

Constitution

of

The Illawarra Health

and

Medical Research

Institute Ltd

ACN 130 692 849 (“Company”)
A Company Limited by Guarantee

Current as at 20 April 2020

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1 Definitions and Interpretation

1.1 Definitions

In this Constitution unless a contrary intention appears:

Annual General Meeting means the Annual General Meeting of the Company.

Appointed Director means a Director appointed under clause 10.4.

Auditor means the auditor for the time being of the Company.

Board means all or some of the Directors acting as a board of directors.

Business Day means the period from 9.00am to 5.00pm during a day of the week that is not a Saturday, Sunday or public holiday in New South Wales.

Chair means the Chairperson appointed under clause 22.1(a).

Deputy Chair means the Deputy Chairperson appointed under clause 22.1(b)

Committee means a committee constituted under clause 18.

Company means The Illawarra Health and Medical Research Institute Ltd being an Australian Public Company Limited by Guarantee established under the Corporations Act which bears the Australian Company Number (ACN) 130 692 849 .

Constitution means this Constitution as amended from time to time and a reference to a clause is a reference to a clause of this Constitution.

Corporations Act means the Corporations Act 2001 (Cth).

Director means a person holding office as Director of the Company.

Directors means all or some of the persons holding office as Directors of the Company.

Executive Director means the person appointed from time to time in accordance with clause 10.5.

Financial Year means each twelve (12) month period ending on 30 June or such other date as determined by the Board and approved by ASIC.

Founding Members means the University and the SESIAHS (now ISLHD) or their successors (as may result from a change in corporate structure or organisation charged with fulfilling their functions)

General Meeting means a meeting of the Members of the Company and includes an Annual General Meeting.

Health and Medical Research means the formal, experimental study of human health and disease processes and includes, but is not limited to, scientific research, clinical research, population health research, health service research and clinical trials.

ISLHD means the Illawarra Shoalhaven Local Health District (ABN 13 567 011 035) as constituted by the Health Services Act 1997 (NSW) or successor corporation established to fulfil its functions across the Illawarra and Shoalhaven regions.

Member means a person entered on the Register of the Company as a Member.

Other Director means a Director elected by the Members in accordance with clause 10.6.

Register means the register of Members under the Corporations Act and if appropriate includes a branch register.

Registered Office means the registered office for the time being of the Company.

Related Body Corporate has the same meaning it has in the Corporations Act.

Representative means a person appointed to represent a corporate Member at a General Meeting of the Company in accordance with the Corporations Act.

Rule means a rule made by the Board in accordance with clause 15.

Schedule means a schedule to this Constitution.

Seal means the common seal (if any) of the Company.

Secretary means a person appointed as a secretary of the Company and includes an honorary Secretary and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

SESIHS means the South Eastern Sydney and Illawarra Area Health Services (ABN 78 390 886 131) constituted by the Health Services Act 1997 (NSW).

Special Majority Approval means in the case of a vote, the resolution or consent of a minimum of 75% of those present and entitled to vote.

Special Majority Director Issues require Special Majority Approval of the Directors, and are those issues described in Schedule 2.

Special Majority Member Issues require Special Majority Approval of the Members, and are those issues described in Schedule 1.

University means the University of Wollongong, (ABN 61 060 567 686).

1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a). words importing any gender include all other genders,
- (b). the singular includes the plural and vice versa,
- (c). a reference to a law includes regulations and instruments made under the law,
- (d). a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise,
- (e). a power, an authority or a discretion reposed in a Director, the Directors, the company in General Meeting or a Member may be exercised at any time and from time to time,
- (f). "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise,

- (g). a reference to an amount paid on a share includes an amount credited as paid on that share, and
- (h). Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia.

1.3 Signing

Where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions, or in any other manner approved by the Directors.

1.4 Corporations Act

In this Constitution unless the contrary intention appears:

- (a). an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act, and
- (b). “section” means a section of the Corporations Act.

1.5 Headings

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

1.6 Replaceable rules do not apply

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

2 Purpose of the Company

2.1 Objects

The objects of the Company are:

- (a). to foster, develop and promote Health and Medical Research collaborations between its Members and community and health service organisations through communication, networking, support and other services to researchers,
- (b). to initiate, promote, undertake, develop, conduct, carry out and directly facilitate Health and Medical Research through grants or donations,
- (c). to conduct Health and Medical Research into the causes, prevention, control, relief or cure of all types of human diseases and conditions,
- (d). to bring about the prevention, control, relief or cure of all types of human diseases and conditions,
- (e). to collate, assess and promote the results of the Health and Medical Research,
- (f). to make available knowledge obtained from the Health and Medical Research by way of publication, training and other means to the health and medical professions and to the general public,
- (g). to act as trustee and to perform and discharge the duties and functions incidental thereto where this is incidental or conducive to the attainment of these objects,
- (h). to do such other things as are incidental or conducive to the attainment of these objects, and
- (i). to do all or any of the things authorised by the Corporations Act.

3 Powers

The Company has the legal capacity and powers of an individual and also has all the powers of a body corporate under the Corporations Act.

4 Application of income for Objects only

4.1 Profits

The profits (if any) or other income and the property of the Company, however derived:

- (a). must be applied solely towards the promotion of the purposes of the Company as set out in clause 2.1, and
- (b). may not be paid or transferred to the Members, in whole or in part, either directly or indirectly by way of dividend, bonus or otherwise.

