

Constitution of Tropical Australian Academic Health Centre Limited

A company
limited by Guarantee

Adopted by written agreement of the persons specified in the application for the Company's registration as the persons who consent to become members, pursuant to section 136(1)(a) of the Corporations Act

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1 Preliminary

1.1 Name of Corporation

The name of the Company is **Tropical Australian Academic Health Centre Limited**.

1.2 Replaceable Rules

The Replaceable Rules do not apply to the Company.

1.3 Definitions and Interpretations

Schedule 1 applies and forms part of this Constitution.

2 Purpose and objects

2.1 Purpose and Objects

- (a) The sole purpose of the Company is the advancement of health through the promotion of the study and research of health topics of special importance to people living in the tropics;
- (b) The Company will pursue these purposes through:
 - (i) promoting and building research capacity in the health services sector;
 - (ii) promoting opportunities for research and development relevant to the delivery of health services, including primary, secondary and tertiary care;
 - (iii) promoting methods and opportunities for translation of research into clinical practice;
 - (iv) identifying and maximising opportunities to work collaboratively and constructively with other interested individuals and entities to improve health outcomes and patient experiences, through research and related activities;
 - (v) wherever possible, making a positive contribution to health outcomes and patient experiences in domestic and overseas health systems;
 - (vi) maximising cooperation and collaboration between the Members;
 - (vii) wherever possible, building upon and enhance, rather than duplicate, other known research;
 - (viii) identifying and securing additional funding to achieve the Company's objectives;
 - (ix) demonstrating good governance and strong leadership in pursuit of the Company's objectives
 - (x) any other object or purpose not inconsistent with the above objects, which the Directors consider appropriate

2.2 Income and property to be applied for Purpose and Objects

- (a) The Company will operate as a not-for-profit entity and the income and property of the Company, however derived, must be applied solely towards the promotion of the Purposes and Objects of the Company as set out in this Constitution.
- (b) The Company must operate and pursue its Purposes and Objects and incur expenditure principally in Australia.
- (c) The Company may do other lawful things incidental or conducive to the attainment of the Purpose and Objects.

2.3 No profit to Members

No part of the income or property of the Company will be transferred directly or indirectly to or amongst the Members.

2.4 Remuneration and reimbursement

Nothing in this Constitution prevents:

- (a) the repayment to any Member of money lent to the Company by that Member, or the payment in good faith of interest at reasonable rates on moneys lent to the Company by a Member;
- (b) the payment of remuneration to any officers, agents, employees or other servants of the Company, in return for services rendered to the Company by that person;
- (c) the payment of remuneration to any Member or to any person in return for services rendered to the Company by that Member or other person;
- (d) the reimbursement or repayment to any Member of out-of-pocket expenses, reasonable and proper charges for plant, equipment or other goods hired by the Company from a Member, payment for goods supplied by a Member in the ordinary and usual course of business, or reasonable and proper rent for premises leased to the Company by a Member.

2.5 Powers of the Company

In accordance with section 124 of the Corporations Act, the Company has the legal capacity and powers of an individual, and may enter into contracts and agreements; acquire, hold, deal with or dispose of property; employ staff and engage consultants or contractors; appoint agents and attorneys; and do anything else necessary or incidental to be done towards the achievement of its purposes and objectives.

2.6 Subsidiaries

- (a) If the Company is a Public Sector Entity, the Company may only establish a subsidiary with the prior approval of the Treasurer of the State of Queensland.
- (b) If the Company is not a Public Sector Entity, the Company may establish a subsidiary by special resolution at a general meeting.

3 Modification or repeal of this Constitution

3.1 Amendment by special resolution

- (a) This Constitution may be modified or repealed only by a special resolution of the Company in a general meeting.
- (b) If the Company is a Public Sector Entity, any amendment of this Constitution must be approved by the Treasurer of the State of Queensland.

3.2 Date of effect of modification or repeal

Any modification or repeal of this Constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.

3.3 Requirements for Special Resolution

A special resolution for the purposes of any general meeting of the Company means a resolution:

- (a) of which notice has been duly given in accordance with this Constitution and the Corporations Act;
- (b) which has been passed by at least 75% of the votes cast by voting members entitled to vote on the resolution; and
- (c) which has been passed by at least 75% of the votes cast by Foundation Members entitled to vote on the resolution.

3.4 Notification to the ACNC

The Company will notify ASIC or the ACNC (as applicable) of any modification or repeal of this Constitution within 28 days after the date the special resolution referred to in **clauses 3.1 and 3.2**.

4 Members and Membership

4.1 Number of Members

The Company must have at least one Member.

4.2 Members

- (a) The Members of the Company are the Founding Members and such other persons as the Board (with the prior approval of Members) admits to Membership from time to time in accordance with this Constitution.
- (b) The Founding Members of the Company are:
 - (i) Cairns and Hinterland Hospital and Health Service;
 - (ii) James Cook University;
 - (iii) Mackay Hospital and Health Service;
 - (iv) North West Hospital and Health Service;
 - (v) Northern Queensland Primary Health Network;

- (vi) Torres and Cape Hospital and Health Service;
- (vii) Townsville Hospital and Health Service; and
- (viii) such other persons who become Members and are approved to be designated as Founding Members by special resolution at a meeting of Founding Members.

4.3 Rights of Founding Members

Each Founding Member:

- (a) has the right to appoint Directors in accordance with **clause 13**;
- (b) has the right to approve up to two (2) representatives to attend general meetings and at any meetings of Founding Members;
- (c) has an entitlement to two (2) votes, or as determined unanimously by the Founding Members by special resolution at a meeting of Founding Members; and
- (d) must pay fees in compliance with **clause 4.5**.

