

**CONSTITUTION**  
**SOUTH EASTERN MELBOURNE PRIMARY HEALTH NETWORK**  
**LTD**

**VERSION 7 – APPROVED: 23 NOVEMBER 2022**

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***Corporations Act 2001 (Cth)*****Public company limited by guarantee****South Eastern Melbourne Primary Health Network Ltd ACN 603 858 751****1 NATURE OF COMPANY AND LIABILITY****Nature of Company**

- 1.1 The Company is a public company limited by guarantee.

**Liability of Members and guarantee on winding up**

- 1.2 The liability of the Members is limited. Every Member undertakes to contribute \$30.00 to the assets of the Company if it is wound up while they are a Member, or within one year afterwards, for:
- 1.2.1 payment of the Company's debts and liabilities contracted before they ceased to be a Member; and
  - 1.2.2 costs and expenses of winding up.

**2 CHARITABLE PURPOSE AND OBJECTS****Charitable purpose**

- 2.1 The Company is established for the charitable purpose of advancement of health principally through promotion of the prevention or the control of diseases (including the Diseases) in human beings in order to foster and support a more person centred and seamless health system to improve health outcomes of our communities.

**Objects**

- 2.2 In pursuing its charitable purpose, the objects of the Company are to operate as a primary health network in the Region with a principal focus on prevention and control of diseases in human beings, including the Diseases, by:
- 2.2.1 seeking to facilitate the integration and coordination of primary health care services for patients in the Region so as to increase the efficiency and effectiveness of medical services for patients in the Region, improve the patient experience of care and achieve improved value in health care expenditure;
  - 2.2.2 translating national primary health policy and reform to ensure it is relevant to the local needs of the community and service system;
  - 2.2.3 delivering timely and relevant localised information to healthcare providers and communities;

- 2.2.4 acting as a capability builder to ensure primary care providers can access the best education, tools and resources;
- 2.2.5 commissioning health services for people to address health service gaps, better integrate healthcare and facilitate equal access to health services regardless of age, gender, culture or location;
- 2.2.6 being an ally to support and walk alongside people to encourage them to improve their lives and enable their own health in order to prevent or control diseases;
- 2.2.7 advocating for primary care as the foundation for a high-performing and sustainable health system and be an important contributor to the overall health system, therefore controlling or preventing diseases in human beings;
- 2.2.8 fostering strong partnerships and collaborations across local, state and federal governments – between primary health, community health, acute and specialist services, in pursuit of the Objects; and
- 2.2.9 doing all such things as are incidental or conducive to the attainment of all or any of the above.

#### **Powers under the Corporations Act**

- 2.3 The Company has the powers set out in the Corporations Act but only to do all things that are necessary, convenient or incidental to carry out the Objects.

### **3 MEMBERSHIP**

#### **Membership**

- 3.1 The Members of the Company are such persons as from time to time hold the office of Director.

#### **Rights of Members**

- 3.2 Unless this Constitution provides otherwise, all Members have the same rights. A Member has the right to receive notices of any general meeting, attend and be heard at any general meeting and vote at any general meeting.

#### **Membership not transferable**

- 3.3 A Member's rights, privileges and benefits of membership are personal to the Member and membership of the Company is not transferable.

#### **Directors as Members**

- 3.4 A person appointed as a Director shall be automatically admitted to the membership of the Company, subject to the person consenting in writing to such appointment and admission to the membership, and agreeing to be bound by this Constitution and to support the pursuit of the Objects of the Company.

**Register of Members**

- 3.5 A register of the Members of the Company must be kept in accordance with the Corporations Act.

**4 CESSATION OF MEMBERSHIP**

**Resignation**

- 4.1 A Member may resign from membership of the Company by giving written notice to the Secretary.
- 4.2 Without limiting clause 4.1, the resignation of a Member is deemed to take effect from the date of receipt of the notice of resignation or such later date as is provided in the notice.