4.2 Payment in good faith

The above clause does not prevent payment in good faith to a Member, or to a firm of which a Member is a partner:

- (a). of remuneration for services to the Company,
- (b). for goods supplied in the ordinary course of business,
- (c). of interest on money borrowed from a Member at a rate not exceeding that fixed for the purposes of this clause by the Company in a General Meeting, or
- (d). of a reasonable rent or licence fee for premises let or licensed by a Member.

5 Winding Up

5.1 Contributions by Members

- (a). Each Member undertakes to contribute to the Company's property if the Company is wound up while they are a Member, or within one year after they cease to be a Member.
- (b). This contribution is for:
 - i. payment of the Company's debts and liabilities contracted before they ceased to be a Member,
 - ii. the costs of winding up, and
 - iii. adjustment of the rights of the contributories among themselves.
- (c). The amount is not to exceed \$10.

5.2 Application of Property

- (a). If any property remains on the winding up or dissolution of the Company and after satisfaction of all its debts and liabilities, that property may not be paid to or distributed among the Members but must be given or transferred to some other institution:
 - i. having objects similar to the objects of the Company, and
 - ii. whose constitution prohibits the distribution of its income and property among

its Members to an extent at least as great as imposed on the Company under this Constitution.

- (b). The institution will be determined by the Members at or before the time of dissolution.

5.3 Revocation of Australian Tax Office Endorsement

- (a). Where the Company has established a tax deductible gift fund and has been endorsed as a deductible gift recipient in relation to that or any other fund under Subdivision 30-BA of the *Income Tax Assessment Act 1997(Cth)* (as amended), then where:

- i. the Company is wound up, or
- ii. the gift fund is wound up, or
- iii. the endorsement under Subdivision 30-BA of the *Income Tax Assessment Act 1997 (Commonwealth)* is revoked,

then any surplus assets of the fund remaining after payment of all liabilities must be transferred to an institution or fund that complies with clause 5.2 and is an endorsed deductible gift recipient.

- (b). Where the Company operates more than one gift fund for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the *Income Tax Assessment Act 1997 (Cth)* is revoked only in relation to one of those gift funds then it may transfer any surplus assets of the fund after payment of all liabilities to any other gift fund for which it is endorsed as a deductible gift recipient.

6 Membership

6.1 Number of Members

The minimum number of Members of the Company will be 6 Members or such greater number as the Directors determine from time to time, subject to that number complying with the Corporations Act.

6.2 Admission as a Member

The Directors may admit any person or corporation as a Member if the person or corporation is eligible under clause 6.3 and agrees to be bound by this Constitution in any manner the Directors determine.

6.3 Membership Criteria

To be eligible to be a Member, a person or corporation must:

- (a). demonstrate an interest in and capacity for contributing to the objects of the company,
- (b). pay any subscription that may be prescribed by the Directors from time to time, and
- (c). consent in writing to become a Member of the Company.

6.4 Membership Process

- (a). The application for Membership must be made:
 - i. in writing, signed by the applicant, and
 - ii. in such form as the Directors from time to time prescribe.
- (b). Each application for Membership must be considered by the Directors at the meeting of Directors first occurring after the application is made. At that meeting the Directors

must determine whether to admit the applicant to Membership of the Company or whether to reject the application.

- (c). When an applicant has been accepted or rejected for Membership the Secretary must immediately notify the applicant of the decision of the Directors.

6.5 Directors' discretion to admit or refuse admission as a Member

The Directors have the discretion to refuse any person or corporation admission as a Member without giving any reason for refusing.

6.6 Right to receive notice of meetings

Each Member of the Company has the right to receive notice of, attend and vote at General Meetings of the Company.

6.7 Member Register

The Secretary must keep a Register setting out the name and address of each Member and whether or not each Member is entitled to vote at General Meetings of the Company.

7 Ceasing to be a Member

7.1 Cessation of Membership

A Member ceases to be a Member on:

- (a). death,
- (b). resignation by written notice to the Company having immediate effect or with effect from a specified date occurring not more than seven days after the service of the notice,
- (c). failing to pay any subscription that may be prescribed by the Directors from time to time for a period of twelve months after the subscription was due and payable,
- (d). becoming of unsound mind or a person whose personal estate is liable to be dealt with in any way under a law related to mental health,
- (e). becoming bankrupt or insolvent or making an arrangement or composition with creditors of a person's joint or separate estate generally,
- (f). the passing of a resolution by the Directors pursuant to clause 7.2,
- (g). that Member (who is a corporation) has an administrator appointed, has an order made for its winding up or goes into liquidation whether voluntarily or compulsorily except for the aims of reconstruction or amalgamation, or
- (h). that Member (who is a partnership) being dissolved for any reason provided that if more than half the former partners continue to carry on the former partnership business under the same name with or without new partners the new partnership will be entitled to continued Membership.

