

Constitution  
of  
Trans Tasman Radiation Oncology Group  
Limited  
ACN 132 672 292

*This Constitution incorporates all amendments up to and including the amendments passed by a special resolution of the members at the Company's General Meeting of Members held on 7 July 2021.*

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# Constitution of Trans Tasman Radiation Oncology Group Limited ACN 132 672 292

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## 1 Preliminary

### 1.1 REPLACEABLE RULES

All of the replaceable rules set out in the Act which the Company is entitled to displace, are displaced by the rules set out in this constitution.

### 1.2 DEFINITIONS

The following expressions in this constitution have the meaning below:

**Act** means *Corporations Act 2001*.

**Affiliate Member** means a member of the Company who qualified to become a member under rule 7.3.

**Annual Subscription Fee** means the annual fee that Full Members are required to pay at the beginning of each Financial Year for their membership of the Company, as determined by the Board from time to time.

**Board** means the directors acting collectively under this constitution.

**Chief Executive Officer** means the person appointed under rule 8.1(c) to whom the Board may delegate power under rule 10.1.

**Company** means the company named at the beginning of this constitution.

**Continuing Director** means a person who is a director of the Company at the time of adoption of this constitution, who continues to hold that office.

**Elected Director** means a director elected under rule 8.3.

**Financial Year** means the twelve month period ending on 31 December each year.

**Full Member** means a member of the Company who qualified to become a member under rule 7.2.

**Life Member** means a member of the Company who qualified to become a member under rule 7.4.

**President** means the person appointed to that office under rule 8.5(b) who generally acts as chair of the Board under rule 17.5.

**President Elect** means a person elected to that office under rule 8.5(b) or appointed to that office under rule 8.5(h).

**Policies and Procedures Manual** means the Company's policies and procedures adopted by the Board as amended from time to time.

**Register of Members** is the record kept by the Secretary at the TROG Office which contains the membership details of each member of the Company in accordance with rule 7.7.

**Scientific Committee** means the committee established under rule 12.

**Secretary** means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with rule 24.

**TCOO** means the TROG Central Operations Office, which at the date of the adoption of this constitution is located at Level 5, Building 7, Calvary Mater Newcastle, Edith St, Waratah, NSW 2298 Australia.

**Trial Management Committee** means a committee established to oversee one of the Company's clinical trials in accordance with rule 13.

**Voting Member** in relation to a general meeting, or meeting of a class of members, means a Full Member or Life Member who has the right to be present, and to vote on at least one item of business to be considered at that meeting.

### 1.3 INTERPRETATION

- (a) Words importing the singular include the plural and vice versa.
- (b) Words importing a gender include any gender.
- (c) Words or expressions defined in the Act have those meanings.
- (d) Except so far as the contrary intention appears in this constitution, an expression has, in a provision of these rules that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (e) Headings are for convenience only, and do not affect interpretation.
- (f) Including and similar expressions are not to be treated as words of limitation.
- (g) A reference to:
  - (i) A party includes its administrators, successors, substitutes by novation and assigns
  - (ii) Any legislation includes legislation varying consolidating or replacing that legislation and includes all regulations or other instruments issued under that legislation
  - (iii) A person includes a body incorporated or unincorporated, partnership or any legal entity
  - (iv) A document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated.

## 2 Name and structure

### 2.1 NAME OF THE COMPANY

The name of the Company is Trans Tasman Radiation Oncology Group Limited.

### 2.2 COMPANY LIMITED BY GUARANTEE

The Company is limited by Guarantee and the liability of the members is limited as provided in this document.

### **3 Purpose and objects**

#### **3.1 PURPOSE**

The Company is a charitable body whose role is to act in the public interest. As such it does not seek to profit, or generate profit for allied parties, from its activities.

#### **3.2 OBJECTIVES**

The objectives of the Company are to:

- (a) Carry out investigator-driven research in oncology, primarily clinical trials involving radiation medicine designed to improve the outcomes for people affected by cancer.
- (b) Foster optimal patient care through maintenance of standards and through independent clinical research including trials.
- (c) Foster regional cooperation between all radiation oncologists in the Australian and New Zealand regions, and specifically to promote coordinated multi-institution research endeavours.
- (d) Promote the highest ethical standard of care and research including quality assurance.

### **4 Application of income and property**

#### **4.1 PROMOTION OF OBJECTS**

All income and property of the Company must be applied solely towards the promotion of the objects of the Company as set out in rule 3.2 and no portion will be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any members of the Company. Nothing in this paragraph prevents payment:

- (a) For services actually rendered to the Company including as an employee by any member or director or for goods and/or services supplied in the usual and ordinary way of business by any member or director
- (b) Of interest on money borrowed from any member or director at not more than commercial rates
- (c) Of rent for premises leased by any member or director to the Company provided that the rent is reasonable and proper, or
- (d) Of insurance premiums for directors and officers as permitted by this constitution.

### **5 Deductible Gift Recipient status**

#### **5.1 COMPLIANCE WITH ATO REQUIREMENTS**

Any provisions that are required from time to time in order to maintain the status of the Company as a Company to which gifts can be deducted under the *Income Tax Assessment Act 1997* (Cth) are considered to form part of this constitution.