**Cessation of membership**

- 4.3 A Member ceases to be a Member:
- 4.3.1 if the Member gives the Secretary written notice of resignation, on the date referred to in clause 4.2; or
- 4.3.2 immediately upon the Member ceasing to be a Director.

**5 INCOME AND PROPERTY OF THE COMPANY**

**Application of income and property**

- 5.1 The income and property of the Company will only be applied towards the promotion of the Objects.

**Transfer of income or property**

- 5.2 Subject to clause 5.1, the Company may not pay or transfer any income or property, directly or indirectly, to any Member.

**Payments, services and information**

- 5.3 Nothing in this clause 5 prevents the Company making a payment in good faith of reasonable and proper:
- 5.3.1 remuneration to any officers or employees of the Company for services actually rendered to the Company in the ordinary and usual course of business in accordance with clause 8.2;
- 5.3.2 payment of directors' fees in accordance with clause 8.1;

- 5.3.3 remuneration to any Member in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual course of business or otherwise on commercial arm's length terms;
- 5.3.4 interest on money borrowed from any Member for any of the purposes of the Company (provided the interest rate does not exceed the rate charged by the Company's bank on similar borrowings);
- 5.3.5 rent for premises let by any Member to the Company; or
- 5.3.6 reimbursement of expenses incurred by any Director on the Company's behalf with the consent of the Board in accordance with clause 8.3; or
- 5.3.7 payment relating to an indemnity in favour of the Director or a contract of insurance, as provided for in clause 13.

## **6 GENERAL MEETINGS**

### **General meetings**

- 6.1 All meetings of Members are called general meetings.

### **Convening of general meetings by Directors**

- 6.2 Any Director may convene a general meeting. Meeting may be convened as otherwise provided by the Corporations Act.

### **Quorum at general meetings**

- 6.3 The Members in general meeting may not transact any business unless a quorum of Members is present at the time when the meeting proceeds to business.
- 6.4 Except as otherwise set out in this Constitution, a quorum for the purposes of a general meeting is a majority of Members (rounded up to the nearest whole number) all of whom are entitled to vote at the meeting at the time.
- 6.5 If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the chairperson:
  - 6.5.1 If the meeting was convened by or on the requisition of Members, it must be dissolved.
  - 6.5.2 Otherwise, it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Board.
- 6.6 If a meeting has been adjourned to another time and place determined by the Board, not less than five business days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.



**Quorum at adjourned general meetings**

- 6.7 At the adjourned meeting, the quorum requirements in clause 6.4 apply, but if a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

**Chairing general meetings**

- 6.8 The Chair of the Board will chair every general meeting of the Company or:
- 6.8.1 if the Chair of the Board is absent or is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act, the Deputy Chair of the Board; or
  - 6.8.2 if the Deputy Chair of the Board is absent or is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act, the Members present shall elect one of their number to be the chairperson of the meeting.

**Chairperson's powers**

- 6.9 Subject to the terms of this Constitution regarding adjournment of meetings, the chairperson's ruling on all matters relating to the order of business, procedure and conduct of the general meeting is final and no motion of dissent from a ruling of the chairperson may be accepted.

**Adjournment of meetings**

- 6.10 The chairperson may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and to another place.
- 6.10.1 The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
  - 6.10.2 When a meeting is adjourned for 20 business days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
  - 6.10.3 Except when a meeting is adjourned for 20 business days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

**Voting on show of hands**

- 6.11 At a general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded before that vote is taken or before the result is declared or immediately after the result is declared.
- 6.12 If a poll is not duly demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the

Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

#### **Right of Members to appoint a proxy**

- 6.13 A Member who is entitled to attend and cast a vote at a meeting of Members may appoint a person who is a Member of the Company as proxy to attend and vote for the Member at the meeting.

#### **Voting rights of Members in general meetings**

- 6.14 On a show of hands every Member present in person or by proxy has one vote.
- 6.15 On a poll every Member present in person or by proxy has one vote.
- 6.16 Except where a Special Resolution of Members is required pursuant to this Constitution or subject to the Corporations Act, a resolution of the Members is carried if a majority of the votes cast on the resolution are in favour of the resolution.

