powers**

- (a) The Directors may delegate any of their powers and functions to a committee, a Director, an employee of the Foundation (such as a Chief Operating Officer, Operations Manager, Finance Manager) or any other person, as they consider appropriate.
- (b) The delegations issued under this clause 6.4 must be recorded in the Foundation's minute book.

### **6.5. Payments to Directors**

- (a) The Foundation must not pay fees to a Director for acting as a Director.
- (b) The Foundation may:
  - (i) pay a Director for work they do for the Foundation, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
  - (ii) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Foundation. All payments made to the Directors must be approved by the Board.

### **6.6. Execution of documents**

The Foundation may execute a document without using a common seal if the document is signed by:

- (a) two Directors of the Foundation; or
- (b) a Director and the Secretary.

## **7. Duties of the Board**

### **7.1. Duties of the Board**

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

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the 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 2.1;
- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;

- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 7.2;
- (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.

## **7.2. Conflicts of interest**

- (a) A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):
  - (i) to the other Directors; or
  - (ii) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.
- (b) The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- (c) Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution) must not, except as provided under clauses 7.2(d):
  - (i) be present at the meeting while the matter is being discussed; or
  - (ii) vote on the matter.
- (d) A Director may still be present and vote if:
  - (i) their interest arises because they are a Member of the Foundation, and the other Members have the same interest;
  - (ii) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Foundation (see clause 15.3);
  - (iii) their interest relates to a payment by the Foundation under clause 15.2 (indemnity), or any contract relating to an indemnity that is allowed under the Law;
  - (iv) the Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter; or
  - (v) the Directors who do not have a material personal interest in the matter pass a resolution that:
    - (A) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Foundation; and
    - (B) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

## **8. Proceedings of the Board**

### **8.1. When the Directors meet**

- (a) The Board must meet at least 2 times in each calendar year.
- (b) The Board may meet together for the dispatch of business adjourned and otherwise regulate their meetings as they think fit.

### **8.2. Calling Board meetings**

- (a) Any Director may at any time on 14 days written notice to the other Directors summon a meeting of the Board.
- (b) A Director may give notice in writing or by any other means of communication that has previously been agreed to by all of the Directors.

### **8.3. Chairperson for Board meetings**

- (a) The elected Chairperson is entitled to chair Directors' meetings.
- (b) If at any meeting the Chairperson is not present within 15 minutes after the time appointed for holding the meeting, the Directors present shall choose one of themselves to be Chairperson of the meeting.

### **8.4. Quorum at Board meetings**

- (a) The quorum necessary for transacting the business of the Board shall be 3 or such greater number as may be fixed from time to time by the Board, and decision recorded in the minutes.
- (b) A quorum must be present for the whole Directors' meeting.
- (c) If there are not sufficient Directors to constitute a quorum at a meeting of the Board because of a vacancy or vacancies in the office of a Director or in the offices of the Board, then the remaining Directors may act but only for the purpose of:
  - (i) increasing the number of Directors to a sufficient number to constitute a quorum;
  - (ii) convening a General Meeting of the Foundation.
- (d) If there are not sufficient Directors to constitute a quorum at a meeting of the Board for reasons other than those contemplated in clause 8.4(c) then:
  - (i) the meeting shall be adjourned for no more than 14 days and shall take place at the same time and place as the adjourned meeting; and
  - (ii) the quorum necessary for transacting the business of the Board at this further meeting shall be 1.

### **8.5. Using technology to hold Board meetings**

- (a) The Directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors.

- (b) The Directors' agreement may be a standing (ongoing) one.
- (c) A Director may only withdraw their consent within a reasonable period before the meeting.

## **8.6. Passing Directors' resolutions**

- (a) A Directors' resolution must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution and determination by a majority of the Board shall for all purposes be deemed a determination of the Board.
- (b) In the case of an equality of votes the Chairperson will have a second or casting vote.
- (c) A resolution in writing signed by all the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Directors.

## **8.7. Circular resolutions of Directors**

- (a) The Directors may pass a circular resolution without a Directors' meeting being held.
- (b) A circular resolution is passed if all the Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 8.7(c) or clause 8.7(d).
- (c) Each Director may sign:
  - (i) a single document setting out the resolution and containing a statement that they agree to the resolution, or
  - (ii) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- (d) The Foundation may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- (e) A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clause 8.7(c) or clause 8.7(d).