## 5.2 COMPLIANCE WITH APPLICABLE GUIDELINES AND DIRECTIVES

The Board must ensure that the Company complies with all relevant guidelines that apply to the Company and any reasonable directives issued to the Company by an authority in a jurisdiction in which the Company conducts charitable fundraising activities.

## 6 Winding up

### 6.1 CONTRIBUTION OF MEMBERS

If the Company is wound up, each member of the Company undertakes to contribute to the assets of the Company an amount not exceeding \$10 for payment of the debts and liabilities of the Company including the costs of the winding up. This undertaking continues for one year after a member ceases to be a member of the Company.

### 6.2 DISTRIBUTION OF PROPERTY

Subject to Rule 5, if the Company is wound up or dissolved, or if the Company's status as a Company to which gifts can be deducted under the *Income Tax Assessment Act 1997* (Cth) is revoked, any property remaining after the satisfaction of the debts and liabilities of the Company will not be paid to or distributed among the members but will be given or transferred to an organisation which:

- (a) Has similar objectives to the Company
- (b) Is a deductible gift recipient for the purposes of any Commonwealth Taxation Act
- (c) Has been nominated by the Board, and
- (d) Has been approved by an ordinary resolution of members.

## 7 Membership

### 7.1 MEMBERSHIP CATEGORIES

A person may become a Member of the Company as a Full Member, an Affiliate Member or a Life Member.

### 7.2 FULL MEMBERS

- (a) A person is eligible to become a Full Member if they:
  - (i) Are qualified:
    - (1) As a medical specialist in an area that relates to the Company's clinical trials ie Radiation Oncologist, Medical Oncologist, Surgeon, or
    - (2) In any other discipline that relates to the Company's clinical trials ie Radiation Therapist, Medical Physicist, Statistician, allied health professional, and/or
    - (3) Are a Director of the Board
  - (ii) Have an interest in the field of radiation oncology research,
  - (iii) Accept the objectives of the Company as set out in rule 3.2.
- (b) A Full Member must pay the Annual Subscription Fee.

- (c) A Full Member may vote at meetings of Members.

### 7.3 AFFILIATE MEMBERS

- (a) A person is eligible to become an Affiliate Member if they:
  - (i) Are qualified or are in training to become qualified:
    - (1) As a medical specialist in an area that relates to the Company's clinical trials ie Radiation Oncologist, Medical Oncologist, Surgeon,
    - (2) In any other discipline that relates to the Company's clinical trials ie Radiation Therapist, Medical Physicist, Statistician, allied health professional, and
  - (ii) Have an interest in the field of radiation oncology research, and
  - (iii) Accept the objectives of the Company as set out in rule 3.2.
- (b) An Affiliate Member is not required to pay the Annual Subscription Fee.
- (c) An Affiliate Member does not have the right to vote at meetings of Members.
- (d) Affiliate Membership will initially be granted for 3-5 years and will then be reviewed periodically.

### 7.4 LIFE MEMBERS

- (a) From time to time, if the Board is of the view that special circumstances apply so that it would be appropriate for a certain person to become a Life Member, the Board may nominate that person to become a Life Member. A person who is nominated to become a Life Member must be an existing Member of the Company.
- (b) If the Board nominates a person to become a Life Member, then that nomination will be put to a resolution of the Voting Members at the next meeting of Members.
- (c) If the Voting Members resolve that the person is to become a Life Member, then the person's name will be entered into the Register of Members as a Life Member.
- (d) A Life Member is not required to pay the Annual Subscription Fee.
- (e) A Life Member may vote at meetings of Members.

### 7.5 NOMINATION FOR MEMBERSHIP

- (a) If a person meets the eligibility criteria to become a Full Member as set out in rule 7.2 or an Affiliate Member as set out in rule 7.3, then that person can make an application for membership in accordance with the process determined by the Board at any time.
- (b) The membership application process determined by the Board under (a):
  - (i) Must provide that the applicant must be nominated for membership by two Members of the Company
  - (ii) May be by electronic means.

## 7.6 APPROVAL OF MEMBERSHIP

After receiving a nomination for membership under rule 7.5, the CEO must decide whether or not the application is to be approved and arrange for a letter to be written to the nominee from the TCOO to:

- (a) Inform the person whether or not their membership has been approved, and
- (b) If they have been approved as a Full Member, request payment of the Annual Subscription Fee within 28 days of the date of the letter.

The Board are to be notified periodically of new Member approvals.

## 7.7 REGISTER OF MEMBERS

- (a) The Secretary must keep a Register of Members at the TCOO in accordance with this rule 7.7.
- (b) A person becomes a Member of the Company when their full name, address and date of entry are recorded in the Register of Members. A person does not have any of the rights associated with membership of the Company until their details are entered into the Register of Members.
- (c) A person's membership details may only be entered into the Register of Members:
  - (i) For Full Members, after the Annual Subscription Fee for their first year of membership has been received by the Company
  - (ii) For Affiliate Members, after their nomination has been approved by the CEO, and
  - (iii) For Life Members, after the resolution has been passed by the Company to approve them becoming a Life Member.
- (d) If a person ceases to be a Member of the Company in accordance with rule 7.11 , then the Secretary must record the date they ceased to be a Member of the Company in the Register of Members.

## 7.8 CONDITIONS OF MEMBERSHIP

- (a) All Members of the Company must comply with the published Policies and Procedures of the Company.
- (b) Any right, privilege or obligation of a person by reason of membership of the Company:
  - (i) May not be transferred or transmitted to another person, and
  - (ii) Terminates on the cessation of membership.