4.4 Other categories of Members

- (a) New categories of Membership may only be created from time to time with the approval of Founding Members by special resolution at a meeting of Founding Members.
- (b) On establishing a category of Membership, the Founding Members must determine:
 - (i) the eligibility criteria for that category; and
 - (ii) the rights and obligations attaching to Membership of that category.

4.5 Membership fees

The Board may determine, from time to time, the annual Membership fee and entrance fee for each category of Membership. Until the Board otherwise determines, the fees shall be determined for each member by multiplying the Base Fee by the Multiplier specified in Schedule Two opposite the name of the member. In determining the amount of annual Membership fees and entrance fees, the Board may differentiate:

- (a) if applicable, between categories of Membership; or
- (b) on such other basis as the Board determines.

4.6 Register of Members

The Secretary must maintain a Register of Members setting out:

- (a) the name and address of each Member;
- (b) the date on which each person became a Member;
- (c) the category of Membership for each Member;
- (d) any conditions imposed on the Member's Membership; and

- (e) in respect of each person who has ceased to be a Member, the date on which that person ceased to be a Member.

4.7 Rights of Members are non-transferable

The rights and obligations of a Member are personal and are not transferable.

5 Application for and Cessation of Membership

5.1 Becoming a Member

- (a) A Member must be a body corporate or other organisation with a legal identity.
- (b) Potential applicants may be invited by the Board to apply for Membership after first being approved by the nomination committee.
- (c) An application for membership must be made in writing by the applicant to the Board, be signed by the applicant, and enclose any application fee and such documentation as the Board requires from time to time.
- (d) The Secretary must provide the application to the Board as soon as practicable after it is received.
- (e) At the first meeting of the Board after an application for Membership has been received, the Board must consider the application and either:
 - (i) accept;
 - (ii) accept subject to conditions; or
 - (iii) reject the application,

any acceptance being subject to approval by Founding Members in accordance with **clause 5.1(f)**.

- (f) If the Board resolves to accept an application for Membership, the Board must call a meeting of Founding Members to consider whether to approve the acceptance of the application and the category of membership appropriate. An acceptance of Membership is only valid if it is approved by Founding Members by special resolution at a meeting of Founding Members. The category of membership for a new member will be that approved by a special resolution at a meeting of Founding Members.
- (g) Subject to the Corporations Act, a person becomes a Member on the registration of that person's name in the Register of Members.
- (h) The persons specified in the application for registration as the persons who consent to become Members are the first Members, and they become Members on the date of the Company's registration of the category specified in the Register.

5.2 Nomination Committee

- (a) The Board must establish a nomination committee for the purpose of reviewing and assessing the eligibility of organisations being considered for Membership of the Company in accordance with clause 5.1(b) of this Constitution.
- (b) The nomination committee must be constituted by:

- (i) an independent chair, appointed by the Members after consultation with the Board, who must be a person who is not employed by, or a Director of, either the Company or of a Member;
- (ii) one Director appointed by the Board, as the Director's representative on the committee, being a Director whose term as a Director does not expire at the next following Annual General Meeting of the Company; and
- (iii) one person nominated by the Members as their representative on the nomination committee.

5.3 Change in Membership class

- (a) The Founding Members may by special resolution change the membership class assigned to any particular member or category of member to another category.
- (b) Except that sub-clause (a) does not apply to any Founding Member or the category of Founding Member.

5.4 Cessation of Membership

- (a) Without limiting any other provision of this Constitution, a Member's membership of the Company will cease if:
 - (i) a Member provides written notice to the Company of its resignation as a Member of the Company. The resignation will be effective on and from the date of receipt of the notice by the Company; or
 - (ii) a Member who is not a natural person becomes insolvent, has a receiver, receiver and manager, Administrator, or liquidator appointed, or is wound up. The cessation of Membership will be effective on and from the date of that event; or
 - (iii) a Member ceases to meet the criteria for the class of membership held by the Member. The cessation of membership will be effective on and from the date the Company becomes aware that the Member no longer meets the criteria for the class of membership held by the Member.
- (b) The Company may also terminate a Member's membership of the Company if:
 - (i) the Member fails to pay any money owing to the Company, including any entrance fee or membership fee, when due and that money has remained outstanding for more than 30 days from the due date for payment; and
 - (ii) the Company has provided the Member with written notice of the outstanding payment and advised the Member that their membership will be terminated if payment is not received within the 14 days of the date of that notice.
- (c) In the event of a cessation of a Member's membership of the Company, the Company is not required to refund any entrance or membership fee paid to the Company by that Member.

- (d) In the event that a Member ceases to be a Member of the Company, that Member's name will be removed from the Register of Members within a reasonable time.

6 Liability of Members

6.1 Liability to contribute

Subject to this Constitution, each person who is a Member, and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:

- (a) payment of debts and liabilities of the Company;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

6.2 Limited liability

The amount that each Member or past Member is liable to contribute is limited to \$10.

7 Corporate representatives

7.1 Appointment

- (a) If a Member is a body corporate, it may appoint a natural person as its representative to exercise on its behalf any or all of the powers it may exercise:
 - (i) at meetings of the Members;
 - (ii) at meetings of creditors or debenture holders; or
 - (iii) relating to resolutions to be passed without meetings.
- (b) The appointment of a corporate representative may be a standing one.