## **8.8. Appointment and role of Secretary**

- (a) The Foundation must have at least one Secretary, who may also be a Director.
- (b) A Secretary must be appointed by the Directors (after giving the Foundation their signed consent to act as Secretary of the Foundation) and may be removed by the Directors.

# **9. MSBase SLG(s)**

## **9.1. Creation of SLG(s)**

In order to assist in the promotion of the Foundation's objects, the Foundation may create one or more Scientific Leadership Group(s) to:

- (a) provide scientific assistance to the Foundation with respect to the Foundation's database and website;
- (b) make recommendations to the Foundation with respect to financing of projects;
- (c) act as custodian of the data on the Foundation's database(s); and
- (d) become a self-constituting entity, subject to the Project Regulations, Participation Agreement and any other requirements of the Foundation,

together with such other matters as the Foundation determines from time to time.

## **9.2. Operations of SLG(s)**

Any SLG created by the Foundation will operate in such a manner and otherwise perform the functions required by the Foundation from time to time.

## **9.3. Project Regulations**

The operation of any SLG will be governed by the Project Regulations, Participation Agreement and any other regulations or requirements of the Foundation from time to time.

# **10. General Meetings of Members**

## **10.1. General Meetings called by Directors**

- (a) The Directors may call a General Meeting.
- (b) If Members with at least 50% of the votes that may be cast at a General Meeting make a written request to the Foundation for a General Meeting to be held, the Directors must:
  - (i) within 21 days of the Members' request, give all Members notice of a General Meeting, and
  - (ii) hold the General Meeting within 2 months of the Members' request.
- (c) The percentage of votes that Members have (in clause 10.1(b)) is to be worked out as at midnight Eastern Australian Time before the Members request the meeting.
- (d) The Members who make the request for a General Meeting must:
  - (i) state in the request any resolution to be proposed at the meeting
  - (ii) sign the request, and
  - (iii) give the request to the Foundation.
- (e) Separate copies of a document setting out the request may be signed by Members if the wording of the request is the same in each copy.

## **10.2. General Meetings called by Members**

- (a) If the Directors do not call the meeting within 21 days of being requested under clause 10.1(b), 50% or more of the Members who made the request may call and arrange to hold a General Meeting.

- (b) To call and hold a meeting under 10.2(a) the Members must:
  - (i) as far as possible, follow the procedures for General Meetings set out in this Constitution;
  - (ii) call the meeting using the list of Members on the Register, which the Foundation must provide to the Members making the request at no cost; and
  - (iii) hold the General Meeting within three months after the request was given to the Foundation.
- (c) The Foundation must pay the Members who request the General Meeting any reasonable expenses they incur because the Directors did not call and hold the meeting.

### **10.3. Annual General Meeting**

- (a) Annual General Meetings shall be held at least once in every calendar year in accordance with the provisions of the Law at such time and place as the Board may determine.
- (b) The Board may whenever they think fit, convene a General Meeting and General Meetings shall be convened on such requisition or in default may be convened by such requisitions as are provided by the Law.

### **10.4. Notice of General Meetings**

Notice of a General Meeting must:

- (a) be given to each Member entitled to vote at the meeting using the list of Members on the Register, and each Director;
- (b) specify the place, the day and the hour of meeting;
- (c) in case of special business, the general nature of that business shall be given to the Members of the Foundation; and
- (d) unless the Members consent to shorter notice in accordance with the Law, 21 days written notice must be given of a General Meeting of the Members.

### **10.5. Proceedings at General Meetings**

The business of an Annual General Meeting may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, Board reports and auditors' reports;
- (b) the election of the Board;
- (c) if required, to consider and if thought fit, to appoint auditors;
- (d) if required, to consider and if thought fit, to fix the auditors' remuneration; and
- (e) the transaction of any other business which under this Constitution ought to be transacted at an Annual General Meeting.