7.2 Termination of Membership

- (a). Subject to this Constitution the Directors may at any time censure, suspend or terminate the Membership of a Member as a Special Majority Director Issue if the Member in the reasonable opinion of the Board:
 - i. refuses or neglects to comply with this Constitution or any applicable Rules or regulations made by the Directors,

- ii. engages in conduct which in the opinion of the Directors is unbecoming of the Member or prejudicial to the interests of the Company, or
 - iii. fails to pay any debt due to the Company for a period of three months after the date for payment.
- (b). The Secretary must give written notice to a Member of:
- i. the allegation against the Member under clause 7.2(a);
 - ii. the substance and circumstances of the allegation; and
 - iii. the date, time and place that the Board will be considering the allegation and making a determination as to what action it will take under clause 7.2(a), being a date that is within 1 month of the date that notice is sent to the Member.
- (c). The relevant Member will be entitled to:
- i. attend the meeting of the Board and make oral submissions for the purpose of answering the allegation;
 - ii. submit to the meeting written representations for the purpose of answering the allegation,
- and the Board must make a decision based on the written, visual and oral evidence put before it (including that of the Member or such other persons that may give evidence).
- (d). If written notice is issued to a Member under clause 7.2(b) the Board may by resolution suspend that Member from all rights and privileges as a Member until the allegation is heard and determined and the Member must be promptly notified of such suspension.
- (e). If the Member fails to attend the meeting of the Board then the charge may be heard and dealt with by the Board and the Board may make a decision based on the evidence before it, having regard to any representations which may have been made to it in writing by the relevant Member prior to the meeting.
- (f). After the Board has considered the written, visual and oral evidence (as the case may be) the Board must come to a decision as to whether the Member is guilty of the allegation and the corresponding penalty or action that the Board will take against the Member.
- (g). If the Member is present at the meeting after the Board's determination, the Board must inform the Member of the outcome determined under clause 7.2(f), but otherwise the Secretary must promptly inform the Member in writing of the Board's decision.
- (h). The decision of the Board will be final and the Board will not be required to give any reason for its decision.
- (i). Any member who has had their membership terminated under this clause 7 will:
- i. remain liable for any unpaid membership fees or other amounts which are due and unpaid as at the date of termination; and
 - ii. not be entitled to any refunds of any membership fees or other amounts paid in advance in respect of membership.

7.3 Limited liability

The Members have no liability as Members except as set out in clause 5.1

8 General Meetings

8.1 Annual General Meetings

Annual General Meetings of the Company are to be held in accordance with the Corporations Act.

8.2 Business of Annual General Meetings

The business of the Company's Annual General Meeting is to receive and consider the financial report, the Directors' report and the Auditor's report and to appoint and fix the remuneration of the Auditor.

8.3 Convening a General Meeting

The Directors may convene and arrange to hold a General Meeting of the Company when they think fit, and must do so if required to do so under the Corporations Act.

8.4 Notice of a General Meeting

Notice of a meeting of Members must be given in accordance with clause 34 and the Corporations Act.

8.5 Calculation of period of notice

In computing the period of notice under clause 8.4, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

8.6 Cancellation or postponement of General Meeting

- (a). Where a General Meeting is convened by the Directors, they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.
- (b). This clause 8.6 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members or to a meeting convened by a Court.

8.7 Notice of cancellation or postponement of a meeting

- (a). Notice of cancellation, postponement or change of place of a General Meeting must state the reason for cancellation or postponement and be given:
 - i. to each Member individually, and
 - ii. to each other person entitled to be given notice of a meeting of the Company's Members under the Corporations Act.

8.8 Contents of notice of postponement of meeting

A notice of postponement of a General Meeting must specify:

- (a). the postponed date and time for the holding of the meeting,
- (b). a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting, and
- (c). if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

8.9 Number of clear days for postponement of meeting

The number of clear days from the giving of a notice postponing the holding of a General Meeting to the date specified in that notice for the holding of the postponed meeting must not

be less than the number of clear days' notice of the General Meeting required to be given by this Constitution or the Corporations Act.

8.10 Business at postponed meeting

The only business that may be transacted at a General Meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

8.11 Proxy at postponed meeting

Where by the terms of an instrument appointing a proxy:

- (a) the proxy is authorised to attend and vote at a General Meeting or General Meetings to be held on or before a specified date, and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy

then, by force of this clause 8.11, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, unless the Member appointing the proxy gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

8.12 Non-receipt of notice

The non-receipt of notice of a General Meeting or cancellation or postponement of a General Meeting by, or the accidental omission to give notice of a General Meeting or cancellation or postponement of a General Meeting to, a person entitled to receive notice does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the cancellation or postponement of a meeting.

8.13 Director entitled to notice of meeting

A Director is entitled to receive notice of and to attend all General Meetings and is entitled to speak at those meetings.

9 Proceedings at General Meetings

9.1 Reference to a Member

Unless a contrary intention appears a reference to a Member in this clause 9 means a person who is a Member or a proxy of that Member.

9.2 Number of a quorum

- (a) Subject to clause 9.1, a quorum at a General Meeting requires all of the current Founding Members to be present in person or by proxy.
- (b) In determining whether a quorum is present, each individual attending as a proxy is to be counted, except that:
 - i. where a Member has appointed more than one proxy, only one is to be counted, and
 - ii. where an individual is attending both as a Member and as a proxy, that individual is to be counted only once.

9.3 Requirement for a quorum

An item of business may not be transacted at a General Meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each

subsequent item of business unless the Chair of the meeting (on the Chair's own motion or at the request of a Member or proxy who is present) declares otherwise.