## 7.9 BOARD POWER TO SUSPEND OR EXPEL A MEMBER

- (a) If the Board is of the opinion that the Member:
  - (i) No longer supports the objectives of the Company as set out in rule 3.2
  - (ii) Has not complied with the Policies and Procedures of the Company, or

- (iii) Has engaged in inappropriate conduct, including conduct which may be prejudicial to the interests of the Company, including unethical conduct, falsification of data in the Company's clinical trials, or financial misconduct involving Company funds

the Board may:

- (iv) Resolve to suspend the Member with immediate effect, and/or
  - (v) Determine that a Board meeting is to be called for the purposes of considering a resolution for the Member to be expelled from the Company.
- (b) The Board may at any time resolve to lift a suspension it makes under rule 7.9(a)(iv) with immediate effect.
  - (c) A suspension made by the Board under rule 7.9(a)(iv) will lapse after 28 days unless the Board has made a determination under rule 7.9(a)(v).
  - (d) If the Board makes a determination under rule 7.9(a)(v):
    - (i) The Secretary must send a notice to the Member which must include:
      - (1) The proposed resolution of the Board to expel the Member and the grounds on which it is based
      - (2) The date, time and place of the meeting at which the resolution to expel the Member will be considered by the Board
      - (3) A statement that the Member may:
        - (A) Address the Board at that meeting, and/or
        - (B) Give to the Board at or before the meeting a written statement setting out why they should not be expelled from the Company.
    - (ii) The meeting must be held no less than 14 days and no more than 28 days after the date of the notice the Secretary sends to the Member under rule 7.9(d)(i)
    - (iii) At the meeting the Board must:
      - (1) Give the Member an opportunity to be heard
      - (2) Give due consideration to any address made by the Member or any written statement the Member gives to the Board, and
      - (3) Vote on the resolution to expel the Member.
    - (iv) If the resolution to expel the Member is passed then the expulsion of the Member is effective immediately.

#### 7.10 EFFECT OF SUSPENSION

If a Member is suspended then they are not entitled to vote at meetings of Members or have any involvement in the Company's clinical trials, unless otherwise determined by resolution of the Board.

#### 7.11 CESSATION OF MEMBERSHIP

Any person will automatically cease to be a Member of the Company if they:

- (a) Resign as a Member of the Company by giving one month's notice in writing to the Secretary
- (b) Are a Full Member and cease to have an the occupation that entitled them to become a Member as referred to in rule 7.3(a)(i)
- (c) Are an Affiliate Member and cease to have an the occupation that entitled them to become a Member as referred to in rule 7.3(a)(i)
- (d) Become insolvent, bankrupt or subject to any form of insolvent administration
- (e) Become of unsound mind or are physically or mentally incapable of performing the duties of membership
- (f) Fail to declare any interests under rule 15.2 or 15.3
- (g) Are expelled by resolution of the Board
- (h) Are determined by the Board as no longer holding the qualifications that are required for holding the category of membership held by the Member.

Failure to pay the Annual Subscription Fees within three months of the date of issuance of a written reminder from the Company that the Annual Subscription Fee is overdue, may result in cessation of Membership.

#### 7.12 CONTINUATION OF LIABILITY

The estate of the deceased Member will not be released from any liability to the Company in respect of the deceased's membership of the Company.

## 8 Directors

### 8.1 COMPOSITION OF BOARD

The Board must at all times consist of a minimum of four Directors. Unless otherwise provided in rule, the Board of the Company will consist of:

- (a) A minimum of four, maximum of seven Elected Directors, which must be elected by the Members of the Company under rule 8.3
- (b) The Scientific Committee Chair, who must be appointed by the Board under rule 8.6
- (c) The Chief Executive Officer, if the Board elects to appoint the Chief Executive Officer as a Director, in accordance with rule 8.6(c)
- (d) The Independent Consumer Representative Director, who must be appointed by the Board under rule 8.6, and
- (e) Up to three additional Independent Directors, who must be appointed by the Board under rule 8.6
- (f) A representative of Royal Australian and New Zealand College of Radiologists (RANZCR)

### 8.2 RESIDENCY AND MEMBERSHIP REQUIREMENTS

- (a) The Company shall aspire to recruit to the Board:

- (i) At least one Elected Director who is a New Zealand resident, and
  - (ii) At least two Elected Directors who are Radiation Oncologists.
- (b) All Elected Directors must be Full Members of the Company.

### 8.3 ELECTION PROCESS

The Elected Directors must be elected according to the following process.