## **10.6. Quorum at General Meetings**

- (a) No business shall be transacted at any General Meeting unless a quorum of at least 3 Members is present at the time when the meeting proceeds to business.
- (b) If at any meeting of Members, the Chairperson is not present within 15 minutes after the time appointed for holding the meeting, the Members present shall choose one of themselves to be Chairperson of the meeting.
- (c) If there are not sufficient Members to constitute a quorum at a meeting of Members, then the meeting shall be adjourned for up to 14 days and will commence at the same time and be held in the same place as the adjourned meeting.
- (d) Whoever is present at that further meeting within 15 minutes after the time appointed for holding the meeting will constitute a quorum.

## **10.7. Auditor's right to attend meetings**

- (a) The auditor is entitled to attend any General Meeting and to be heard by the Members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- (b) The Foundation must give the auditor (if any) any communications relating to the General Meeting that a Member of the Foundation is entitled to receive.

## **10.8. Representation at General Meetings**

Subject to this Constitution, each Member entitled to vote at a meeting of Members may vote:

- (a) in person; or
- (b) by not more than 1 proxy

## **10.9. Using technology to hold meetings**

- (a) The Foundation may hold a General Meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.
- (b) Anyone using this technology is taken to be present in person at the meeting.

## **10.10. Chairperson for General Meetings**

- (a) The elected Chairperson shall preside as Chairperson at General Meetings of the Foundation.
- (b) The Members present and are entitled to vote at a General Meeting may choose a Director or Member to be the Chairperson for that meeting if:
  - (i) there is no elected Chairperson; or
  - (ii) the elected Chairperson is not present within 15 minutes after the starting time set for the meeting; or



- (iii) the elected Chairperson is present but says they do not wish to act as Chairperson of the meeting.
- (c) The Chairperson 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.

#### **10.11. Adjournment of meetings**

- (a) If a quorum is present, a General Meeting must be adjourned if a majority of Members present direct the Chairperson to adjourn it.
- (b) Only unfinished business may be dealt with at a meeting resumed after an adjournment.

#### **10.12. Voting at General Meetings**

Subject to the Law and this Constitution, at a General Meeting:

- (a) on a show of hands, every Member present and entitled to vote has one vote; and
- (b) on a vote in writing every Member present has one vote.

#### **10.13. Challenge to Member's right to vote**

- (a) A Member or the Chairperson may only challenge a person's right to vote at a General Meeting at that meeting.
- (b) If a challenge is made under clause 10.13(a), the Chairperson must decide whether or not the person may vote. The Chairperson's decision is final.

#### **10.14. How voting is carried out**

A resolution put to the vote of a General Meeting must be decided by a roll call on a show of hands unless a vote in writing is demanded by 2 or more Members before or immediately after a vote is taken.

#### **10.15. Procedure for votes in writing**

- (a) A vote in writing may be demanded on any resolution.
- (b) If a vote in writing is duly demanded at a General Meeting, it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairperson of the meeting directs, and the result of the vote in writing will be the resolution of the meeting at which the vote in writing was demanded.
- (c) A vote in writing demanded at a General Meeting on the election of a Chairperson of the meeting or on a question of adjournment must be taken immediately.

#### **10.16. Chairperson's casting vote**

In the case of equality of votes whether on a show of hands or on a vote in writing the Chairperson of the meeting at which the show of hands takes place or at which the vote in writing is demanded shall be entitled to a second or casting vote.

### **10.17. Appointment of proxy**

- (a) A Member who is entitled to attend and cast a vote at a meeting of the Members may appoint a proxy to attend and vote at the meeting on their behalf at the meeting.
- (b) An appointment of a proxy is valid if it is signed by the Member making the appointment and must contain the proxy's name and the meeting(s) at which the appointment may be used.
- (c) A proxy appointment may specify the way the proxy must vote on a particular resolution.

### **10.18. Voting by proxy**

- (a) A proxy appointed to attend and vote for a Member has the same rights as the Member to:
  - (i) speak at the meeting;
  - (ii) vote (but only to the extent allowed by the appointment); and
  - (iii) join in a demand for a vote in writing.
- (b) When a vote in writing is held, a proxy:
  - (i) does not need to vote, unless the proxy appointment specifies the way they must vote;
  - (ii) if the way they must vote is specified on the proxy form, must vote that way; and
  - (iii) if the proxy is also a Member or holds more than one proxy, may cast the votes held in different ways.