9.4 If quorum not present

If within thirty (30) minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a). if convened by a Director or at the request of Members, is dissolved, and
- (b). in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting. At that adjourned meeting, a quorum will require at least 1 Founding Member to be present in person or proxy.

9.5 Appointment and powers of Chair of General Meeting

If the Directors have elected one of their number as Chair of their meetings, that person is entitled to preside as Chair at a General Meeting.

9.6 Absence of Chair at General Meeting

If a General Meeting is held and:

- (a). a Chair has not been elected by the Directors, or
- (b). the elected Chair is not present within 25 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

then the following may preside as chair of the meeting (in order of precedence):

- (c). the Deputy Chair if a Director has been so elected by the Directors, or
- (d). a Director or Member elected by the Members present to preside as Chair of the meeting.

9.7 Conduct of General Meetings

- (a). The Chair of a General Meeting:
 - i. has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting,
 - ii. may require the adoption of any procedure which is, in the Chair's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the General Meeting, and
 - iii. may, having regard where necessary to the Corporations Act terminate discussion or debate on any matter whenever the Chair considers it necessary or desirable for the proper conduct of the meeting.
- (b). A decision by the Chair under this clause is final.

9.8 Adjournment of General Meeting

- (a). The Chair of a General Meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:
 - i. in exercising the discretion to do so, the Chair may, but need not, seek the approval of the Members present in person or by proxy, and
 - ii. only unfinished business is to be transacted at a meeting resumed after an adjournment.

- (b). Unless required by the Chair, a vote may not be taken or demanded by the Members present in person or by proxy in respect of any adjournment.

9.9 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

9.10 How questions are decided

Subject to the requirements of the Corporations Act, any resolution other than Special Majority Member issues are taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

9.11 Equality of votes – casting vote for Chair

If there is an equality of votes, either on a show of hands or on a poll, then the Chair of the meeting is entitled to a casting vote in addition to any votes to which the Chair is entitled as a Member or proxy or attorney or Representative.

9.12 Voting on show of hands

At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn. A declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the Chair nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

9.13 Poll

If a poll is demanded:

- (a). it must be taken in the manner and at the date and time directed by the Chair and the result of the poll is the resolution of the meeting at which the poll was demanded,
- (b). on the election of a Chair or on a question of adjournment, it must be taken immediately,
- (c). the demand may be withdrawn, and
- (d). the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

9.14 Votes of Members

- (a). Every Member has one vote.
- (b). Subject to this Constitution:
 - i. on a show of hands, each Member present in person and each other person present as a proxy of a Member has one vote, and
 - ii. on a poll, each Member present in person has one vote and each person present as proxy of a Member has one vote for each Member that the person represents.

9.15 Right to appoint proxy

- (a). Subject to the Corporations Act, a Member entitled to attend a meeting of the Company is entitled to appoint another person (whether a Member or not) as proxy to attend in the Member's place at the meeting. A proxy has the same right as the

Member to speak and vote at the meeting and may be appointed in respect of more than one meeting.

- (b). The instrument appointing a proxy must be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised. The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll. A Member will be entitled to instruct his proxy to vote in favour of or against any proposed resolutions. The proxy may vote as he thinks fit unless otherwise instructed.
- (c). No Member, and no other person, may hold and vote in accordance with more than two proxies.
- (d). The instrument appointing a proxy may be in the form set out in Schedule 3 to this Constitution.
- (e). The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority will be deposited at the registered office of the Company, or at such other place within the State as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy will not be treated as valid.
- (f). A vote given in accordance with the terms of an instrument of proxy will be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no notice in writing of such death unsoundness of mind or revocation as aforesaid has been received by the Company at the registered office by 5pm on the day before the commencement of the meeting or adjourned meeting at which the instrument is used.

9.16 Validity of vote in certain circumstances

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a). the appointing Member dies, or
- (b). the Member revokes the appointment or authority.

9.17 Objection to voting qualification

- (a). An objection to the right of a person to attend or vote at the meeting or adjourned meeting:
 - i. may not be raised except at that meeting or adjourned meeting, and
 - ii. must be referred to the Chair of the meeting, whose decision is final.
- (b). A vote not disallowed under the objection is valid for all purposes.

9.18 Unanimous agreement

Subject to any requirements of the Corporations Act to the contrary, the Members may pass a resolution without a General Meeting being held if all of the Members sign a document containing a statement that they are in favour of the resolution set out in the document.

10 Directors

10.1 Number of Directors

The number of Directors shall be a minimum of six (6) and a maximum of ten (10).

10.2 How questions are decided

Subject to the requirements of the Corporations Act, any resolution other than Special Majority Director Issue are taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

10.3 Composition of Board of Directors

Subject to clauses 10.4, 10.5 and 10.6 , the Board shall be comprised of the following Directors:

- (a). Four (4) Appointed Directors, with up to two (2) Appointed Directors each appointed by the Founding Members;
- (b). the one (1) Executive Director; and
- (c). a maximum of five (5) Other Directors as recommended to the Members by the existing Directors based on their skills or other potential benefit to the Company and thereafter elected to office by the Members at the Annual General Meeting of the Company.