- (a) At least four weeks before the date of each annual general meeting, the Secretary will circulate to members a notice which must include:
  - (i) The number of Elected Director positions on the Board that will be vacant at the next annual general meeting
  - (ii) Any residency or membership requirements referred to in rule 8.2 that must be satisfied by a person elected to fill a vacancy on the Board
  - (iii) A request for nominations for the vacant positions on the Board, and
  - (iv) A copy of the form approved by the Board for nomination of Directors.
- (b) Any two Voting Members of the Company may nominate any person to serve as an Elected Director.
- (c) The nomination must be:
  - (i) In writing
  - (ii) Signed by a proposing Member, a seconding Member and the candidate, and
  - (iii) Lodged with the Secretary at least 14 days before the meeting at which the election is to take place.
- (d) The Secretary must post on the Company's website a list of the candidates in alphabetical order at least seven days before the date of the annual general meeting.
- (e) The Board may appoint a candidate on the appointment date without holding a ballot if:
  - (i) The number of candidates is equal to or less than the number of vacancies, or
  - (ii) The continuing Directors do not satisfy a residency or membership requirement set out in rule 8.2, and only one candidate satisfies that particular requirement.
- (f) Subject to (g), Voting Members may vote in person at the annual general meeting or by electronic means permitted by the Board. The Board may prescribe a time limit by which electronic votes must be received.
- (g) A Voting Member is not entitled to vote at a general meeting unless all moneys presently payable to the Company by that Member have been paid.
- (h) The number of electronic votes received will be recorded in the minutes of the general meeting.
- (i) Each Voting Member personally present at the general meeting at which the election is to take place, and who has not voted by electronic means, will be given a ballot listing

containing the names of candidates in alphabetical order and will be entitled to one vote for each position on the Board.

- (j) The number of votes personally cast at the general meeting will be recorded in the minutes of the general meeting.
- (k) The votes by electronic means received in accordance with the method permitted by the Board and the votes cast at the general meeting will be counted and tallied at the general meeting and recorded in the minutes of the general meeting.
- (l) The candidates with the highest number of votes in the ballot will be elected to fill each vacancy on the Board unless their election would conflict with the residency and membership requirements set out in rule 8.2, in which case the candidate with the highest number of votes that satisfies the residency or membership requirement will be elected to the Board even if that candidate does not have the highest number of votes overall.

#### 8.4 TERM OF APPOINTMENT

A Director elected under rule 8.3:

- (a) Is appointed for a three year term from the date of the annual general meeting at which they are elected
- (b) Retains office until the third annual general meeting after the Director was elected, when the Director must retire from office
- (c) May stand for re-election on their retirement from office, and
- (d) May hold the position of Director for a maximum of nine years (initial appointment plus two re-elections). As of June 2021, this does not apply to existing approved tenures of the current Board.

#### 8.5 PRESIDENT/PRESIDENT ELECT

- (a) The President must be a Full Member and a qualified Radiation Oncologist.
- (b) The President will be elected by eligible Voting Members of the Company subject to:
  - (i) The person being a current member of the Board of Directors and continuing to be a Director for the duration of that term,
  - (ii) The person continuing to be a Full Member of the Company for the duration of that term; and
  - (iii) The no confidence provisions set out in rule 8.5(n).
- (c) The President Elect will be elected according to the following process:
  - (i) A notice circulated by the Secretary under rule 8.3(a):
    1. With respect to the annual general meeting that will mark the commencement of the final year of a President's term determined in accordance with rule 8.5(l); or
    2. At a time when there is a vacancy in the office of President,

Must include, in addition to the other matters required to be included in that notice:

3. A request for nominations for the position of President Elect, and
4. A copy of the form approved by the Board for nomination of the President Elect;

And if rule 8.5(c)(i)(1) applies:

5. Notification that the President has one year of term remaining;
6. Notification of whether or not the President is eligible for reappointment for a further three year term in accordance with rule 8.5(l).

- (d) Subject to rule 8.3(e), the nomination and voting process for Elected Directors as set out in rules 8.3(b) to 8.3(l) will apply to the election of a President Elect as it applies to Elected Directors.
- (e) Members of the Board of Directors are eligible to stand for and accept a nomination as President Elect.
- (f) Each nominee for the office of President Elect (other than nominees who are Elected Director who are not up for re-election at the relevant annual general meeting) will be deemed to be a nomination for Elected Director and the nominee will appear on the ballot for the election of Elected Directors. The Secretary must ensure that the ballot paper contains words to the effect that:
  - (i) The President Elect and Elected Directors are to be determined by two separate ballots in the event that the number of candidates exceeds the number of vacancies
  - (ii) Any votes for a candidate for President Elect will not count towards their tally of votes in the ballot for the election of Elected Directors, and
  - (iii) If the successful President Elect candidate is a candidate for Elected Director, any votes for that person will be disregarded in the Elected Director ballot.
- (g) At each annual general meeting the election for the President Elect will take place before the election of Elected Directors and, if the successful candidate for the office of President Elect is not an existing Elected Director, that person will fill one of the vacant Elected Director positions.
- (h) The Board may appoint a candidate for President Elect on the appointment date without holding a ballot if there is only one candidate.
- (i) The President Elect will serve until the next annual general meeting after his or her election as an Elected Director and as President Elect.
- (j) At the annual general meeting following his or her election as President Elect, the President Elect will become President and will continue to serve as an Elected Director.
- (k) All of the obligations of Elected Directors and other provisions dealing with Elected Directors as set out in this constitution apply to the President and President Elect as they apply to the other Elected Directors except as otherwise provided for in this rule 8.5. Rule 8.4 will not apply to a person who is President or President Elect.