7.2 Authority to act as corporate representative

- (a) An appointment of a corporate representative must be in writing and be signed by the body corporate appointing the representative and state:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the representative's name or the name of the office held by the representative; and
 - (iv) the general meeting at which the representative may act, or if the appointment is a standing one, a clear statement to that effect.
- (b) The instrument appointing the corporate representative may restrict the exercise of any power.

7.3 Instrument to be received by Company

- (a) An instrument purporting to appoint the corporate representative is not valid unless it is received by the Company at least 30 minutes before a general meeting or, in the case of an adjourned meeting, at least 30 minutes before the resumption of an adjourned general meeting.
- (b) An instrument appointing a corporate representative must be received by the Company at any of the following:
 - (i) the registered office;
 - (ii) a facsimile number at the registered office; or
 - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

7.4 Revocation and appointment of corporate representative

The appointment of a corporate representative may be revoked by the Member who appointed the corporate representative by notice to the Company from the Member stating that the appointment of the corporate representative is revoked or by appointing a new corporate representative.

7.5 Validity of votes of corporate representative

A vote cast by a corporate representative will be valid unless before the start of the general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48 hours before the resumption of the adjourned or postponed general meeting) at which a corporate representative votes:

- (a) the Member who appointed the corporate representative ceases to be a Member; or
- (b) the Company has received notice of:
 - (i) the revocation of the instrument appointing the corporate representative; or
 - (ii) the appointment of a new corporate representative.

7.6 No liability

The Company is not responsible for ensuring that the terms of appointment of a corporate representative are complied with, and accordingly is not liable if those terms are not complied with.

8 General meetings

8.1 Director convening a general meeting

Any three or more Directors may call a general meeting.

8.2 Meetings requested by Members

- (a) If the Board receives a request from at least three Members, the Board must call a general meeting within 21 days after the date of receipt of that request.

- (b) The request must detail any proposed resolution, the names of the Members requesting the meeting and be signed by all of the Members making the request. For this purpose, signatures of the Members may be contained in more than one document.
- (c) A general meeting requested by the Members must be held no later than two calendar months after the request is received.

8.3 Notice of general meeting

At least 21 days' notice of a general meeting must be given to the Members entitled to receive notice, the Directors and the Auditor (if any). The notice must:

- (a) state the date, time and place (or places) of the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the business to be conducted at the meeting;
- (c) state any proposed resolutions; and
- (d) contain a statement informing the Members of the right to appoint a proxy.

8.4 Notice of resumption of an adjourned meeting

If a general meeting is adjourned for 30 days or more, at least 30 days' notice must be given to the eligible Members, Directors and Auditor of the day, time and place (or places) for the resumption of the adjourned general meeting.

8.5 General meetings at two or more places

A general meeting may be held in one place or two or more places. If a general meeting is held in two or more places, the Company must use technology that gives Members a reasonable opportunity to participate in that general meeting.

8.6 Postponement or cancellation of general meeting

- (a) Subject to this Constitution and the Corporations Act, the Board may change the place (or places) of, postpone or cancel a general meeting.
- (b) If a general meeting is convened pursuant to a request by Members, the Board may not postpone or cancel the general meeting without the consent of the requesting Members.

8.7 Notice of change, postponement or cancellation of meeting

- (a) If the Board changes the place (or places) of a general meeting, notice must be given to each eligible Member and each person entitled to receive notice of the general meeting of the new place (or places) of the meeting.
- (b) If the Board postpones a general meeting, notice must be given to each eligible Member and each other person entitled to receive notice of the new date, time and place (or places) of the general meeting.
- (c) If the Board cancels a general meeting, notice must be given to each person entitled to receive notice of general meetings.

8.8 Omission to give notice relating to general meeting

No resolution passed at or proceedings at any general meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that general meeting;
- (b) any change of place (or places) of that general meeting;
- (c) postponement of that general meeting, including the date, time and place (or places) for the resumption of the adjourned general meeting; or
- (d) resumption of that adjourned general meeting.

9 Proceedings at general meetings

9.1 Quorum

- (a) A quorum at a general meeting is three quarters of the total number of Members entitled to vote, present in person or by proxy. The quorum must be present at all times during the general meeting.
- (b) If a Member has appointed more than one proxy and two or more proxies attend a general meeting, only one proxy will be counted for the purposes of determining whether there is a quorum.

9.2 Lack of quorum

- (a) If a quorum is not present within 30 minutes after the time appointed for a general meeting (or any longer period of time as the chair may allow) or ceases to be present at any time during the general meeting, the general meeting:
 - (i) if convened by a Director or on the request of Members, is dissolved; or
 - (ii) in any other case:
 - (A) is adjourned to be resumed on a day, time and place (or places) as the chair determines or if the chair is not present as the Directors or Director at the meeting may determine; or
 - (B) if the Directors do not so determine, no Director is present or no Director present so determines:
 - (1) the date for the resumption of the adjourned general meeting will be on the same day in the next week;
 - (2) the time for the resumption of the adjourned general meeting will be at the same time as the adjourned meeting; and
 - (3) the place (or places) for the resumption of the adjourned general meeting, will be at the same place (or places) as the adjourned meeting.
- (b) If a quorum is not present within 30 minutes after the time appointed for the resumption of the adjourned general meeting or ceases to be present during the meeting:
 - (i) for meeting was convened at the request of Members, the general

meeting is dissolved;

- (ii) for any other meeting, the Members present in person or by proxy constitute a quorum.