#### **Vote of the chairperson at general meetings**

- 6.17 In a case of an equality of votes, whether on a show of hands or on a poll, the chairperson of a general meeting does not have a second or casting vote in addition to any votes he or she may have as a Member or as a proxy of a Member.

#### **Objections to voter qualification**

- 6.18 No objection may be raised to the eligibility of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- 6.19 An objection to the eligibility of a voter must be referred to the chairperson, whose decision is final.
- 6.20 A vote not disallowed according to an objection as provided in this Constitution is valid for all purposes.

#### **Mode of meeting for Members**

- 6.21 A general meeting may be called or held (including at one or more than one venue or at one or more than one venue and using virtual meeting technology or using virtual technology only) using any technology that gives the Members as a whole a reasonable opportunity to participate in the meeting. The Members may otherwise regulate their meetings as they think fit.

#### **Members' circular resolutions**

- 6.22 A resolution in writing signed by a majority of the total number of Members entitled to vote on the resolution is to be treated as a determination of the Members passed at a meeting of the Members duly convened and held.

**Form of resolution in writing**

- 6.23 A resolution in writing may consist of several documents in like form, each signed by one or more Members and if so signed it takes effect on the latest date on which a Member thereby constituting a majority of the total number of Members signs one of the documents.
- 6.24 In relation to a resolution in writing a document generated by electronic means or in electronic form which purports to be a resolution of Members is to be treated as a resolution in writing and a document bearing an electronic signature using electronic means is to be treated as signed.

**7 APPOINTMENT AND RETIREMENT OF DIRECTORS****Number of Directors**

- 7.1 The number of Directors must not be less than three (3) nor more than nine (9).

**Vacation of office**

- 7.2 The office of Director immediately becomes vacant if the Director:
- 7.2.1 ceases to be a Director by virtue of the Corporations Act.
  - 7.2.2 becomes bankrupt or an insolvent under administration.
  - 7.2.3 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 or is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs.
  - 7.2.4 is absent from at least three (3) consecutive Board meetings, or at least four (4) Board meetings over a consecutive period of 12 months, without the approval of the Board.
  - 7.2.5 becomes prohibited from holding office or continuing as a director by reason of an order made under the Corporations Act.
  - 7.2.6 has been:
    - (a) disqualified from being a Responsible Entity of a Registered Entity during the preceding 12 months; or
    - (b) suspended or removed as a Responsible Entity of a Registered Entity, under the ACNC Act.
  - 7.2.7 submits his or her resignation in writing to the Company as a Director or otherwise resigns as a Member under clause 4.1.

- 7.2.8 is removed by a resolution of the Members in accordance with section 203D of the Corporations Act.

**No power to appoint alternate**

- 7.3 No Director has the power to appoint a person to be an alternate Director in his or her place, and a Director must not at any time purport to do so.

**Composition of the Board**

- 7.4 The Directors shall be appointed by the Board from time to time.
- 7.5 In appointing Directors, the Board:
- 7.5.1 will seek to advertise, by appropriate means, impending vacancies on the Board and call for nominations for the office of Director from suitably qualified and experienced persons;
  - 7.5.2 will take into account any recommendation or advice as to suitable persons for nomination or appointment by any Board committee that may be established at the discretion of the Board to have responsibility for the matters referred to in clause 7.5.1;
  - 7.5.3 must have regard to the skills and experience of the Directors in any discipline, profession or field of knowledge, and to the personal attributes of the Directors, which may be beneficial to the Company; and
  - 7.5.4 will use best endeavours to ensure diversity of the Board, including but not limited to gender inclusion, in accordance with the Skills and Diversity matrix proposed by the Board from time to time.

**Term of office**

- 7.6 The term of office for Directors will be three (3) years from the date of the person's appointment, unless the person's term of office ceases earlier in accordance with clause 7.2, after which the person must retire from office.
- 7.7 A retiring Director is eligible for re-appointment for further terms, subject to a maximum tenure of twelve (12) years in office.

