

Constitution of the
Aged Care Industry
I.T. Company Ltd

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PRELIMINARY

1 Definitions

- 1.1 The words and phrases used in this Constitution have the meanings as set out at Schedule 1.
- 1.2 In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

2 Interpretation

In this Constitution:

- (a) the words “including”, “include” and “includes” are to be construed without limitation;
- (b) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;
- (c) a reference to a “person” includes a corporate representative appointed pursuant to section 250D of the Corporations Act;
- (d) headings are used for convenience only and are not intended to affect the interpretation of this Constitution; and
- (e) a word or expression defined in the Corporations Act and used, but not defined, in this Constitution has the same meaning given to it in the Corporations Act when used in this Constitution.

3 Replaceable rules

- 3.1 To the extent that they are not inconsistent with this Constitution, the replaceable rules in the Corporations Act will apply to the Company.

OBJECTS

4 Objects

- 4.1 The Company is established to be a not-for-profit organisation whose primary objects are:
 - (a) to promote and facilitate the use of technology in the provision of aged care services to support the delivery of quality aged care services;
 - (b) to provide a primary point of reference for information on the development, maintenance or implementation of existing and emerging technologies in aged care;

- (c) to provide education and training services to aged care providers to enhance the use of technology in aged care;
 - (d) to assist the Government with developing, planning and implementing policies and programs that relate to the use of technology in aged care;
 - (e) to assist smaller aged care providers adopt existing or emerging technologies; and
 - (f) to create, adopt and disseminate the latest technological research to enhance the provision of aged care services.
- 4.2 The Company may only exercise the powers in section 124(1) of the Corporations Act to:
- (a) carry out the objects in clause 4.1; and
 - (b) do all things incidental or convenient in relation to the exercise of power under clause 4.2(a).

INCOME AND PROPERTY OF THE COMPANY

5 Income and property of Company

- 5.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 4.
- 5.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:
- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
 - (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

MEMBERS

6 Admission

- 6.1 The Members of the Company are:
- (a) the organisations who consented to become Members in the application for registration of the Company, set out in Schedule 2 to this Constitution; and
 - (b) any person that the Directors admit to membership in accordance with this Constitution.
- 6.2 Applications for membership of the Company must be in writing, signed by the applicant and in a form approved by the Directors in their absolute discretion.
- 6.3 The Directors will consider each application for membership at the next meeting of Directors after the application is received. In considering an application for membership, the Directors may:
- (a) accept or reject the application; or

- (b) ask the applicant to give more evidence of eligibility for membership.
- 6.4 If the Directors ask for more evidence under clause 6.3(b), their determination of the application for membership is deferred until the evidence is given.
- 6.5 The Directors must provide written reasons for rejecting an application for membership.
- 6.6 As soon as practicable following acceptance of an application for membership, the Secretary will send the applicant written notice of the acceptance.
- 6.7 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

7 Ceasing to be a Member

- 7.1 A Member's membership of the Company will cease:
 - (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
 - (b) if a liquidator is appointed in connection with the winding-up of the Member; or
 - (c) if an order is made by a Court for the winding-up or deregistration of the Member.
- 7.2 Any Member ceasing to be a Member will remain liable for and will pay to the Company any moneys which were due to the Company at the date of ceasing to be a Member.

8 Powers of attorney

- 8.1 If a Member executes or proposes to execute any document or do any act by or through an attorney that affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the attorney to the Company for notation.
- 8.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.
- 8.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

9 Representatives

- 9.1 Any corporation or organisation which is a Member may by written notice to the Secretary:
 - (a) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
 - (b) remove a Representative.
- 9.2 A Representative is entitled to:

- (a) exercise at a general meeting all the powers which the corporation or organisation which appointed him or her could exercise if it were a natural person;
 - (b) stand for election as an office bearer or Director; and
 - (c) be counted towards a quorum on the basis that the Member corporation or organisation is to be considered personally present at a general meeting by its Representative.
- 9.3 A certificate executed in accordance with section 127 of the Corporations Act is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.
- 9.4 The chairperson of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by and to the satisfaction of the chairperson of the general meeting.
- 9.5 The appointment of a Representative may set out restrictions on the Representative's powers.

GENERAL MEETINGS

10 Calling general meeting

- 10.1 Any Director may, at any time, call a general meeting.
- 10.2 A Member may:
- (a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Act; and
 - (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

11 Notice of general meeting

- 11.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 11.2 A notice calling a general meeting:
- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
 - (b) must state the general nature of the business to be transacted at the meeting; and
 - (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 11.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:

- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
 - (b) the election of directors; or
 - (c) the appointment and fixing of the remuneration of the Auditor.
- 11.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 10.2).
- 11.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 48.1 entitled to receive notices from the Company.
- 11.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

PROCEEDINGS AT GENERAL MEETINGS

12 Place for general meeting

- 12.1 Subject to the Corporations Act, a general meeting may be held by the Members communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 12.2 The Members need not all be physically present in the same place for a general meeting to be held.
- 12.3 Subject to this Constitution, a Member who participates in a general meeting held in accordance with this Constitution is taken to be present and entitled to vote at the general meeting.