9.3 Chairing general meetings

- (a) At the first general meeting of the Company, a Director will be elected as the chair. Each subsequent general meeting may be chaired by the Director elected as chair at the first general meeting, or a new chair may be elected.
- (b) If there is no chair or if the chair is not present within 10 minutes after the time appointed for a general meeting, the Directors present may elect a Director present to chair that general meeting.
- (c) If no Director is elected or if all the Directors present decline to take the chair for the whole or any part of that general meeting, the Members present may elect a Member present to chair for the whole or any part of that general meeting.
- (d) If the Members present do not so elect a chair, the meeting will be adjourned to be resumed on the same day, at the same time and at the same place (or places) in the following week.

9.4 Conduct of general meetings

The chair of each general meeting has charge of conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.

9.5 Annual general meetings

- (a) The Company must hold its first annual general meeting within 18 months after its registration.
- (b) The Company must hold at least one general meeting every 12 months.

9.6 Business at annual 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, directors' report and auditor's report;
- (b) the election of Directors;
- (c) the appointment of the Auditor; and
- (d) determination of Auditor's remuneration.

9.7 Adjournment

- (a) The chair of a general meeting at which a quorum is present may adjourn the general meeting.
- (b) If a majority of the Members present at a general meeting in person or by proxy determine that the meeting should be adjourned, the chair must adjourn the meeting to another date, time and place (or places) determined by the chair.

- (c) No business may be transacted on the resumption of the adjourned general meeting other than the business left unfinished at the adjourned general meeting.

9.8 Meetings of groups of Members

The provisions of **clauses 9.1 to 9.7** apply, with necessary amendments, to any meeting of Founding Members or any other sub-group of Members.

10 Proxies

10.1 Appointment of proxy

- (a) A Member who is entitled to attend and vote at a general meeting of the Company may appoint a person as proxy to attend, speak and vote for that Member.
- (b) An appointment of a proxy under **clause 10.1(a)**:
 - (i) must be in a form approved by the Board;
 - (ii) may be a standing appointment; and
 - (iii) must be received by the Company at least 30 minutes before the general meeting or, as the case may be, the resumption of an adjourned general meeting.
- (c) A proxy has the same rights as the Member to speak and vote at the general meeting and to demand, or join in demanding, a poll.

10.2 Proxy instruments

- (a) An appointment of a proxy must be in writing and be signed by the Member appointing the proxy or by the duly authorised attorney of the Member and state:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the general meeting at which the proxy may be used, or if the appointment is a standing one, a clear statement to that effect.
- (b) Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Company.
- (c) An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy must vote as directed in the instrument, and is not entitled to vote on the proposed resolution except as directed in the instrument. If an instrument does not contain a direction, the proxy is entitled to vote on the proposed resolution as the proxy considers appropriate.
- (d) If a proxy is appointed to vote on a particular resolution by more than one member, that proxy:

- (i) may vote on a show of hands in the same way if each instrument appointing the proxy directs the proxy to vote in the same way or does not direct the proxy how to vote;
- (ii) may not vote on a show of hands unless each instrument appointing the proxy and directing the proxy to vote in a particular way directs the proxy to vote in the same way.

10.3 Proxy to be received by Company

The instrument appointing a proxy is not effective unless it is received, together with any additional documentation, including where applicable a copy of the power of attorney (certified as a true copy of the original), by the Company at least 48 hours before the general meeting or, as the case may be, the resumption of an adjourned general meeting, at any of the following:

- (a) the registered office;
- (b) a facsimile number at the registered office; or
- (c) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

10.4 Power to demand poll

A proxy may demand, or join in demanding, a poll.

10.5 Revocation of proxy

The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Company from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.

10.6 Validity of votes of proxy

A vote cast by a proxy will be valid unless before the start of a general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48 hours before the resumption of the adjourned or postponed general meeting) at which a proxy votes:

- (a) the Member who appointed the proxy ceases to be a Member; or
- (b) the Company receives notice of:
 - (i) the revocation of the instrument appointing the proxy;
 - (ii) the appointment of a new proxy; or
 - (iii) the revocation of any power of attorney under which the proxy was appointed.

10.7 No liability

The Company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

11 Voting

11.1 Entitlement to vote

- (a) Each Member entitled to vote at a general meeting may vote in person or by proxy.
- (b) Each Member has two votes, whether on a show of hands, or on a poll.
- (c) A vote may be given by a procedure for electronic voting or other technology mentioned in the notice of meeting.

11.2 Casting votes

If on any ordinary resolution an equal number of votes are cast for and against a resolution, the chair does not have a casting vote and the motion is not passed.

11.3 Voting on resolution

- (a) At any general meeting, a resolution put to a vote must be decided by a show of hands unless a poll is demanded in accordance with this Constitution.
- (b) All resolutions are ordinary resolutions except:
 - (i) matters that must be passed by special resolution under the Corporations Act; or
 - (ii) matters that require a special majority under this Constitution or Bylaws.

11.4 Objection to right to vote

- (a) A challenge to a right to vote at a general meeting:
 - (i) may only be made at that general meeting; and
 - (ii) must be determined by the chair.
- (b) A decision made by the chair in relation to a challenge to a right to vote is binding on all Members and is final.

11.5 Written resolutions

Members may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures of the Members may be contained in more than one document.

11.6 Minutes

- (a) Unless a poll is demanded in accordance with this Constitution, a declaration by the chair that a resolution has, on a show of hands, been:
 - (i) carried;
 - (ii) carried unanimously;
 - (iii) carried by a particular majority; or

(iv) lost or not carried by a particular majority,

is conclusive evidence of the fact declared. An entry to that effect made in the minutes book of the Company signed by the chair is evidence of that fact unless the contrary is proved.