- (l) A person who becomes President in accordance with rule 8.5(h) retains office as President and will also retain office as an Elected Director until the third annual general meeting after the annual general meeting at which that person become President, when that person must retire from office. A person who is due to retire from office under this rule after serving one term as President may stand for re-election, favour of continued Presidency for a further three year term after which, having served continuously for two terms the President will be ineligible for reappointment.
- (m) Any casual vacancy occurring in the office of an President will be filled by the President Elect, or if there is no such person at the time of the vacancy it will be filled by another Elected Director with such person to be determined by a resolution of the Board. In the event of a casual vacancy of the President Elect that office will remain vacant until the next annual general meeting of the Company at which time a new President Elect must be elected or appointed in accordance with this rule 8.5.
- (n) Any Director on the Board may propose to the Board a motion of no confidence in the President. If 75% of the Board vote in favour of the motion of no confidence then the Board will remove the President from that position immediately. The removed person is entitled to retain their place as an Elected Director.

#### 8.6 DIRECTORS APPOINTED BY THE BOARD

- (a) The Board must by ordinary resolution appoint Directors to fill the positions on the Board specified in rules 8.1(b) and 8.1(d) as soon as reasonably practicable after those positions become vacant.
- (b) The Board must appoint the Scientific Committee Chair for a term of three years and at the expiry of each term, the Board may re-appoint that person for a further term.
- (c) The Board may in its absolute discretion elect to appoint the Chief Executive Officer as a Director of the Company by passing an ordinary resolution of the Board.
- (d) The appointment of the Consumer Representative Director will be consistent with rule 8.4.
- (e) The Board may in its absolute discretion elect to appoint up to three additional Independent Directors on the terms consistent with rule 8.4 by passing an ordinary resolution of the Board.
- (f) Unless the Board determines otherwise by ordinary resolution, a Chief Executive Officer who is appointed as a Director under rule 8.6(c) holds the office of Director for the duration of that person's employment as Chief Executive Officer and vacates the office of director immediately on termination of their employment as Chief Executive Officer.

#### 8.7 TERMINATION AND REMOVAL OF DIRECTORS

- (a) The appointment of a Director appointed under rule 8.6 can be terminated if the Board removes that Director from office, whether or not the appointment was expressed to be for a specified term.
- (b) The appointment of an Elected Director can be terminated by ordinary resolution of the Voting Members.

## 8.8 CESSATION

The office of a Director automatically becomes vacant if the person who holds the office:

- (a) Ceases to meet one of the residency or membership requirements that they held when elected to the Board as specified in rule 8.2
- (b) Becomes insolvent, bankrupt or subject to any form of insolvent administration
- (c) Is not permitted by the Act to be a Director or vacates office by force of a provision of the Act
- (d) Becomes of unsound mind or physically or mentally incapable of performing the functions of that office
- (e) Is absent without the consent of the Directors from two Board meetings within a 12 month period
- (f) Resigns by notice in writing to the Company
- (g) Is removed from office under rule 8.7
- (h) Dies, or
- (i) If the person was appointed to the office for a specified period and that period expires.

## 8.9 CASUAL VACANCIES

Any casual vacancy occurring in the office of an Elected Director may be filled by the Board provided that the Director who fills the vacancy will hold office only until the next annual general meeting following his or her appointment and will be eligible for re-election at that annual general meeting.

## 8.10 TOO FEW DIRECTORS

If the number of Directors is reduced below the minimum of three Directors as required by rule 8.1, the continuing Directors may act as the Board only:

- (a) To appoint Directors up to that minimum number
- (b) To convene a meeting of members
- (c) In emergencies.

# 9 Powers of the Board

## 9.1 MANAGEMENT OF THE COMPANY

Subject to the Act and to any other provision of this constitution, the Board will manage the business of the Company. The Board may exercise all the powers of the Company as are not required by the Act or by this constitution to be exercised by the Company in general meeting.

## 9.2 EXERCISE OF POWERS

A power of the Board can be exercised only by resolution passed, or treated by rule 17 as passed, at a meeting of the Board, or in accordance with rule 11.

### 9.3 NEGOTIABLE INSTRUMENTS

The Board must decide the manner in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept or endorse negotiable instruments only in the manner for the time being decided by the Board.

## 10 Chief Executive Officer

### 10.1 POWER OF CHIEF EXECUTIVE OFFICER

The Board may confer powers on the Chief Executive Officer which may be:

- (a) Concurrent with, or be to the exclusion of, the powers of the Board
- (b) On the terms and subject to any restrictions the Board decides
- (c) Revoked by the Board at any time.

## 11 Delegation of Board powers

### 11.1 DELEGATION OF POWERS

The Board may delegate any of its powers to:

- (a) The Chief Executive Officer, or any other executive
- (b) An attorney, or
- (c) A Board sub-committee (consisting of at least one Director and which may include persons who are not Directors).

### 11.2 TERMS OF DELEGATION

A delegation of powers under rule 11.1 may be:

- (a) For a specified period or without specifying a period
- (b) On the terms and subject to any restrictions the Board decides
- (c) Provided that any delegation made by the Company in relation to the administration of fundraising by the Company complies with the requirements of any laws relating to fundraising.

### 11.3 REVOCATION OF POWERS

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

### 11.4 STATUS OF EXERCISE OF POWER

Any power exercised in accordance with a delegation of the Board is taken to be exercised by the Board.

### 11.5 POWERS OF ATTORNEY

A power of attorney under rule 11.1 may contain the provisions for the protection and convenience of those who deal with the attorney that the Board thinks appropriate.

## 11.6 PROCEEDINGS OF COMMITTEE

Subject to the terms on which a power of the Board is delegated to a Board sub-committee, the meetings and proceedings of sub-committees are, as far as practicable, governed by the rules of this constitution which regulate the meetings and proceedings of the Board.