13 Member presence

- 13.1 In clauses 14 [Quorum], 15 [Chairperson], 17 [Decision on questions] and 19 [Entitlement to vote], Member includes a Member present in person or by proxy, attorney or Representative.

14 Quorum

- 14.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 14.2 A quorum of Members is the majority of Members for the time being, provided that those Members also hold a majority of the voting entitlements on a poll pursuant to clause 18.
- 14.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:

- (a) if the general meeting was called 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 7 days after the meeting, or to another day, time and place determined by the Directors; and
 - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

15 Chairperson

- 15.1 The chairperson of Directors' meetings will be the chairperson at every general meeting.
- 15.2 The Directors present may elect a chairperson of a general meeting if:
- (a) there is no chairperson;
 - (b) the chairperson is not present within 15 minutes after the time appointed for holding the general meeting; or
 - (c) the chairperson is unwilling to act as chairperson of the general meeting.
- 15.3 If no election is made under clause 15.2, then:
- (a) the Members may elect one of the Directors present as chairperson; or
 - (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.
- 15.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

16 Adjournment

- 16.1 The chairperson of a general meeting at which a quorum is present:
- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
 - (b) must adjourn the general meeting if the meeting directs him or her to do so.
- 16.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 16.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 16.4 Notice of an adjourned general meeting must only be given in accordance with clause 11.1 if a general meeting has been adjourned for more than 21 days.

17 Decision on questions

- 17.1 The Company may pass resolutions without a meeting in accordance with the Corporations Act.
- 17.2 Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 17.3 The chairperson of a general meeting does not have a casting vote at general meetings in addition to the chairperson's votes as a Member, proxy, attorney or Representative.
- 17.4 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- 17.5 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
 - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 17.6 The demand for a poll may be withdrawn.
- 17.7 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.
- 17.8 If there is a dispute at a general meeting about a question of procedure, the chairperson of the general meeting may determine the question.

18 Taking a poll

- 18.1 A poll will be taken when and in the manner that the chairperson directs.
- 18.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 18.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 18.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 18.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 18.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

VOTES OF MEMBERS

19 Entitlement to vote

19.1 Each Member has one vote.

20 Objections

20.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.

20.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.

20.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

21 Votes by proxy

21.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.

21.2 A proxy need not be a Member.

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

21.4 A proxy or attorney may vote on a poll.

21.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

22 Document appointing proxy

22.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.

22.2 For the purposes of clause 22.1, an appointment received at an electronic address will be taken to be signed by the Member if:

- (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
- (b) the appointment has been verified in another manner approved by the Directors.

22.3 A proxy's appointment is valid at an adjourned general meeting.

22.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.

- 22.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
 - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
 - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting, even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 22.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Secretary.

23 Lodgement of proxy

- 23.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
 - (b) the taking of a poll on which the appointee proposes to vote.
- 23.2 The Company receives an appointment of a proxy or any power of attorney when it is received at:
- (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

24 Validity

- 24.1 A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:
- (a) died;
 - (b) became mentally incapacitated; or
 - (c) revoked the proxy or power,
- unless written notification of the death, mental incapacity or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

APPOINTMENT AND REMOVAL OF DIRECTORS

25 Number and Appointment of Directors

- 25.1 There will not be less than 3 nor more Directors than the maximum permitted under the Corporations Act.
- 25.2 The Directors of the Company will comprise:
- (a) one person appointed by Aged & Community Services Australia;
 - (b) one person appointed by Aged Care Association Australia; and
 - (c) one independent person appointed by the Board.
- 25.3 The term of office of Directors appointed under clause 25.2(c) will be 2 years.
- 25.4 The Director appointed under clauses 25.2(a) holds office until removed by Aged & Community Services Australia.
- 25.5 The Director appointed under clauses 25.2(b) holds office until removed by Aged Care Association Australia.
- 25.6 An appointment of a person as a Director is not effective unless a signed consent to the appointment is provided by that person to the Company. The appointment of a person as a Director will take effect on the later of the date of appointment and the date on which the Company receives the signed consent.
- 25.7 Where the Board determines that it is necessary or desirable for the proper functioning of the Board to increase the number of Directors appointed under clause 25.2, the Board will call for nominations for those additional positions and the additional Directors will be appointed by the Board.