- (b) Within one month after each general meeting, the Directors must record or cause to be recorded in the minutes book:
 - (i) the proceedings and resolutions of each general meeting;
 - (ii) any declarations at each general meeting ; and
 - (iii) all resolutions passed by Members without a general meeting.
- (c) The chair, or the chair of the next meeting, must sign the minutes within one month after the general meeting.
- (d) The minute books must be kept at the registered office.
- (e) Members may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

12 Poll

12.1 Chair may determine to take a poll

The chair of a general meeting may determine that a poll be taken on any resolution.

12.2 Right to demand poll

A poll may be demanded on any resolution at a general meeting other than the election of a chair or the question of an adjournment by:

- (a) at least five Members entitled to vote on the resolution; or
- (b) Members with at least five percent of the votes that may be cast on the resolution on a poll.

12.3 Procedure for demanding poll

- (a) A poll may be demanded:
 - (i) before a vote on a show of hands is taken;
 - (ii) before the result of a vote on a show of hands is declared; or
 - (iii) immediately after the result of a vote on a show of hands is declared.
- (b) If a poll is demanded, it may be taken in the manner and at the time and place (or places) as the chair directs.
- (c) A demand for a poll may be withdrawn at any time by the person or persons who demanded it. A demand for a poll which is withdrawn does not invalidate the result of a show of hands declared before the demand for the poll was made.
- (d) A demand for a poll does not prevent the general meeting continuing for the

transaction of any business other than the question on which a poll has been duly demanded.

13 Appointment and removal of Directors

13.1 Appointment of Directors

- (a) Each Founding Member is entitled to appoint two Directors.
- (b) Members other than Founding Members, subject to the respective rights and obligations attaching to Membership of that category, are entitled to collectively elect one Director.
- (c) The appointment of the First Directors takes effect in accordance with the Corporations Act on the date of the Company's registration.
- (d) An appointment of a person as a Director is not effective unless a signed consent to the appointment is provided by that person to the Company. The appointment of a person as a Director will take effect on the later of the date of appointment and the date on which the Company receives the signed consent.

13.2 Appointment of Member Directors

- (a) The Member Directors are appointed by:
 - (i) giving to the Board and the Company notice in writing of the appointment signed by the Founding Member; and
 - (ii) giving to the Company a signed consent to act as a Director from the person appointed as a Member Director.
- (b) Founding Members may remove their Member Directors, or appoint a replacement Member Director for any Member Director who is so removed or who ceases for any reason to be a Director, at any time by giving notice in writing to the Board and the Company signed by the Founding Member. Subject to the relevant signed consent to act being received by the Board and the Company, the relevant appointment or removal will take effect immediately on receipt of that notice, or at such later time and date as may be expressed in the notice.
- (c) If a Member Director is disqualified or prohibited from acting as a Director under this Constitution, the Corporations Act or any other law, the office of the Member Director is vacated and the appointing Member may appoint a replacement in accordance with this clause.

13.3 Election of Elected Directors

- (a) All new Directors (excluding Member Directors and the Chair) will be elected by Members other than Founding Members, by ordinary resolution in general meeting (**Elected Director**).
- (b) Any Elected Director candidate proposed to the Board must be approved by the nomination committee.

13.4 Nomination committee

- (a) The Board must establish a nomination committee for the purpose of reviewing and assessing the eligibility of persons being considered for election to the Board in accordance with clause 13.3 of this Constitution.
- (b) The nomination committee must develop, and apply to its selection process, a board skills-set matrix that outlines the mix of skills and diversity that the Board currently has or is looking to achieve in its directorship.
- (c) The nomination committee must be constituted by:
 - (i) an independent chair, appointed by the Members after consultation with the Board, who must be a person who is not employed by, or a Director of, either the Company or of a Member;
 - (ii) one Director appointed by the Board, as the Director's representative on the committee, being a Director whose term as a Director does not expire at the next following Annual General Meeting of the Company; and
 - (iii) one person nominated by the Members as their representative on the nomination committee.

13.5 Chair of Board

- (a) The Members will determine by an ordinary resolution, the chair of the Board.
- (b) In making such a determination, the Members may choose the chair from among existing Directors or approve an additional Director to act as chair who may be paid a fee.

13.6 Term of Directors

A Director is appointed for a term of one to three years (as specified in the notice of appointment or resolution of Members appointing the Director, as appropriate) and may be available for re-election or re-appointment subject to any eligibility criteria as determined (from time to time), the ACNC (as applicable), and the Corporations Act.

13.7 Removal of Director

- (a) The Company may remove an Elected Director by resolution at a general meeting.
- (b) At least two months' notice must be given to the Company of the intention to move a resolution to remove an Elected Director at a general meeting.
- (c) If notice of intention to move a resolution to remove an Elected Director at a general meeting is received by the Company, the Elected Director must be given a copy of the notice as soon as practicable.
- (d) The Elected Director must be informed that the Director may:
 - (i) submit a written statement to the Company for circulation to the Members before the meeting at which the resolution is put to a vote; and
 - (ii) speak to the motion to remove the Elected Director at the general

meeting at which the resolution is to be put to a vote.

- (e) At least 21 days' notice must be given of a general meeting at which the resolution for the removal of an Elected Director is proposed. The notice must set out the proposed resolution and the grounds for the proposed resolution.