### **10.19. Members' resolutions and statements**

Members may give:

- (a) written notice to the Foundation of a resolution they propose to move at a General Meeting (Members' resolution); and/or
- (b) written request to the Foundation that the Foundation give all of its Members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (Members' statement).

### **10.20. Circular resolutions of Members**

- (a) Subject to clause 10.20(b) the Directors may put a resolution to the Members to pass a resolution without a General Meeting being held (a circular resolution).
- (b) Circular resolutions of Members cannot be used:
  - (i) for a resolution to remove an auditor;
  - (ii) for passing a special resolution; or
  - (iii) where the Law requires a meeting to be held.

- (c) A circular resolution is passed if all the Members entitled to vote on the resolution sign or agree to the circular resolution.
- (d) Members sign the circular resolution, and containing a statement that they agree to the resolution.
- (e) The Foundation may send a circular resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## **11. Minutes and Records**

- (a) The Board must, within one month after the relevant meeting is held, make and keep the following records:
  - (i) minutes of proceedings and resolutions of General Meetings;
  - (ii) minutes of proceedings and resolutions of meetings of the Directors' meetings (including meetings of any committees);
  - (iii) minutes of circular resolutions of Members or Directors; and
  - (iv) a copy of a notice of each General Meeting.
- (b) The Directors must ensure that minutes of a General Meeting or a Directors' meeting are signed within a reasonable time after the meeting by the Chairperson of the meeting or by the Chairperson of the next succeeding meeting.

## **12. Accounts and Finances**

### **12.1. Financial year**

The annual accounting year of the Foundation shall end on 30 June each year.

### **12.2. Donations**

- (a) The Foundation is entitled to receive Donations from Members or non-Members.
- (b) The Foundation is entitled to accept or reject any Donation, whether in the form of money or otherwise, from any person, whether a Member or not, in its absolute discretion without giving any reasons for doing so.
- (c) The Foundation will not accept any Donations which are conditional upon the admission of any particular Member or appointment of any particular Director.
- (d) The Foundation is entitled to use any Donation for any or all of its objects unless otherwise agreed with the relevant donor.

### **12.3. Gift Fund**

The Board must establish and maintain a separate Gift Fund for the receipt and distribution of Gifts received by the Foundation. All Gifts in the Gift Fund are to be used for the objects

specified in clause 2.1. The Gift Fund must at all times (including upon winding up) comply with the requirements of Subdivision 30-BA of the *Income Tax Assessment Act 1997* (Cth).

#### **12.4. Financial and related records**

- (a) The Board shall make and keep written financial records that:
  - (i) cause proper accounts to be kept with respect to all sums of money received and expended by the Foundation and the manner in respect of which the receipt and expenditure takes place and the assets and liabilities of the Foundation; and
  - (ii) cause to be prepared a Balance Sheet and a Statement of Income and Expenditure drawn up for the 12 months ending on 30 June each year.
- (b) The accounts shall be subject to audit and a duly audited copy of the Balance Sheet and Statement of Income and Expenditure shall be furnished to all Members and the Board not less than 21 days prior to the date for the Annual General Meeting at which the annual accounts are to be presented. A copy shall also be provided to the Chairperson of the Board of the Foundation.
- (c) The accounts shall be kept at the office of the Foundation or at such other place or places as the Board decide from time to time and shall be open for inspection during normal business hours by any Director.

#### **12.5. Auditor**

A qualified auditor shall be appointed, and their duties regulated in accordance with the Law.

### **13. By-Laws**

- (a) The Directors may pass a resolution to make by-laws to give effect to this Constitution.
- (b) Members and Directors must comply with by-laws as if they were part of this Constitution.

### **14. Notices**

#### **14.1. Notices in writing**

Anything written to or from the Foundation under any clause in this Constitution is written notice and any reference in this Constitution to a notice in writing includes a notice given by fax transmission, electronic transmission or any other form of written communication.