## 12 Scientific Committee

### 12.1 GOVERNANCE OF SCIENTIFIC COMMITTEE

The TROG Scientific Committee (TSC) is a committee of the Board of the Company, appointed by the Board in accordance with the constitution. It is governed by the rules of this constitution as well as its Charter.

## 13 Trial Management Committee

### 13.1 ROLE OF TRIAL MANAGEMENT COMMITTEE

- (a) The Board must establish a Trial Management Committee for each of the Company's clinical trials and ensure that the Trial Management Committee is required to comply with the Policies and Procedures of the Company and reports to The TROG Scientific Committee.
- (b) Each Trial Management Committee must be Chaired by a Full Member.

## 14 Finance, Audit and Risk Management Committee

### 14.1 GOVERNANCE OF FINANCE AUDIT & RISK MANAGEMENT COMMITTEE

In accordance with rule 11.1, the Board has established the Finance, Audit and Risk Management (FARM) Committee. It is governed by the rules of this constitution as well as its Charter.

## 15 Director's duties and interests

### 15.1 HOLDING OFFICES OR ENTERING INTO AGREEMENTS

A director is not disqualified by reason only of being a director from:

- (a) Holding any office or place of profit or employment, other than that of the Company's auditor, or being a member or creditor, of any corporation (including the Company) or partnership other than the auditor, or
- (b) Entering into any agreement with the Company.

### 15.2 DECLARATION OF INTERESTS

Subject to the Act, if a Director has a material personal interest in a matter that relates to the affairs of the Company that Director must give the other Directors notice of the interest in the required format including the nature and extent of the interest, and the relation of the interest to the affairs of the Company. This is to be done:

- (a) At the first Board meeting held after the Director becomes aware of their interest in the matter, or
- (b) After appointment as a Director, or

- (c) As soon as the Director becomes aware of their interest in the matter and the details must be recorded in the minutes of the next Board meeting.

The required format is the Disclosure of a Conflict of Interest Form which can be requested from the Company Secretary. The Company Secretary maintains a register of the conflicts of interest for the Board and distributes such on a regular basis.

### 15.3 DIRECTOR INTERESTED IN AGREEMENT

- (a) If a Director has a material personal interest in a matter that relates to the affairs of the Company, unless disclosure is not required under the Act, the Director must disclose the nature and extent of the interest and its relation to the affairs of the Company at a Board meeting in accordance with rule 15.2 and the Act so that the Director may be counted in a quorum at a Board meeting that considers, and may vote on, matters that relate to the interest
- (b) The Director may vote on matters that relate to the interest
- (c) Any transactions that relate to the interest may proceed
- (d) The Director may participate in the execution by or on behalf of the Company of any documents that relate to the interest
- (e) If the disclosure is made before the transaction is entered into:
  - (i) The Director may retain benefits under the transaction even though the Director has the interest
  - (ii) The Company cannot avoid the transaction merely because of the existence of the interest.

## 16 Officers indemnity and insurance

### 16.1 INDEMNITY

Subject to the Act the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company and of its wholly owned subsidiaries and may indemnify its auditor (if any) against a liability:

- (a) Incurred as officer or auditor of the Company to a person (other than the Company or a related body corporate), unless the liability arises out of conduct involving a lack of good faith or is for a pecuniary penalty order or compensation order under the Act
- (b) For costs and expenses incurred by the officer or auditor in defending civil or criminal proceedings in which judgement is given in favour of the officer or auditor or in which the officer or auditor is acquitted, or in connection with proceedings for relief to the officer or auditor under the Act in which the court grants relief and for other legal costs, to the extent permitted by the Act, as approved by the Board.

### 16.2 INSURANCE

Subject to, and without limiting s199B of the Act, the Company may pay insurance premiums to cover the liabilities of its officers and its auditors which may extend to all liabilities, excluding liabilities arising out of conduct involving wilful breach of duty in relation to the Company, acts

not in good faith and for a proper purpose, or improper use of position. The Company may also insure its officers and its auditors against liabilities for costs and expenses incurred in defending legal criminal or civil proceedings, notwithstanding that these proceedings may arise out of conduct involving wilful breach of duty in relation to the Company, acts not in good faith and for proper purpose, or improper use of position and irrespective of the outcome of these proceedings.

#### 16.3 FORMER OFFICERS

The indemnity in favour of officers under rule 16.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

### **17 Board meetings**

#### 17.1 CONVENING

A Director may at any time, and the Company Secretary must on the request of a Director, convene a Board meeting.

#### 17.2 NOTICE

The convenor of each Board meeting must give reasonable notice of the meeting, using any technology (and, if it is adjourned, on its resumption) individually to each Director and each alternate in respect of whom the appointer has given notice requiring notice of Board meetings to be given to that alternate. Failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

#### 17.3 USE OF TECHNOLOGY IS ALLOWED

A Board meeting may be held using any means by which each Director participating can hear and be heard by each and every other Director participating or in any other way permitted by the Act.

#### 17.4 PLACE OF MEETING IF TECHNOLOGY IS USED

A Board meeting held solely or partly by use of technology is treated as held at the place agreed by the Directors, provided at least one of the Directors present at the meeting was at that place for the duration of the meeting.