13.8 Cessation of Directorship

A person ceases to be a Director and the office of Director is vacated, if the person:

- (a) is an Elected Director and is removed from office as a Director by a resolution of the Company at a general meeting;
- (b) is the chair and is removed from office as chair and a Director by a resolution of the Company at a general meeting;
- (c) is a Member Director and is removed by their appointing Member under **clause 13.2(b)**;
- (d) resigns as a Director by giving notice of resignation to the Company at its registered office;
- (e) is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
- (f) dies;
- (g) is disqualified from acting as a Director under the Corporations Act; or
- (h) is absent from Board meetings for three meetings in a row without leave of absence from the Board and the Board resolves that the Director should cease to be a Director;
- (i) is a Member Director and the Member who appointed them ceases to be a Member of the Company, which is effective immediately upon the Member ceasing to be a Member of the Company.

13.9 Remuneration and reimbursement for expenses

- (a) A Director is entitled to be paid fees (or other remuneration) for services performed as a Director as determined by the Company in general meeting from time to time.
- (b) A Director is entitled (with the approval of the Board) to be reimbursed by the Company for reasonable costs and expenses incurred or to be incurred in connection with attendance at Board meetings or otherwise in the execution of their duties as Directors.
- (c) The Board may request advice from the nomination committee on the quantum or calculation of remuneration offered to any Director for consideration by the Company in general meeting from time to time.

14 Powers and duties of Board

14.1 Management of the Company

- (a) Subject to this Constitution and the Corporations Act, the activities of the Company

are to be managed by, or under the direction of, the Board.

- (b) Subject to this Constitution and the Corporations Act, the Board may exercise all powers of the Company that are not required to be exercised by the Company in a general meeting.
- (c) The powers of the Board include the power to:
 - (i) borrow or otherwise raise money;
 - (ii) mortgage, charge (including in the form of a floating charge) any of the Company's assets (both present and future); and
 - (iii) issue debentures and other securities, and any instrument (including any bond).

14.2 Delegation of powers and duties of Board

- (a) The Board may delegate any of the functions and powers of the Board to:
 - (i) a Director;
 - (ii) a committee of Directors;
 - (iii) an employee of the Company; or
 - (iv) any other person.
- (b) Any person or persons to whom the Board delegates functions and powers must, in the exercise of those functions and powers, comply with any restrictions that may be imposed by the Board.

14.3 Advisory Committees

- (a) The Board may establish one or more Advisory Committees consisting of such Members or Directors or other interested persons as the Board thinks fit. Such Advisory Committees must act in an advisory capacity only and must conform to any regulations that may be imposed by the Board.
- (b) The Board must not delegate any of its powers to an Advisory Committee and an Advisory Committee must not exercise any powers of a Director or the Board.
- (c) Except as provided in a direction of the Board, the meetings and proceedings of an Advisory Committee must be governed by the provisions of this Constitution, in so far as they are applicable, as if the meetings of the Advisory Committee are meetings and proceedings of the Board.

14.4 Chief executive officer

- (a) The Board may from time to time appoint a chief executive officer of the Company and may enter into contracts for the provision of the services of the chief executive officer to the Company.
- (b) The appointment of the chief executive officer will be at such remuneration and with such responsibilities and powers as is determined by the Board.

14.5 Bylaws

The Board may adopt Bylaws in relation to any matters relating to the operation of the Company and the Membership, and may modify, repeal or replace Bylaws from time to time. Bylaws are binding on the Board and all Members.

14.6 Negotiable instruments

All negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed in such manner as the Board may determine.

15 Board meetings

15.1 Convening meetings

- (a) In the ordinary course, the Secretary will convene Board meetings in accordance with the determinations of the Board.
- (b) A Director may at any time convene a Board meeting by notice to the other Directors.

15.2 Notice of meetings

- (a) Reasonable notice of each Board meeting must be given to the Directors.
- (b) Each notice must state:
 - (i) the date, time and place (or places) of the Board meeting; and
 - (ii) the general nature of the business to be conducted at the Board meeting.

15.3 Omission to give notice

No resolution passed at or proceedings at any Board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that Board meeting;
- (b) any change of place (or places) of that Board meeting;
- (c) postponement of that Board meeting; or
- (d) resumption of that adjourned Board meeting.

15.4 Use of technology

A Board meeting may be convened or held using any technology approved by the Board from time to time.

15.5 Quorum at meetings

A quorum at a Board meeting is one half of the total number of Directors in office plus one additional Director. The quorum must be present at all times during the Board meeting.

15.6 Passing resolutions at meetings

- (a) A resolution of the Board must be passed by a majority of the votes cast by the

Directors present and entitled to vote on the resolution.

- (b) Subject to (c) each Director present and entitled to vote on a resolution has one vote.
- (c) In circumstances where only one of the Directors appointed by a Founding Member is present and entitled to vote on a resolution that single Director has two votes.

15.7 No casting vote

If on any resolution an equal number of votes are cast for and against a resolution, the chair does not have a casting vote and the motion is not passed.

15.8 Conduct of meetings

The chair of each Board meeting has charge of conduct of that meeting, of the procedures to be adopted and the application of those procedures at that meeting.

15.9 Written resolutions

- (a) The Board may pass a resolution without a Board meeting being held if:
 - (i) all the Directors entitled to vote on the resolution are sent a document containing the resolution; and
 - (ii) the resolution is approved by a majority of the Directors entitled to vote on the resolution (or by such other proportion of the Directors as is required under this Constitution or the Bylaws for that resolution).
- (b) For this purpose, a resolution is approved by a Director if:
 - (i) the document containing the terms of the resolution has been signed by the Director either physically or by affixing a signature by electronic means, and the document has been given to the Company; or
 - (ii) where the Board has resolved to accept a procedure for Directors to indicate their approval for a resolution by electronic means, the Director has indicated the Director's approval in accordance with that procedure.