10.4 Appointed Directors

- (a). The following persons are entitled to be Appointed Directors:
 - i. up to two (2) persons nominated by the ISLHD, and
 - ii. up to two (2) persons nominated by the University,
provided that at no time may the Appointed Directors constitute a majority of the Board.
- (b). The appointor of an Appointed Director:
 - i. may at any time remove or replace the Appointed Director from office, and
 - ii. will re-affirm the appointment of each Appointed Director every three (3) years from the date of appointment of that Appointed Director. If the appointor fails to re-affirm the appointment of any Appointed Director, the Appointed Director continues in the position of Director until either re-affirmed or removed by the appointor.
- (c). Any appointment, re-affirmation or removal of an Appointed Director must be in writing served on the Company.

10.5 Executive Director

- (a). The Chief Executive Officer of the Company will hold the position of Executive Director for the period of their tenure as Chief Executive Officer.
- (b). The Chief Executive Officer's position as Executive Director will be:
 - iii. immediately vacated upon termination of their employment as Chief Executive Officer of the Company; and
 - iv. immediately suspended from all rights and privileges as Executive Director for the period of any period of suspension from their employment as Chief Executive Officer of the Company.

10.6 Other Directors

(a). Each Other Director must:

- i. not be a member of the governing body, or an officer, employee or contractor of ISLHD or the University or any body or entity that is an associated entity of them;
- ii. not be a shareholder, director, consultant, employee or agent of any person, body or entity that has a contract with ISLHD or the University at the time of their election as a Director or who has contracted with ISLHD or the University in the 5 years preceding their election as Director; and
- iii. not be a shareholder, director, consultant, employee or agent of any person, body or entity that subsequently enters into a contract with ISLHD or the University during their period of office,

but for the avoidance of doubt, an Other Director's eligibility to be a Director will not be affected by reason of them being (or having been) either a Member or a Director of the Company.

(b). The Other Directors:

- i. must retire from office at the third Annual General Meeting after their election to the Board;
- ii. who are retiring, hold office until the conclusion of the meeting at which they retire; and
- iii. may be re-elected by the Members for a maximum of 3 further consecutive terms as an Other Director so that the Director's period of service to the Company as an Other Director does not exceed 12 consecutive years.

(b). At each Annual General Meeting held while this clause is in effect the number of Other Directors required to fill vacancies on the Board will be elected.

(c). A vacancy caused by an Other Director ceasing to hold office otherwise than by retirement at the end of their 3 year term (whether or not the position has been filled as a casual vacancy under clause 10.10) will be filled by election at the Annual General Meeting and the person elected will, unless otherwise disqualified, hold office for the residue of the term of office of the person who caused the vacancy initially.

(d). The Members may:

- i. remove any or all of the Other Directors before the expiry of their period of office; and
- ii. elect another person or other persons in the place of the Other Directors so removed, provided that such person or persons fulfils the criteria in clause 10.6(a).

10.7 Qualification of Directors

To be eligible for the office of a Director or to fill a casual vacancy, a person must:

- (a) be a Member of the Company or a Representative of a Member of the Company;
- (b) have a demonstrated interest in and capacity to act in the general interests of the Company;
- (c) in the case of an Other Director, satisfy the additional criteria in clause 10.6; and
- (d) consent in writing to act as a Director (and if seeking election as an Other Director at a General Meeting of the Company for the first time, the signed consent must be lodged at the Registered Office at least thirty (30) days before the General Meeting).

10.8 Election of officers

At a meeting of the Directors held following the Company's adoption of this Constitution, and then after each Annual General Meeting, the Directors shall in accordance with clause 22.1 elect the officers of the Company, being the Chair and the Deputy Chair, who will each hold office until the end of the next following Annual General Meeting unless their office is vacated earlier in accordance with this Constitution.

10.9 Casual vacancy in Office of Other Directors

- (a). The Board may at any time as a Special Majority Director Issue appoint any person to be a Director to fill a casual vacancy in the Office of an Other Director.
- (b). A Director appointed under this clause holds office until the conclusion of the next Annual General Meeting of the Company but is eligible for election at that meeting.

10.10 Casual vacancy in Office of Executive Director

- (a). The Board may at any time as a Special Majority Director Issue appoint any person who has been employed as the acting or interim Chief Executive Officer of the Company to be a Director to fill a casual vacancy in the office of the Executive Director.
- (b). A Director appointed under this clause holds office until the employment of the Chief Executive Officer of the Company and the appointment of that person as the Executive Director.

10.11 Minimum numbers

The Board may continue to act despite a vacancy above the minimum number. If a vacancy occurs at or below the minimum number they may act:

- (a). in an emergency,
- (b). for filling vacancies to bring the number up to or above the minimum,
- (c). to convene a General Meeting, and
- (d). in any event if the vacancy (ies) is caused by the failure of a Founding Member to appoint Directors.

11 Remuneration and employment of Directors

11.1 Remuneration as Directors

Subject to clause 11.2, the Directors may not be paid any remuneration for their services as Directors.

11.2 Paid employment of Directors

A Director may be a paid employee of, or be interested in any contract to provide services to, the Company provided:

- (a). such contract or services are not in breach of any provision of the *Charitable Fundraising Act 1991* (NSW);
- (b). the provisions of the *Corporations Act* with regard to material personal interests, and registration of the Company without the word "Limited", are complied with; and
- (c). in the case of an Other Director they comply with clause 10.6(a).