26 Filling Vacancies

- 26.1 Where a vacancy arises for a Director appointed under clause 25.2(a), the Board will submit a request to Aged & Community Services Australia to notify the Board and the Company of the person to be appointed to fill that vacancy.
- 26.2 Where a vacancy arises for a Director appointed under clause 25.2(b), the Board will submit a request to Aged Care Association Australia to notify the Board and the Company of the person to be appointed to fill that vacancy.
- 26.3 Where a vacancy arises for a Director appointed under clause 25.2(c) the Board will call for nominations for that position and the Director will be appointed by the Board.

27 Retirement

- 27.1 A Director appointed under clause 25.2(c) must retire from office at the conclusion of the term of his or her appointment.
- 27.2 A Director retiring in accordance with clause 27.1 will be eligible for re-election.

28 Chairperson

- 28.1 The Board will appoint from within their number to fill the position of chairperson on a rotational basis with each chairperson appointed for a term of 2 years.
- 28.2 The maximum term a Director may hold the position of chairperson is two successive 2 year terms.
- 28.3 A chairperson is not eligible to be appointed chairperson for 12 months from the date of the maximum term of appointment expires.
- 28.4 If no chairperson is elected or if the chairperson is not present at any Board meeting within ten minutes after the time appointed for the meeting to begin, the Board present must elect another Director to be chairperson of the meeting.

29 Vacation of office

- 29.1 The office of a Director immediately becomes vacant if the Director:
- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
 - (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
 - (c) is subject to the appointment of a trustee in bankruptcy pursuant to the *Bankruptcy Act 1966* (Cth);
 - (d) resigns by notice in writing to the Company;
 - (e) is removed by a resolution of the Company;
 - (f) is absent from Directors' meetings for 6 consecutive months without leave of absence from the Directors; or
 - (g) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act.

POWERS AND DUTIES

30 Powers and duties of Directors

- 30.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.
- 30.2 Without limiting the generality of clause 30.1, the Directors may exercise all the powers of the Company to:
- (a) borrow money;
 - (b) charge any property or business of the Company;

- (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
- (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

PROCEEDINGS OF DIRECTORS

31 Directors' meetings

- 31.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 31.2 A Directors' meeting must be called on at least 48 hours written notice of a meeting to each Director and each Alternate Director.
- 31.3 It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- 31.4 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 31.5 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 31.6 Subject to clause 32.2, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 31.7 Clauses 31.4 to 31.5 apply to meetings of Directors' committees as if all committee members were Directors.
- 31.8 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 31.9 A quorum is a majority of Directors for the time being.
- 31.10 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may call a general meeting to deal with the matter.
- 31.11 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

32 Decision on questions

- 32.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 32.2, each Director has one vote.
- 32.2 The chairperson of a meeting has a casting vote in addition to his or her deliberative vote.

32.3 An Alternate Director has one vote for each Director for whom he or she is an alternate.

32.4 If the Alternate Director is a Director, he or she also has a vote as a Director.

PAYMENTS TO DIRECTORS

33 Payments to Directors

33.1 No payment will be made to any Director of the Company other than payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors and where the amount payable is approved by the Directors and is not more than an amount which commercially would be reasonable payment for the service;
- (c) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors; and
- (d) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act.

34 Directors' interests

34.1 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 void or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

34.2 No Director 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.

34.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.

34.4 Any Director having direct or indirect material personal interest in any contract or arrangement which the Company proposes to enter will declare his or her interest immediately by written notice to the chairperson. A general notice that the Director is an employee of a particular Member is to be regarded as interested in all transactions with that Member will be a sufficient disclosure under this clause for that Director and the relevant transactions and the Director will not be required to give special notice relating to any particular transaction with that Member.

- 34.5 Subject to clause 34.6, a Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
- (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter,
- unless permitted by the Corporations Act to do so, in which case the Director may:
- (c) 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;
 - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 34.6 The prohibition on voting in clause 34.5 will not apply to any contract or arrangement:
- (a) in relation to a Member who employs a Director;
 - (b) to give the Director any security for advances;
 - (c) for an indemnity of the Director; or
 - (d) where the Director is interested merely as a shareholder or director of another company.
- 34.7 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

35 Alternate Directors

- 35.1 A Director may, with the approval of the Directors, appoint any person as his or her alternate for a period determined by that Director.
- 35.2 An Alternate Director is entitled to notice of Directors' meetings and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- 35.3 An Alternate Director is an officer of the Company and is not an agent of the appointor.
- 35.4 The provisions of this Constitution which apply to Directors also apply to Alternate Directors.
- 35.5 The appointment of an Alternate Director:
- (a) may be revoked at any time by the appointor or by the other Directors; and
 - (b) ends automatically when the appointor ceases to be a Director.