#### **14.2. Notices by the Foundation to Members**

- (a) A notice may be given by the Foundation to a Member:
  - (i) by serving it personally;
  - (ii) by posting it to, or leaving it at the Member's address as shown in the Register or such other address (if any) nominated by the Member;

- (iii) by fax transmission to such fax number, as the Member has supplied to the Foundation for the giving of notices;
  - (iv) by electronic transmission to such electronic address, as the Member has supplied to the Foundation for the giving of notices; or
  - (v) if agreed to by the Member, by notifying the Member at an email or other electronic address nominated by the Member, that the notice is available at a specified place or address (including an electronic address).
- (b) If the Foundation does not have an address for the Member, the Foundation is not required to give notice in person.

### **14.3. Notices by Members or Directors to the Foundation**

Subject to this Constitution, a notice may be given by a Member or Director to the Foundation by:

- (a) delivering it to the Foundation at the registered office of the Foundation;
- (b) posting it to the Foundation's registered office or to another address chosen by the Foundation for notice to be provided;
- (c) sending it to an email address or other electronic address notified by the Foundation to the Members as the Foundation's email address or other electronic address; or
- (d) sending it to the fax number notified by the Foundation to the Members as the Foundation's fax number.

### **14.4. Time of service**

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the fifth day after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 14.2(a)(v) is taken to be given on the business day after the notification that the notice is available is sent.

## **15. Protection of Directors and Officers**

### **15.1. Persons to whom this clause applies**

This clause 15 applies:

- (a) to each Director and any company Secretary; and
- (b) to such other officers and employees of the Foundation as the Board determines, referred to in this clause 15 as an "Indemnified Person".

## 15.2. Indemnity

- (a) Each Indemnified Person is entitled to be indemnified out of the assets of the Foundation against:
  - (i) subject to clause 15.5 all losses or liabilities incurred in relation to the execution of the Indemnified Person's duties as a Director, company secretary, officer or employee of the Foundation;
  - (ii) any liability incurred by the Indemnified Person in that capacity:
    - (A) in defending any proceedings or in anticipation of defending any proceedings, whether civil or criminal, which are settled, discontinued or in which judgement is given in the Indemnified Person's favour or in which the Indemnified Person is acquitted;
    - (B) in connection with any administrative proceedings relating to that person's position with the Foundation, except proceedings which give rise to civil or criminal proceedings against that person:
      - (1) in which judgment is not given in that person's favour; or
      - (2) in which that person is not acquitted; or
      - (3) which arise out of conduct involving a lack of good faith; or
      - (4) where the officer is subject to a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the Law;
    - (C) in connection with any application in relation to any proceedings relating to that person's position with the Foundation whether civil or criminal, in which relief is granted to that person under the Law by the court; and
    - (D) in connection with any application under the Law in which relief is granted to him or her by the court in respect of any negligence, default, breach of duty or breach of trust.
- (b) With regard to GST:
  - (i) the amount of any indemnity payable under this clause 15.2 will include an amount (GST Amount) equal to any GST payable by the Indemnified Person;
  - (ii) payment of the GST Amount of any indemnity is conditional upon the Indemnified Person providing to the Foundation a copy of the tax invoice for the GST Amount issued to the Indemnified Person; and
  - (iii) in this clause 15.2, "GST" refers to the Goods and Services Tax under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the terms used in this clause 15.2(b) have the same meaning as in that Act.

## 15.3. Insurance

The Foundation may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Law) and this Constitution.

#### **15.4. Directors' access to documents**

- (a) A Director has a right of access to the financial records of the Foundation at all reasonable times.
- (b) If the Directors agree, the Foundation must give a Director or former Director access to:
  - (i) certain documents, including documents provided for or available to the Directors; and
  - (ii) any other documents referred to in those documents.

#### **15.5. Breach of duty**

Nothing in this Constitution exempts any Indemnified Person from, or indemnifies any Indemnified Person against, any liability in respect of which an exemption or indemnity cannot be validly granted (including, without limitation, by reason of the Law) or adversely affects the Foundation's capacity or power to take action in respect of any such liability.

### **16. Winding Up**

#### **16.1. Surplus assets not to be distributed to Members**

If the Foundation is wound up, any surplus assets must not be distributed to a Member or a former Member of the Foundation, unless that Member or former Member is a charity described in clause 16.2.