## 8 DIRECTORS' REMUNERATION

**Determination of fees**

- 8.1 The Directors' fees for their services (if any) will be determined from time to time by a resolution of the Board. Directors' fees accrue from day to day.

**Additional services rendered**

- 8.2 Any Director may be paid a fee, salary or hourly rate in return for any services actually rendered to the Company in a professional or technical capacity (other than within his or

her ordinary duties as a Director), provided that the Board has given its prior written approval to both the provision of the services and the proposed fee, salary or hourly rate.

#### **Payment for expenses**

- 8.3 Each Director may be reimbursed for out-of-pocket expenses reasonably and properly incurred by the Director in connection with Company business (including travel and accommodation expenses). Alternatively, the Company may pay such amounts on the Director's behalf.

### **9 POWERS OF THE BOARD**

- 9.1 Subject to the Corporations Act and this Constitution, the business of the Company is to be managed by or under the direction of the Directors. The Directors may exercise all those powers of the Company as are not, by the Corporations Act or by this Constitution (including those matters described in the Schedule to this Constitution), required to be exercised by the Members in general meeting or otherwise.

### **10 PROCEEDINGS OF DIRECTORS**

#### **Board meetings**

- 10.1 A Director may at any time, and a Secretary must on the requisition of a Director, convene a Board meeting.
- 10.2 A Board meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting by providing notice in writing to the Chair.
- 10.3 The Board may meet together for the dispatch of business and adjourn or otherwise regulate its meetings as it considers fit.

#### **Quorum at Board meetings**

- 10.4 Subject to clause 10.13, a quorum for the purposes of a Board meeting is a majority of the number of Directors holding office at the time (rounded up to the nearest whole number).
- 10.5 If the number of Directors is falls below the minimum number fixed in accordance with this Constitution, the continuing Director or Directors may act only to:
- 10.5.1 appoint additional Directors in accordance with clause 7.4 to bring the number to the prescribed minimum; or
  - 10.5.2 convene a general meeting of the Company.

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

- 10.6 The Board must determine any questions arising at a Board meeting by a majority of votes of Directors present and voting.

### **Appointment of Chair and Deputy Chair**

- 10.7 The Board will by resolution elect from among their number a Director to act as Chair and another Director to act as Deputy Chair. The terms of office of the Chair and Deputy Chair will be for the duration of the person's term as a Director.
- 10.8 The office of the Chair/Deputy Chair of the Board shall become and be vacant:
- 10.8.1 if the Chair/Deputy Chair of the Board ceases to be a Director;
  - 10.8.2 by the written resignation of the Chair/Deputy Chair of the Board from the office; or
  - 10.8.3 if the Chair/Deputy Chair is removed by a resolution of the Board.
- 10.9 Where the office of the Chair/Deputy Chair of the Board becomes vacant, a new Chair/Deputy Chair will be appointed in accordance with clause 10.7.

### **Chairing Board meetings**

- 10.10 The Chair will preside at Board meetings. If at any Board meeting the Chair is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act, the Deputy Chair will chair the meeting and if the Deputy Chair is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act, the Directors present must choose one of their number to chair that meeting.

### **Chairperson's vote at Board meetings**

- 10.11 In the case of an equality of votes at a Board meeting, the Chair (or other Director chairing the meeting in accordance with clause 10.10) does not have a second or casting vote in addition to his or her deliberative vote as a Director.

### **Conflicts of interest**

- 10.12 Guidelines for the identification and management of conflicts of interest for the Directors, are recorded in the Company's policies and procedures for the management of conflicts of interest, as amended from time to time.
- 10.13 The quorum for consideration at a Board meeting of a matter in which one or more Directors have a personal interest is three (3) Directors who are entitled to vote on any resolution that may be considered at the meeting in relation to that matter.