#### 17.5 CHAIR

The President will chair the Board's meetings. If there is no President or the President is not present at the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

#### 17.6 QUORUM

The quorum for a Board meeting is three Directors unless the Board decides otherwise.

#### 17.7 MAJORITY DECISIONS

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.

#### 17.8 CHAIRPERSON HAS CASTING VOTE

The chairperson has a casting vote if necessary in addition to any vote they have in their capacity as a Director except where only two Directors are present and entitled to vote.

#### 17.9 BOARD DETERMINES PROCEDURES

The Board may meet together, adjourn and regulate its meetings as it decides.

#### 17.10 CIRCULAR RESOLUTIONS

The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on a resolution:

- (a) Vote via a secure digital voting platform, or
- (b) Electronically sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs. Directors may sign separate documents if the wording of the resolution and statement is identical in each copy. An e-mail message containing the text of the document expressed to have been signed by a Director that is sent to the Company Secretary is a document signed by that Director at the time of its receipt by the Company Secretary.

#### 17.11 EFFECT OF IRREGULARITIES

Each resolution passed or act done by or with the participation of a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) There was a defect in the appointment of the person, or
- (b) The person was disqualified from continuing in office, voting on the resolution or doing the act.

### **18 Meeting of Members**

#### 18.1 CALLING MEETINGS

A Director may at any time, and the Board must when required by the Act or by order made under the Act, call a meeting of Members.

#### 18.2 NOTICE OF MEETING

Subject to rules 18.3 and 18.4, at least 14 days written notice of a meeting of Members must be given in accordance with the Act to each Member, to each Director and to the auditor (if any).

#### 18.3 SHORT NOTICE

Subject to the Act, the Company may call on short notice:

- (a) An annual general meeting, if all the Members entitled to attend and vote agree
- (b) Any other general meeting if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.

#### 18.4 POSTPONEMENT OR CANCELLATION

Subject to the Act, the Board may postpone or cancel a meeting of Members by written notice given individually to each person entitled to be given notice of the meeting. If a meeting is adjourned for one month or more, the Company must give new notice of the resumed meeting.

#### 18.5 USE OF TECHNOLOGY

The Company may hold a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

#### 18.6 ACCIDENTAL FAILURE TO GIVE NOTICE

An accidental omission to give notice of a general meeting or the postponement of a general meeting to any person entitled to receive that notice or the non-receipt of notice by any person entitled to receive that notice does not invalidate the proceedings or any resolutions passed at the general meeting.

#### 18.7 CLASS MEETINGS

Rule 19 to 20 inclusive apply to a separate meeting of a class of Members as far as they are capable of application and modified as necessary.

#### 18.8 QUORUM

No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. The presence of ten members entitled to attend and vote will constitute a quorum.

For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a body corporate that is a Member, shall be deemed to be a Member.

### **19 Conduct of general meetings**

- (a) The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting will be determined by the chairperson, including the procedure for the conduct of the election of Directors.
- (b) If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question and no vote may be taken by the Members on any such determination by the chairperson.
- (c) A Director (and an alternative Director when acting as a Director) is entitled to speak at every general meeting.

#### 19.2 QUORUM NOT PRESENT

If a quorum is not present within 15 minutes after the time appointed for a meeting:

- (a) If the meeting was convened by or on the requisition of Members, it is automatically dissolved; or
- (b) In any other case:
  - (i) It will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors

- (ii) If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is dissolved.

## **20 Appointment of chair of meetings of members**

The President will chair meetings of members unless:

- (a) there is no President for the time being, or
- (b) the President is not present at the time for which a meeting of Members is called or is not willing to chair the meeting,

in which case the Voting Members present must elect a Member or Director present to chair the meeting.

## **21 Adjourned meetings**

### **21.1 ABILITY TO ADJOURN**

The chairperson of a meeting at which a quorum is present:

- (a) May adjourn a meeting with the consent of the majority of Voting Members present
- (b) Must adjourn a meeting if the majority of Voting Members direct the chairperson to do so.

### **21.2 VENUE OF ADJOURNED MEETING**

An adjourned meeting may take place at a different venue from the initial meeting.

### **21.3 BUSINESS AT ADJOURNED MEETING**

The only business that can be transacted at an adjourned meeting is the unfinished business of the initial meeting.

### **21.4 NOTICE OF ADJOURNED MEETING**

If a general meeting has been adjourned for more than 42 days, notice of the adjourned meeting must be given to Members as if it were an original meeting, but otherwise it is not necessary to give notice of an adjourned meeting or the business of the adjourned meeting.

## **22 Proxies, attorneys and representatives**

### **22.1 ABILITY TO APPOINT**

A Member who is entitled to attend and vote at a meeting of Members may appoint a person as the Member's proxy for the meeting.

### **22.2 VALIDITY OF APPOINTMENT**

An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required under the Act.

### **22.3 VOTING DIRECTIONS**

An appointment of a proxy may specify the way the proxy is to vote on a particular resolution. If it does the proxy must not vote in the resolution except as specified in the instrument.

#### 22.4 EFFECTIVENESS OF APPOINTMENT

An appointment of a proxy for a meeting of Members is not effective unless:

- (a) The proxy's appointment
  - (b) If the appointment is signed by the appointer's attorney, the authority under which the appointment was signed or a certified copy of that authority,
- is received by the Company at least 48 hours before the meeting.