12 Expenses of Directors

A Director is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company. Any reimbursement to a Director must be approved by the Directors.

13 Vacation of office of Director

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a). becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health,
- (b). resigns from the office by notice in writing to the Company,
- (c). becomes insolvent or bankrupt, compounds with his creditors, or assigns his estate for the benefit of his creditors,
- (d). is absent personally at three successive meetings of the Board without prior leave of absence from the Board,
- (e). is absent personally at more than half of the meetings of the Board in any Financial Year without prior leave of absence from the Board;
- (f). becomes prohibited for being a Director by reason of any order of any court of competent jurisdiction,
- (g). ceases to fulfil the criteria for the relevant Director's office which they hold as provided under this Constitution; or
- (h). ceases to comply with the restrictions on their office as Director as provided under this Constitution.

14 Powers and duties of Directors

14.1 Directors to manage the Company

The Directors are to manage the business of the Company and may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in General Meeting.

14.2 Delegation to officers and employees

- (a). The Board may as a Special Majority Director Issue delegate any of its powers to an officer or employee of the Company subject to any conditions or limitations which the Board sees fit to impose and the Board may, at any time, revoke or vary a delegation made under this clause 14.2.
- (b). Notwithstanding any delegation made under this clause 14.2, the Board may continue to exercise any or all of its powers.

15 Rules

Subject to this Constitution, the Board may from time to time by resolution make and rescind or alter Rules which are binding on Members for the management and conduct of the business of the Company.

16 Appointment of attorney

- (a). The Board may, as a Special Majority Director Issue by power of attorney, appoint any person to be the attorney of the Company for the purposes and with the powers, authorities and discretions held by the Board for the period and subject to the conditions that they think fit.
- (b). A power of attorney granted under this clause 16 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Board think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.
- (c). The Board may at any time, revoke or vary any appointment, or power, authority or discretion or an attorney appointed.

17 Chief Executive Officer

17.1 The Board shall appoint a Chief Executive Officer of the Company for such a period and on such other terms as determined as a Special Majority Director Issue.

17.2 The Chief Executive Officer will:

- (a). be an eminent health and medical researcher;
- (b). oversee the research within the Company and exercise such powers and undertake such duties as directed and delegated by the Board;
- (c). be responsible to the Board for the management and administration of the work of the Company;
- (d). pursue a program of scientific or clinical research and oversee all scientific and clinical work of the Company;
- (e). conduct and supervise their own program of research within the Company;
- (f). use their best endeavours to enhance the good name of the Company and through the hospitals administered by the ISLHD in the areas of teaching and research and the University;
- (g). implement the policies of the Board so far as the Company's resources permit;
- (h). prepare an annual report for the Board each Financial Year on the work and activities of the Company during the preceding year in the form required by the Board;
- (i). comply with such minimum key performance indicators as notified by the Board;
- (j). hold the position of Executive Director for the tenure of their employment; and
- (k). exercise all other functions, duties and responsibilities as are determined by the Board from time to time.

17.3 The Board may suspend or terminate the employment of the Chief Executive Officer as a Special Majority Director Issue.

17.4 In the event of a vacancy in the position of Chief Executive Officer, the Board may appoint an acting or interim Chief Executive Officer for such period and on such terms as determined as a Special Majority Director Issue.

18 Board committees

- (a). The Directors may as a Special Majority Director Issue delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a committee or committees consisting of any person they think fit.
- (b). Any committee formed in accordance with this clause 18 shall be constituted according to Terms of Reference adopted at a meeting of the Directors. The Terms of Reference must contain the:
 - i. name of the committee,
 - ii. purpose of the committee,
 - iii. membership,
 - iv. chair,
 - v. scope,
 - vi. delegated authority, including the power to establish sub-committees and the terms of reference of such sub-committees,
 - vii. proceedings (meetings, quorum, minutes),
 - viii. reporting requirements, and
 - ix. duration, including revision and term.
- (c). A committee to which any powers have been delegated under this clause 18 must exercise those powers in accordance with any directions of the Directors. A power so exercised is taken to have been exercised by the Directors.
- (d). Any committee formed under this clause 18 shall include in its membership at least one (1) Director.

19 Powers of delegation

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by Section 198D of the Corporations Act.

20 Proceedings of directors

20.1 Directors meetings

- (a). The Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b). A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors within 30 days.
- (c). A meeting of Directors includes the Directors communicating with each other by any

technological means by which they are able to participate in discussion where the Directors (or any one or more of them) are not physically present in the same place. A Director participating in such a meeting is deemed to be present (including for constituting a quorum) and entitled to vote at the meeting.

20.2 How questions are decided

Subject to the requirements of the Corporations Act, any resolution of the Board other than Special Majority Director Issues are taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

21 Directors' Interests

21.1 Contracts not voided by directorship

No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

21.2 No liability to account

No Director employed by, contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

21.3 No disqualification

Subject to clause 10.6, a Director is not disqualified merely because of being a Director from contracting with the Company in any respect.