### **Exercise of rights**

- 10.14 If the Company 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 that the Board in its absolute discretion considers fit.

### **Delegation of powers**

- 10.15 The Board may delegate any of its powers to any person, as the Board in its absolute discretion sees fit. This includes delegating any of the Board's powers to committees

consisting of Directors or other persons. The Board may at any time revoke any delegation of power.

- 10.16 A delegate must conform to the directions of the Board in the exercise of any powers delegated to the delegate. The delegate's exercise of a power in accordance with this Constitution is to be treated as the exercise of that power by the Board.

#### **Board committees**

- 10.17 The Board may in its absolute discretion establish one or more committees to provide advice and recommendations to the Board on specified matters (among any other functions determined by the Board, which may, but need not, include the exercise of power delegated by the Board in accordance with clause 10.15).

- 10.18 The Board may, with respect to a committee:

10.18.1 Specify in writing from time to time the terms of reference and functions of the committee.

10.18.2 Appoint such persons as the Board considers appropriate to the committee (including, if thought fit, one or more Directors), and remove any such person from the committee at any time by written notice or otherwise in accordance with the terms of reference of that committee.

10.18.3 Specify the period and conditions (including as to remuneration, if any) from time to time of any such appointment to the committee.

10.18.4 Terminate the committee at any time.

#### **Proceedings of committees**

- 10.19 Except as provided in this Constitution or in a direction of the Board (including if applicable the terms of reference of the relevant committee), the meetings and proceedings of a committee formed by the Directors and/or other persons must be governed by the provisions of this Constitution, in so far as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the Board.

#### **Validity of acts of Directors etc**

- 10.20 All acts done by a Board meeting or of a committee of (or including) Directors 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 to be a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

#### **Minutes**

- 10.21 The Board must cause minutes of all proceedings of general meetings, of Board meetings and of subcommittees formed by the Directors to be entered, within one month after the relevant meeting is held, in books kept for the purpose.
- 10.22 Subject to the Corporations Act, the Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the chairperson of the

meeting at which the proceedings took place within a reasonable time after the meeting is held or by the chairperson of the next succeeding meeting by:

10.22.1 signing a physical form of the document by hand; or

10.22.2 signing an electronic form of the document using electronic means.

#### **Directors' circular resolution**

10.23 A resolution in writing signed by a majority of the total number of Directors entitled to vote on the resolution is to be treated as a determination of the Board passed at a Board meeting duly convened and held.

10.23.1 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 thereby constituting a majority of the total number of Directors.

10.23.2 In relation to a resolution in writing a document generated by electronic means or in electronic form which purports to be a resolution of Directors is to be treated as a resolution in writing and a document bearing an electronic signature using electronic means is to be treated as signed.

## **11 SECRETARY**

11.1 The Board may appoint one or more Secretaries and may at any time terminate the appointment or appointments.

11.2 The Board may determine the terms and conditions of appointment of a Secretary, including remuneration. Any one of the Secretaries may carry out any act or deed required by this Constitution, the Corporations Act or by any other statute to be carried out by the secretary of the Company.

## **12 CHIEF EXECUTIVE OFFICER**

### **Appointment**

12.1 The Board may from time to time appoint a person to the position of Chief Executive Officer for the period and on the terms (including as to remuneration and whether the position will be full-time or part-time) as the Board sees fit.

12.2 The Board may from time to time appoint another person to act temporarily as Chief Executive Officer if:

12.2.1 the Chief Executive Officer is absent from duty or is (in the Board's determination) incapable of acting as the Chief Executive Officer; or

12.2.2 the position of Chief Executive Officer is vacant.



### **Termination**

- 12.3 Subject to the law, the Board may terminate the appointment of the Chief Executive Officer. For the avoidance of doubt, the Company in general meeting has no power to terminate the appointment of the Chief Executive Officer or appoint a person to the position of Chief Executive Officer.
- 12.4 A person's appointment as Chief Executive Officer automatically terminates if he or she is appointed as a Director.