15.10 Minutes of meetings

- (a) Within one month after each Board meeting, the Directors must record or cause to be recorded in the minute books:
 - (i) the proceedings and resolutions of each Board meeting; and
 - (ii) all resolutions passed without a Board meeting.
- (b) The chair, or the chair of the next Board meeting, must sign the minutes within one month after the meeting.
- (c) The minute books must be kept at the registered office.
 - (d) The Directors or the Members may inspect the minute books between the hours of 9.00 am and 5.00 pm on any business day. No amount may be charged for inspection.

15.11 Committee meetings

The Board will determine how meetings of any committee of the Board are to be conducted, including the procedures to be adopted and the application of those procedures.

16 Director's interests

16.1 Declaration of interest

- (a) Any Director who:
 - (i) has a material personal interest in a contract or proposed contract of the Company; or
 - (ii) holds any office or owns any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director,must give the Board notice of the interest at a Board meeting.
- (b) A notice of a material personal interest must set out:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable.

16.2 Voting by interested Directors

A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:

- (a) vote on the matter at a meeting; and
- (b) be present while the matter is being considered at the meeting, and accordingly will not count for the purposes of determining whether there is a quorum.

16.3 Conflicts of interest

Directors may only be engaged to provide goods or services to or on behalf of the Company if:

- (a) that Director is for bona fide reasons considered by the Board to be a suitable person to provide such goods or services;
- (b) bona fide attempts have been made to identify others who provide the goods or services and to compare rates and service levels of such others compared with the relevant Director's rates and service levels;
- (c) the goods or services are provided on arms-length terms;
- (d) the provision of the goods or services are disclosed clearly and expressly to the Members; and
- (e) the Board agrees, by ordinary resolution excluding the interested Director, to the provision of the goods or services by the relevant Director.

17 Removal and remuneration of Auditor

17.1 Remuneration of Auditor

Subject to any requirements regarding the appointment and remuneration of the Auditor General of the State of Queensland (**Auditor-General**), the Board may appoint a properly qualified Auditor or Auditors and:

- (a) where the Company has an Auditor, the remuneration of the Auditor may be determined by the Company at a general meeting; and
- (b) if the remuneration is not determined at a general meeting, it may be determined by the Directors at a Board meeting.

17.2 Removal of Auditor

- (a) This **clause 17.2** does not apply for so long as the Company is required to appoint the Auditor General (or an auditor approved by the Auditor General) as its auditor.
- (b) The Company may remove an Auditor by resolution at a general meeting.
- (c) At least two months' notice must be given to the Company of the intention to move a resolution to remove an Auditor at a general meeting.
- (d) If notice of an intention to move a resolution to remove the Auditor at a general meeting is received by the Company, the Auditor must be given a copy of the notice as soon as practicable.
- (e) The notice of an intention must also inform the Auditor that the Auditor:
 - (i) may submit written representations to the Company within seven days after receiving the notice and that the Auditor may request the Company to send a copy of the written representations to the Members before the resolution is put to a vote; and
 - (ii) may speak at the general meeting or request that the written representations be read at the general meeting at which the resolution is voted upon.

17.3 Auditor's attendance at general meetings

The Auditor must be notified of, and may attend, any general meeting. The Auditor is entitled to be heard at any general meeting it attends on any part of the business of the general meeting which concerns the Auditor.

18 Financial records

18.1 Member's access to financial records

Subject to any resolution from a meeting of Members, the Board may determine whether and to what extent, and at what times and places and under what conditions, a Member may inspect any financial or any other record of the Company, including the Minutes of the Board and any of its committees.

18.2 Directors' access to financial records

Any Director may at any time access and inspect any financial and any other record of the

Company.

18.3 Access to financial records after ceasing to be a Director

The Board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record and any other record of the Company relating to the time during which the person was a Director.

19 Appointment of Secretary

- (a) The Company must have at least one Secretary.
- (b) The Board has the power to appoint a natural person to act as Secretary on the terms and for such period as the Board may determine.
- (c) Any Secretary appointed may be removed at any time by the Board.

20 Seal

- (a) If the Company has a Seal the Directors must provide for the safe custody of the Seal (and any duplicate of it).
- (b) The Seal (and any duplicate of it) must not be used without the prior authority of the Board, and when used, the Seal must be used in accordance with any direction of the Board.
- (c) If a document is to be executed by the use of the Seal, the fixing of the Seal must be witnessed by two Directors or a Director and Secretary.

21 Notices

21.1 General

A notice, demand, certification, process or other communication under this Constitution must be in writing, except any notice convening a Board meeting.

21.2 How to give a communication

In addition to any way allowed under the Corporations Act, a notice or other communication may be given by being:

- (a) personally delivered;
- (b) left at the person's current address as recorded in the Register of Members;
- (c) sent to the person's address as recorded in the Register of Members by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by fax to the party's current fax number for notices; or
- (e) sent by email to the person's current email address for notices.

21.3 Communications by post

Subject to **clause 21.6**, a communication is given if posted:

- (a) within Australia to an Australian postal address, three (3) Business Days after

posting; or

- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten (10) Business Days after posting.