21.4 Director actions

Except as provided by clause 10.6, a Director or a body or entity in which a Director has a direct or indirect interest may:

- (a). enter into any agreement or arrangement with the Company;
- (b). hold any office or place of profit other than as auditor in the Company; and
- (c). act in a professional capacity other than as auditor for the Company,
and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.

21.5 Matters of material personal interest

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

be present while the matter is being considered at the meeting; or

- (a). vote on the matter,
- (b). unless permitted by the Corporations Act to do so, in which case the Director may:
 - i. be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;

- ii. sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- iii. vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

21.6 Disclosure by Directors

A Director who is a Council or board member of a Member may disclose to that Council or Board of the Member any information (confidential or otherwise) about the affairs, finances and accounts of the Company that comes into the Director's possession from time to time, subject to requiring that the recipients maintain the confidentiality of any confidential information and provided that they disclose this disclosure to the Company. This right will not apply if:

- (a). the exercise of such a right is inconsistent with this Constitution or the Director's fiduciary or other legal duties; and
- (b). the Board has directed that such information not be disclosed but only if:
 - i. the information is not information to which a Member may have access either under this Constitution or by operation of law.

22 Chair of directors

22.1 Election of Chair

The Directors shall elect:

- (a). an Other Director as Chair of their meetings;
- (b). an Other Director as Deputy Chair of their meetings who will act as Chair in the event that the Chair is unwilling or unable to act,

and may also determine the period for which those persons are to hold office in those positions. For the avoidance of doubt, no one Other Director can hold both positions.

22.2 Absence of Chair at Directors' meeting

If a Directors' meeting is held and:

- (a). a Chair and Deputy Chair has not been elected under clause 22.1, or
- (b). neither the Chair nor the Deputy Chair is present within ten minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

then the Directors may by simple majority elect:

- (c). any one of the Other Directors to be a Chair of the meeting; and
- (d). if there are no Other Directors present or willing to act, then any one of their number to be a Chair of the meeting.

22.3 Casting vote for Chair at Directors' meetings

In the event of an equality of votes cast for and against a question, the Chair of the Directors' meeting has a second or casting vote, except in the case of the Chair being appointed under clause 22.2(d) where the Chair will not have a casting vote.

23 Quorum for directors' meeting

A quorum for a meeting of Directors is a majority of the Directors that hold office at the time of the meeting.

24 Circulating resolutions

- (a). The Directors may pass a resolution without a meeting being held if:
- i. the Directors at a previous Board meeting agreed with Special Majority Approval that a proposed resolution would be decided by circulating resolution; and
 - ii. the proposed resolution has been sent to all Directors; and
 - iii. the required number of Directors to effectively pass the resolution (as if they were in a properly constituted Board meeting with all Directors holding office present and entitled to vote on the resolution):
 - A. sign a document; or
 - B. send to all of the other Directors an email or SMS from an email address or mobile telephone number previously advised in writing by that Director that is their own,

containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing or otherwise confirming acceptance by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs or sends the email or SMS.

- (b) The Directors may also pass a resolution without a meeting being held if all of the Directors entitled to vote on the resolution:

- i. sign a document; or
- ii. send to all of the other Directors an email or SMS from an email address or mobile telephone number previously advised in writing by that Director that is their own,

containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs or sends the email or SMS.

25 Validity of acts of directors

All acts done at a meeting of the Directors or of a Committee of Directors, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a). there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting, or
- (b). a person acting as a Director was disqualified or was not entitled to vote,

are valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

26 Amendments to Constitution

- (a) No alteration to the Constitution for the time being in force will be considered at a General Meeting of the Company unless the proposed alteration has first been notified in writing to the Founding Members and:
 - i. neither of the Founding Members object to the alteration within twenty one (21) days of the date of notification; or
 - ii. both of the Founding Members consent in writing to the proposed alteration.
- (b) In addition to 26(a), the alteration of the Constitution is a Special Majority Member issue.

27 Secretary

27.1 Appointment of Secretary

There must be at least one Secretary who is to be appointed by the Directors.

27.2 Suspension and removal of Secretary

The Directors may suspend or remove a Secretary from that office.

27.3 Powers, duties and authorities of Secretary

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Directors.

28 Dispute resolution

28.1 Handling a dispute

Where there is a dispute, grievance or other disagreement between a Member and the Company or a Director and the Company, whether arising out of the application of these rules or otherwise ("Dispute"), then either must, prior to the commencement of any proceedings in a Court or Tribunal or before any authority or board, notify the other in writing of the nature of the Dispute, and the following must occur:

- (a). The Member and the Company (or the Director and the Company) must in the period fourteen days from the service of the notice of the Dispute ("Initial Period") use their best endeavours to resolve the Dispute.
- (b). If the Company and the Member (or the Director and the Company) are unable to resolve the Dispute within the Initial Period, then the Dispute must be referred for mediation to a mediator agreed by the Member and the Company (or the Director and the Company).
- (c). If the disputants are unable to agree on a mediator within seven days of the Initial Period, either party may request a mediator appointed by the Association of Dispute Resolvers (LEADR).
- (d). The costs of the mediation will be shared equally between the parties.
- (e). Where:
 - i. the party receiving the notice of the Dispute fails to attend the mediation

required by clause 28.1(b), or

- ii. the mediation has not occurred within six weeks of the date of the notice of the Dispute, or
- iii. the mediation fails to resolve the Dispute,

then the party serving the notice of Dispute will be entitled to commence any proceedings in a Court or Tribunal or before any authority or board in respect of the Dispute.