## **13 INDEMNITY AND INSURANCE**

### **Indemnity**

- 13.1 Every officer and past officer of the Company may be indemnified by the Company, to the fullest extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, against a liability incurred by that person as an officer of the Company or a subsidiary of the Company, including legal costs and expenses incurred in defending an action or in connection with or arising from any enquiry or investigation by an Authority or External Administrator involving that person as an officer of the Company. For the avoidance of doubt, the ways in which the Company may do so include by entering into an 'Indemnity, Insurance and Access Deed' (or similar contract) from time to time with one or more officers or past officers of the Company.

### **Insurance premiums**

- 13.2 The Company may pay the premium on a contract insuring a person who is or has been an officer of the Company to the fullest extent permitted by law and subject to the restrictions in section 199B of the Corporations Act. For the avoidance of doubt, the ways in which the Company may do so include by entering into an 'Indemnity, Insurance and Access Deed' (or similar contract) from time to time with one or more officers or past officers of the Company.

### **GST**

- 13.3 The amount of any indemnity payable under clauses 13.1 or 13.2 will include an additional amount (**GST amount**) equal to any GST payable by the Officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST amount.

## **14 EXECUTION OF DOCUMENTS**

- 14.1 The Company may execute a document in any manner permitted by the Corporations Act or at general law. A Director may execute or participate in the execution of a document by or on behalf of the Company in accordance with delegations authorised by the Board or as otherwise approved by the Board.

- 14.2 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed in accordance with delegations authorised by the Board or as otherwise approved by the Board.

## **15 DISTRIBUTION OF SURPLUS AND DGR CONTRIBUTIONS**

### **Distribution of surplus assets**

- 15.1 Subject always to clause 15.2, upon the winding up or dissolution of the Company any surplus remaining after satisfaction of all debts and liabilities will not be paid to or distributed among the Members, but will be given or transferred to some other charitable institution, body, entity or organisation operated in Australia:
- 15.1.1 having objects similar to the objects of the Company; and
  - 15.1.2 whose governing documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 5 of this Constitution,

such charitable institution, body, entity or organisation to be determined by ordinary resolution of the Members in general meeting at or before the time of winding up or dissolution of the Company and, in default of any such determination, by the Supreme Court of Victoria.

### **Distribution of DGR Contributions**

- 15.2 Upon the winding up of the Company or the revocation of the endorsement of the Company as a deductible gift recipient, whichever is earlier, any surplus comprising of DGR Contributions shall be transferred to a charitable institution, body, entity or organisation operated in Australia:
- 15.2.1 having objects similar to the objects to the Company;
  - 15.2.2 whose governing documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 5 of this Constitution; and
  - 15.2.3 to which income tax deductible gifts can be made,

such institution, body, entity or organisation to be determined by the Members at or before the winding up or the revocation of the endorsement of the Company as a deductible gift recipient and in default, by application to the Supreme Court of Victoria for determination.

## **16 ACCOUNTS, AUDIT AND RECORDS**

### **Accounts**

- 16.1 The Board must cause proper accounting and other records to be kept in accordance with the ACNC Act or as otherwise required by law.

### **Reports**

- 16.2 To the extent required by the ACNC Act or otherwise required by law, the Board must cause the Company to:

- 16.2.1 prepare financial reports;
- 16.2.2 prepare directors' reports;
- 16.2.3 notify each Member of the Member's right to receive reports from the Company; and
- 16.2.4 provide members with reports, in a form and within such timeframe, as required by the ACNC Act or otherwise required by law.

### **Appointment of Auditor**

- 16.3 A registered company auditor must be appointed by resolution of the Members. The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Corporations Act and ACNC Act. Subject to the requirements of the Corporations Act and the ACNC Act, the Company may remove an Auditor by resolution of the Members.

## **17 NOTICES**

### **Persons authorised to give notices**

- 17.1 A notice by either the Company or a Member in connection with this Constitution may be given on behalf of the Company or Member by a solicitor, director, company secretary or other authorised officer of the Company or Member in accordance with the Corporations Act.