21.4 Communications by fax

Subject to **clause 21.6**, a communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

21.5 Communications by email

A communication is given if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient.

21.6 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

22 Indemnity and insurance

22.1 Indemnity

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company must indemnify each officer, Director and Secretary of the Company (**Officer**) in respect of any liability, loss, damage, cost or expense incurred or suffered or to be incurred or suffered by the Officer in or arising out of the conduct of any activity of the Company or the proper performance of any duty of that Officer.
- (b) The indemnity in **clause 22.1(a)**:
 - (i) is enforceable without the Officer first having to make a payment or incur an expense;
 - (ii) is enforceable by the Officer notwithstanding that the Officer has ceased to be an officer of the Company; and
 - (iii) applies to any liability, loss, damage, cost or expense incurred or suffered or to be incurred or suffered by the Officer, whether incurred before or after the date of this Constitution.

22.2 Documenting indemnity

The Company may enter into an agreement containing an indemnity in favour of any Officer. The Company will determine the terms of the indemnity contained in the agreement.

22.3 Insurance

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may pay any premium in respect of a contract of insurance between an insurer and an Officer or any person who has been an Officer in respect of the liability suffered or incurred in or arising out of conduct of any activity of the Company and the proper performance by the Officer of any duty.
- (b) If the Company determines, the Company may execute a document containing rules under which the Company agrees to pay any premium in relation to such a contract of insurance.

23 Winding up

- (a) If the Company is wound up, or if the Company's obtains endorsement as a deductible gift recipient and this is subsequently revoked (whichever first occurs), any surplus of:
 - (i) gifts of money or property for the principal purpose of the Company;
 - (ii) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
 - (iii) money received by the Company because of such gifts and contributions referred to in **clauses 23(a)(i) and 23(a)(ii)**,must be transferred to a fund, authority or institution that is endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act or equivalent provisions.
- (b) If the Company is wound up, any surplus assets that remain after payment of the amounts referred to in **clause 23(a)** and satisfaction of all debts and liabilities of the Company, the payment of the costs, charges and expenses of winding up and any adjustment of the rights of the contributories, must be given or transferred to another organisation in Australia which:
 - (i) if the Company is or was previously endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act, has been endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act or equivalent provisions; and
 - (ii) has similar charitable objects to the objects of the Company and whose constitution prohibits the distribution of its income and property among members.
- (c) The Company must not pay, distribute or transfer any amount referred to in **clauses 23(a) and 23(b)** directly or indirectly to the Company's Members.

24 Schedule 1 – Definitions and interpretation

1. Definitions

In this Constitution these terms have the following meanings:

ACNC	Australian Charities and Not-for-profits Commission or any replacement or successor body.
Administrator	A person appointed in accordance with sections 436A, 436B, or 436C of the <i>Corporations Act</i> , but to avoid doubt, but not a person appointed under section 276 of the <i>Hospital and Health Boards Act 2011</i> (Qld).
Advisory Committee	Committees established by the Board under clause 14.3 .
ASIC	Australian Securities and Investments Commission.
Auditor	The person appointed for the time being as the auditor of the Company (if any).
Auditor-General	The meaning given in clause 17.1 .
Base Fee	The quantum determined to be the base for fee calculation for membership.
Board	The Directors of the Company present at a meeting, duly convened as a Board meeting, at which a quorum is present.
Business Day	A day which is not a Saturday, Sunday or bank or public holiday in Queensland.
Bylaws	Rules of operation in respect of the Company, adopted under clause 14.5 .
Company	Tropical Australia Academic Health Centre Limited.
Constitution	The constitution for the time being of the Company as constituted by this document and any resolutions of the Company modifying this document.
Corporations Act	<i>Corporations Act 2001</i> (Cth).
Director	A person appointed or elected from time to time to the office of director of the Company in accordance with these rules and includes any alternate director duly acting as a Member of the Board.
First Directors	Those persons named as Directors in the application for registration of the Company.
Founding Members	The Members identified in clause 4.2 .
Hospital and Health Service	The meaning given in the <i>Hospital and Health Boards Act 2011</i> (Qld).
Member	A person admitted as a Member of the Company under the applicable

	provisions of clauses 4 and 5 .
Membership	Being a Member of the Company.
Multiplier	The number by which the Base Fee should be multiplied to determine any particular member's annual membership fee.
Officer	The meaning given in clause 22.1 .
Public Sector Entity	The meaning given in the <i>Auditor-General Act 2009</i> (Qld).
Register of Members	The register of Members maintained pursuant to the Corporations Act.
Replaceable Rules	The replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act.
Seal	The common seal, if any, from time to time of the Company.
Secretary	The person holding office, or performing the functions of, secretary of the Company.
Tax Act	<i>Income Tax Assessment Act 1997</i> (Cth).

2. Interpretation

Unless expressed to the contrary, in this Constitution:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) 'includes' means includes without limitation;
- (d) a reference to:
 - (i) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (ii) writing (including a reference to a document or a form) includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax and email transmissions;
- (e) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
- (f) if the date on or by which any act must be done under this Constitution is not a Business Day, the act must be done on or by the next Business Day; and

- (g) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded; and
- (h) headings do not affect the interpretation of this document.

25 Schedule 2 – Base Fee Multiplier for Members

Members	Fee multiplier
Townsville Hospital and Health Service	4
Cairns & Hinterland Hospital and Health Service	4
James Cook University	4
Mackay Hospital and Health Service	2
North West Hospital and Health Service	1
North Queensland Primary Health Network	1
Torres & Cape Hospital and Health Service	1