- (f). The procedure in this clause will not apply in respect of proceedings for urgent or interlocutory relief.

29 Minutes

29.1 The Directors must ensure that minutes are made that record:

- (a). proceedings and resolutions of meetings of the Members;
- (b). proceedings and resolutions of Directors' meetings (including meetings of a Committee and of the Board); and
- (c). resolutions passed by Directors without a meeting.

29.2 The Directors must ensure that minutes made in accordance with clause 29.1 are signed within a reasonable time after the meeting by one of the following:

- (a). the person who chairs the meeting at which proceedings were held; or
- (b). the person who chairs the next succeeding meeting.

29.3 The Directors must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within reasonable time after the resolution is passed.

30 Documents

Documents executed for and on behalf of the company must be executed by:

- (a). two Directors, or
- (b). a Director and the Secretary, or
- (c). such other persons to whom the Directors delegate authority.

31 Accounts

The Directors must cause proper accounting and other records to be kept and must distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) accompanied by a copy of the Auditor's report thereon as required by the Corporations Act, provided, however, that the Directors must cause to be made out and laid before each Annual General Meeting a balance sheet and profit and loss account made up to date not more than six months before the date of the meeting.

32 Seals

32.1 Safe custody of common seals

The Directors must provide for the safe custody of any seal of the Company.

32.2 Use of common seal

If the Company has a common seal or duplicate common seal:

- (a). it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use, and
- (b). every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

33 Inspection of records

33.1 Inspection by Members

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to inspection by the Members.

33.2 Right of a Member to inspect

A Member does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in General Meeting.

34 Service of documents

34.1 Document includes notice

In this clause 34, a reference to a document includes a notice.

34.2 Methods of service

- (a). The Company may give a document to a Member:
 - i. personally,
 - ii. by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member, or
 - iii. by sending it to a fax number or electronic address nominated by the Member.
- (b). The Company may give a document to a Director:
 - i. personally,
 - ii. by sending it by post to the address nominated by the Director, or
 - iii. by sending it to a fax number or electronic address nominated by the Director.
- (c). A document sent by post:
 - i. if sent to an address in Australia, may be sent by ordinary post, and
 - ii. if sent to an address outside Australia, must be sent by airmail, and
 - iii. in either case is taken to have been received on the day after the date of its posting.

- (d). If a document is sent by fax or electronic transmission, delivery of the document is taken:
 - i. to be effected by properly addressing and transmitting the fax or electronic transmission, and
 - ii. to have been delivered on the day following its transmission.

34.3 Evidence of service

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member or another Director by post or by fax or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

35 Indemnity

The Company may indemnify any current or former Director, Secretary or executive officer of the Company or of a Related Body Corporate of the Company out of the property of the Company against:

- (a). every liability incurred by the person in that capacity (except a liability for legal costs), and;
- (b). all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,
except to the extent that:
 - (c). the Company is forbidden by statute to indemnify the person against the liability or legal costs, or
 - (d). an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

36 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of the Company or of a Related Body Corporate of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a). the Company is forbidden by statute to pay or agree to pay the premium, or
- (b). the contract would, if the Company paid the premium, be made void by statute.

37 Directors' liability insurance

To the extent permitted by the Corporations Act, the Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been a Director of the Company against costs and expenses incurred by the person as a director in defending proceedings (whether civil or criminal, and whatever their outcome) provided that the liability does not arise out of conduct involving:

- (a). a wilful breach of duty in relation to the Company, or
- (b). a contravention of sections 199A, 199B or 199C or any other provision of the Corporations Act.

38 Contract

The Company may enter into an agreement with a person referred to in clauses 35, 36 or 37 with respect to the matters covered by these clauses. An agreement entered into pursuant to this clause may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

39 Audit

The Directors must cause the accounts of the Company to be audited in accordance with the requirements of the Corporations Act.

Schedule 1

Special Majority Member Issues

1. Establishment or acquisition of a controlling interest in an entity to commercialise Institute intellectual property.
2. Take a step to dissolve or wind up the Company.
3. Amend the Constitution.

Schedule 2

Special Majority Director Issues

1. On a ground pursuant to clause 7.2, terminate the membership of a Member.
2. Appoint a person to fill a casual Director vacancy in respect of an Other Director or Executive Director.
3. Delegate powers of the Board to an officer or employee of the Company.
4. Delegate powers to a Committee of the Company.
5. Appoint a person to the position of Chief Executive Officer
6. Appoint a person under power of attorney for the Company
7. Remove the Chief Executive Officer from their office
8. Consent to a future circulating resolution under clause 24(a)

Schedule 3

Appointment of Proxy

The Illawarra Health and Medical Research Institute Ltd

ACN

Appointment of Proxy

I/We _____

being a Member/Members of the above named Company hereby appoint

of _____

or, in his or her absence

of _____

as my/our proxy to vote for me/us on my/our behalf at the meeting of the Company's Members of the Company to be held on the _____ day of _____ 20__ and at any adjournment of that meeting.

This form is to be used *in favour of / *against the resolution

SIGNED _____

NAME _____

DATED _____

To be inserted if desired

* Strike out whichever is not desired