#### **16.2. Distribution of surplus assets**

- (a) Subject to the Law and any other applicable Act, and any court order, any surplus assets that remain after the Foundation is wound up must be distributed to one or more charities:
  - (i) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 2.1; and
  - (ii) which also prohibit the distribution of any surplus assets to its Members to at least the same extent as the Foundation.
- (b) The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of Members at or before the time of winding up. If the Members do not make this decision, the Foundation may apply to the Supreme Court to make this decision.

### **17. Adoption and Amendment of Constitution**

#### **17.1. Process for amending or repealing the Constitution**

- (a) The Board will review this Constitution periodically to ensure it remains consistent with the Board's objectives and responsibilities.

- (b) The Members may amend or repeal this Constitution, or a provision of this Constitution, by special resolution passed at either an Annual General Meeting or at an Extraordinary General Meeting.
- (c) The Members must not pass a special resolution that amends the Constitution if passing it causes the Foundation to no longer be a charity.
- (d) A notice of the proposed alterations must be provided by written communication to every Member at least 21 days prior to the date of the meeting.
- (e) A special resolution amending, adopting or repealing this Constitution takes effect:
  - (i) if no later date is specified in the resolution, then on the date on which the resolution is passed; or
  - (ii) on a later date specified in, or determined in accordance with, the resolution.

## 17.2. Reading this Constitution with the Corporations Act

- (a) Each of the provisions of the sections or sub-sections of the Act which would but for this clause apply to the Foundation as a replaceable rule, are displaced and do not apply to the Foundation.
- (b) While the Foundation is a registered charity, the ACNC Act and the Corporations Act override any clauses in this Constitution which are inconsistent with those Acts.
- (c) If the Foundation is not a registered charity (even if it remains a charity), the Corporations Act overrides any clause in this Constitution which is inconsistent with that Act.
- (d) A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this Constitution.

# 18. Definitions and Interpretation

## 18.1. Definitions

In this Constitution:

**“Annual General Meeting”** means a meeting of Members held at least once each calendar year;

**“Board”** means the Board of Directors of the Foundation;

**“Chairperson”** means the chairperson of the Board as appointed by the Board from time to time;

**“Constitution”** means this constitution of the Foundation;

**“Director”** means a director of the Foundation;

**“Donation”** means a donation of cash or a donation of a tangible or intangible asset;

**“Foundation”** means MSBase Foundation Limited;



**“General Meeting”** means a meeting of Members convened in accordance with the Law and this Constitution;

**“Gift”** means a Donation or other gift which is tax deductible to the donor under Division 30 of the *Income Tax Assessment Act 1997* (Cth) and is to be included in the Gift Fund;

**“Gift Fund”** means the gift fund established under clause 12.3;

**“Law”** means the *Corporations Act 2001* (Cth);

**“Member”** means a person whose name is entered in the Register as a member of the Foundation;

**“Participation Agreement”** means any participation agreement determined from time to time by the Foundation;

**“Project Regulations”** means any project regulations to apply to the SLG which are adopted by the Foundation from time to time;

**“Register”** means the register of Members of the Foundation kept under the Law;

**“Secretary”** shall mean and include the Secretary and any assistant or acting Secretary and any other person for the time being appointed to perform whether alone or in addition to any other person or persons the duties of a Secretary of the Foundation;

**“Signature”** shall mean the impression of a mark by hand facsimile mechanical electronic or other means which is properly authorised by the person purported to have signed the document, and **“signed”** shall mean the result of a signature produced by any means defined above; and

**“SLG”** has the meaning given to that term in clause 9.

## **18.2. Interpretation**

In this Constitution:

- (a) the singular includes the plural and conversely;
- (b) a reference to legislation or to a provision of legislation includes a modification, re-enactment of or substitution for it and a regulation or statutory instrument issued under it;
- (c) unless stated otherwise, one word or provision does not limit the effect of another;
- (d) reference to the whole includes part;
- (e) a reference to a “clause” is a reference to a clause of this Constitution unless otherwise specified; and
- (f) words importing any gender includes the other genders.