### **Method of giving notices**

- 17.2 In addition to the method for giving notices permitted by the Corporations Act, a notice by the Company or a Member in connection with this Constitution may be given to the addressee by any of the following means:
- 17.2.1 By delivering it to a street address of the addressee.
  - 17.2.2 By sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the addressee.
  - 17.2.3 By sending it by email to the email address of the addressee.

**Addresses for giving notices to Members**

- 17.3 The street address or postal address of a Member is the street or postal address of the Member shown in the Register.
- 17.4 The email address of a Member is the email address which the Member may specify by written notice to the Company as the email address to which notices may be sent to the Member.

**Address for giving notices to the Company**

- 17.5 The street and postal address of the Company is the Office.
- 17.6 The email address of the Company is the email address which the Company may specify by written notice to the Members as the email address to which notices may be sent to the Company.

**Time notices are given**

- 17.7 A notice given in accordance with this Constitution is to be taken as given, served and received at the following times:
  - 17.7.1 If delivered in writing to the street address of the addressee, at the time of delivery.
  - 17.7.2 If it is sent by post to the street or postal address of the addressee, on the business day after posting.
  - 17.7.3 If sent by email to the email address of the addressee, at the time transmission is completed.

**Persons entitled to notice of meeting**

- 17.8 Notice of every general meeting must be given by a method authorised by this Constitution to all of the following persons:
  - 17.8.1 Every Member.
  - 17.8.2 Every Director.
  - 17.8.3 The auditor for the time being of the Company, if any.
- 17.9 No other person is entitled to receive notices of general meetings.

**18 AMENDMENT**

- 18.1 Subject to clause 18.2, any amendments to this Constitution must be made by Special Resolution of Members.

- 18.2 No amendment may be made to this Constitution which would prejudice the Company's registration as a charity with the ACNC, and any resolution or document purporting to make such an amendment shall be void and of no effect with respect to that amendment.

## 19 DEFINITIONS AND INTERPRETATION

### Definitions

- 19.1 In this constitution the following definitions apply:

**ACNC** means the Australian Charities and Not-for-profits Commission.

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and for the avoidance of doubt includes any 'governance standards' prescribed under any related regulations.

**Authority** means:

- a) a Royal Commission, Board of Inquiry, Parliamentary Committee or similar body;
- b) the Australian Securities & Investments Commission, the Australian Competition and Consumer Commission, ACNC and any other regulatory authority;
- c) a department of any Australian government or of any other jurisdiction;
- d) a public authority;
- e) an instrumentality, agent or appointee of the Crown in right of the Commonwealth, in right of a State or in right of a Territory or the equivalent of any of them in any other jurisdiction;
- f) any other body exercising statutory or prerogative power;
- g) a government, a governmental, semi-governmental or judicial person, authority, body or entity;
- h) a statutory corporation; or
- i) a person, authority, body or entity (whether autonomous or not) who is charged with the administration of law.

**Board** means Directors acting as the board of the Company.

**Chair** means the Director elected under clause 10.7 to preside as chairperson at Board meetings at the relevant time.

**Chief Executive Officer** has the meaning given in clause 12.

**Company** means South Eastern Melbourne Primary Health Network Ltd ACN 603 858 751.

**Constitution** means the constitution of the Company as amended from time to time.

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

**Controller** has the meaning given by the Corporations Act.

**Deputy Chair** means the Director elected under clause 10.7.

**DGR Contributions** means:

- (a) gifts of money or property for the Objects of the Company;
- (b) contributions made in relation to an eligible fundraising event held for the Objects of the Company, and
- (c) money received by the Company because of such gifts and contributions.

**Director** means a person occupying the position of a director of the Company.

**Diseases** include:

- (a) Diabetes.
- (b) Cardiovascular disease.
- (c) Respiratory disease.
- (d) Cancer.
- (e) Muscular-skeletal diseases.
- (f) Chronic diseases.
- (g) Mental illness.