#### 22.5 ADJOURNED MEETING

If a meeting of Members has been adjourned, any appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

#### 22.6 VALIDITY OF VOTE OF PROXY

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes, the appointer:

- (a) Dies
- (b) Becomes mentally incapacitated, or
- (c) Revokes the proxy or power appointment.

#### 22.7 STANDING APPOINTMENTS

A Member may appoint a proxy, attorney or representative to:

- (a) Act at a particular meeting of members, or
- (b) Make a standing appointment

and may revoke any appointment.

#### 22.8 SUSPENSION OF PROXY OR ATTORNEY'S POWERS OF MEMBER PRESENT

A proxy or attorney has no power to act for a member at a meeting at which the Member is present either personally, or by an attorney or, in the case of a body corporate, by a representative.

#### 22.9 PRIORITY OF CONFLICTING APPOINTMENTS OF ATTORNEY OR REPRESENTATIVE

If more than one attorney or representative appointed by a Member is present at a meeting of Members and the Company has not received notice of revocation of any of the appointments:

- (a) An attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment
- (b) Subject to paragraph (a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

#### 22.10 MORE THAN TWO CURRENT PROXY APPOINTMENTS

The appointment of proxy made first in time is the first to be treated as revoked by the appointment of a subsequent proxy.

### 23 Voting

#### 23.1 NUMBER OF VOTES

Subject to this constitution, the contents of any proxy, and the terms on which membership of the Company is granted, each Voting Member has one vote on a show of hands and one vote on a poll.

If an equal number of votes is cast for and against a resolution, then the chairperson of a meeting of Members has a second or casting vote.

#### 23.2 OBJECTION TO RIGHT TO VOTE

A Member or Director may challenge a person's right to vote at a meeting of Members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairperson, whose decision is final.

#### 23.3 NO VOTING RIGHTS

A Member does not have voting rights at a general meeting unless:

- (a) They are a Full Member or a Life Member
- (b) The Board has not resolved to remove the Member's voting rights, and
- (c) That Member has paid all monies it owes to the Company.

#### 23.4 METHOD OF VOTING

A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the chairperson's declaration of a decision on a show of hands is final.

#### 23.5 DEMAND FOR A POLL

A poll may be demanded on any resolution except a resolution concerning the election of the chairperson of a meeting by:

- (a) At least five Members entitled to vote on the resolution
- (b) Members with at least 5% of the votes that may be cast on the resolution on a poll, or
- (c) The chairperson.

#### 23.6 WHEN AND HOW POLLS MUST BE TAKEN

A poll demanded on the adjournment of a meeting must be taken immediately. If a poll is demanded on any other resolution, the poll must be taken when and in the manner the chairperson directs.

## **24 Secretary**

### **24.1 APPOINTMENT AND REMOVAL OF SECRETARY**

The Board will appoint an individual to the position of Secretary of the Company. They do not need to be a Member.

### **24.2 TERMS AND CONDITIONS OF OFFICE**

A Secretary holds office for the duration and on the terms that the Board from time to time determines.

## **25 Minutes**

### **25.1 MINUTES MUST BE KEPT**

The Board must keep minutes in accordance with the Act of:

- (a) Proceedings and resolutions of meetings of Members
- (b) Proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors)
- (c) Resolutions passed by Members without a meeting
- (d) Resolutions passed by Directors without a meeting
- (e) If the Company has only one Director, the making of declarations by the Director.

### **25.2 MINUTES AS EVIDENCE**

A minute recorded and signed in accordance with the Act is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

### **25.3 INSPECTION OF MINUTES**

Members may access the minutes of meetings of Members in accordance with the Act.

## **26 Accounts and audit**

### **26.1 KEEPING ACCOUNTS**

The Board must cause the Company to keep written financial records that:

- (a) Correctly record and explain its transactions and financial position and performance
- (b) Would enable true and fair financial statements to be prepared and audited.

### **26.2 RIGHT OF ACCESS**

A Director has a right of access to financial records of the Company at all reasonable times.

### **26.3 FINANCIAL REPORT**

If required by the Act, the Board must cause the Company to prepare a financial report and a Directors' report that comply with the Act and must report to Members in accordance with the Act.

## 26.4 AUDIT

If required by the Act, the Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report.

## 27 Inspection of financial records and books

Subject to rule 25.3 and the Act, a Member who is not a Director does not have any right to inspect any financial records or books of the Company except as authorised by the Board or by a resolution of Members.

## 28 Notices

### 28.1 NOTICES BY COMPANY

A notice is properly given by the Company to a person if it is:

- (a) In writing signed on behalf of the Company (by original, printed or electronic signature)
- (b) Addressed to the person to whom it is to be given
- (c) Either
  - (i) Sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address
  - (ii) Sent by electronic message to the electronic address (if any) nominated by that person.

### 28.2 OVERSEAS MEMBERS

A Member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

### 28.3 WHEN GIVEN

A notice to a person by the Company is regarded as given and received:

- (a) If it is sent by electronic message:
  - (i) by 5.00 pm (local time in the place of receipt) on a business day - on that day, or
  - (ii) After 5.00 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day
- (b) if it is sent by mail:
  - (i) Within Australia - three business days after posting, or
  - (ii) To a place outside Australia - seven business days after posting.

A certificate in writing signed by a Director or Secretary of the Company stating that a notice was sent is conclusive evidence of service.