**External Administrator** means a liquidator, provisional liquidator, Controller or an administrator.

**GST** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* as modified or amended from time to time.

**Member** means a person who is a member of the Company in accordance with clause 3.1.

**Objects** means the objects of the Company described in clause 2.2.

**Office** means the registered office of the Company.

**Region** means the applicable geographic region in which the Company conducts its core activities, as may be determined by the Board from time to time.

**Register** means the register of Members kept by the Company under the Corporations Act.

**Registered Entity** means an entity that is registered under the ACNC Act.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Responsible Entity** has the meaning given in the ACNC Act.

**Secretary** means a person appointed to perform the duties of a secretary of the Company.

**Skills and Diversity Matrix** means the matrix of competencies, skills and/or experience and personal attributes (or equivalent document) adopted by the Board from time to time that specifies the desired range of competencies, skills and/or experience and personal attributes to be demonstrated by the Directors and the Board for the time being, taking into account the Company's needs and objectives and other relevant matters at the time.

**Special Resolution of the Members** means a resolution approved by at least 75% of votes cast by the Members present and entitled to vote at a meeting of Members.

### **Interpretation**

19.2 In this Constitution, unless the context otherwise requires:

- 19.2.1 A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the date of this constitution.
- 19.2.2 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.
- 19.2.3 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this constitution.
- 19.2.4 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 19.2.5 A word which indicates the singular indicates the plural, a word which indicates the plural indicates the singular, and a reference to any gender indicates the other genders.
- 19.2.6 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or public authority.
- 19.2.7 A reference to 'dollars' or '\$' means Australian dollars.
- 19.2.8 References to the word 'include' or 'including', or to the word 'exclude' or 'excluding', are to be interpreted without limitation.
- 19.2.9 A reference to a time of day means that time of day in the place where the Office is located.

- 19.2.10 A reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in the place where the Office is located.
- 19.2.11 Where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day.
- 19.2.12 A term of this Constitution 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.

### **References to this Constitution**

- 19.3 A reference to this Constitution, where amended, means this Constitution as so amended.

### **Replaceable rules**

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

### **Application of Corporations Act**

- 19.5 Unless the context otherwise requires,
  - 19.5.1 An expression used but not defined in this Constitution has the same meaning given in the Corporations Act.
  - 19.5.2 Where an expression referred to in clause 19.5.1 has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as the relevant clause of this Constitution, the expression has the same meaning as in that provision.
- 19.6 Subject to clause 19.4, for so long as the Company is a Registered Entity, the provisions in Part 2G.2 (except Division 8) and Part 2G.3 of the Corporations Act are incorporated into this constitution by reference as if they are repeated in full. To the extent that the ACNC Act or any law or binding regulation of the ACNC applies to the Company and this prohibits compliance with one or more provisions in Part 2G.2 and Part 2G.3 of the Corporations Act or this constitution, the Company must comply with (as applicable) the ACNC Act or that law or binding regulation.



**SCHEDULE        RESERVED DECISIONS FOR THE MEMBERS**

Decisions that are reserved for the Members are as follows:

- (a) change the minimum or maximum number of Directors (clause 7.1 and section 201P of the Corporations Act);
- (b) removal of a Director (clause 7.2.8 and section 203D of the Corporations Act);
- (c) appointment and removal of an Auditor (clause 16.3 and sections 327B(1)(b), 327D and 329(1) of the Corporations Act);
- (d) inspection of the books of the Company (section 247D of the Corporations Act);
- (e) amend the constitution of the Company (clause 18 and section 136(2) of the Corporations Act);
- (f) winding up the Company (section 491 of the Corporations Act);
- (g) distribution of any surplus on winding up or distribution of DGR Contributions (clause 15);
- (h) change the company type of the Company (section 162 of the Corporations Act);
- (i) change the name of the Company (section 157 of the Corporations Act); and
- (j) any other matters that may be provided by the Corporations Act from time to time.