35.6 Any appointment or revocation under this clause must be effected by written notice delivered to the Secretary.

36 Remaining Directors

36.1 The Directors may act even if there are vacancies on the Board.

36.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:

- (a) appoint a Director; or
- (b) call a general meeting.

37 Delegation

37.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a committee or committees.

37.2 The Directors may at any time revoke any delegation of power to a committee.

37.3 At least one member of each committee must be a Director.

37.4 A committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.

37.5 A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.

37.6 Meetings of any committee of Directors will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each member of a committee was a Director.

38 Written resolutions

38.1 The Directors may pass a resolution without a Director's meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.

38.2 For the purposes of clause 38.1, 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.

38.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.

38.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause.

38.5 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

39 Validity of acts of Directors

39.1 If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director, Alternate Director or member of a Directors' committee; or
 - (b) a person appointed to one of those positions was disqualified,
- all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

40 Minutes and Registers

40.1 The Directors must ensure that:

- (a) minutes are kept recording:
 - (i) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
 - (ii) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees; and
 - (iii) all orders made by the Directors and Directors' committees.
- (b) the Company register records:
 - (i) all resolutions passed by Directors in accordance with clause 40;
 - (ii) all appointments of officers; and
 - (iii) all disclosures of interests made under clause 33.1.

40.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.

40.3 The Company must keep all registers required by this Constitution and the Corporations Act.

LOCAL MANAGEMENT

41 Local management

41.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.

42 Appointment of attorneys and agents

42.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:

- (a) for the purposes;
- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);

- (c) for the period; and
- (d) subject to the conditions,
determined by the Directors.

42.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:

- (a) any member of any committee established under this Constitution;
- (b) any company;
- (c) the members, directors, nominees or managers of any company or firm;
- (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors; or
- (e) any Member, officer or employee of the Company.

42.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.

42.4 The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Company.

42.5 An attorney or agent appointed under this clause may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

SECRETARY

43 Secretary

43.1 The Company must have at least one Secretary. The Directors have the power to appoint a natural person to act as secretary on the terms and for such period as the Directors may determine.

43.2 Any Secretary appointed may be removed at any time by the Directors.

43.3 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.

SEALS

44 Common Seal

44.1 If the Company has a Seal:

- (a) the Directors must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Directors or a Directors' committee authorised to use the Seal; and
- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document.

45 Duplicate Seal

- 45.1 If the Company has a Seal, the Company may have one or more duplicate of the Seal each of which:
- (a) must be a copy of the Seal with 'Duplicate Seal' on its face; and
 - (b) must not be used except with the authority of the Directors.

INSPECTION OF RECORDS

46 Inspection of records

- 46.1 Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 46.2 Except as otherwise required by the Corporations Act, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

NOTICES

47 Service of notices

- 47.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
- (a) by serving it on the person; or
 - (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 47.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
 - (b) on the day after the day on which it was posted.
- 47.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
 - (b) on the day after its despatch.
- 47.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice Directors at the Company's registered office.

- 47.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's address for the purposes of clause 47.
- 47.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 47.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 47.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

48 Persons entitled to notice

- 48.1 Notice of every general meeting must be given to:
- (a) every Member;
 - (b) every Director and Alternate Director;
 - (c) the Secretary and
 - (d) the Auditor.
- 48.2 No other person is entitled to receive notice of a general meeting.

AUDIT AND ACCOUNTS

49 Audit and accounts

- 49.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.
- 49.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.

GIFT FUND

50 Operation of gift fund

- 50.1 Where the ITAA requires that a gift fund be established for the receipt of tax deductible donations, the Company must establish a separate gift fund account to which such donations are credited.
- 50.2 The Gift Fund Account must only be used or applied for purposes that are consistent with the objects of the Company and separate records must be maintained as to the receipt and disbursement of moneys from that account.

51 Transfer of the gift fund in specified circumstances

- 51.1 On:

(a) revocation of the endorsement of the Company under sub-division 30-B of the ITAA; or

(b) the winding up of the gift fund by the Company,

any balance in the Gift Fund Account or an account set up by the Company to acknowledge tax deductible gifts made to it must be transferred to such other gift fund, gift funds, entity or entities having objects similar to the objects of the Company as will be determined by the Members at or before that time, provided that each recipient must be endorsed as a deductible gift recipient under sub-division 30-B of the ITAA.

WINDING UP

52 Winding up

52.1 If the Company is wound up:

(a) each Member; and

(b) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the Company for the:

(c) payment of debts and liabilities of the Company (in relation to clause 52.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and

(d) adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding \$10.

52.2 If any surplus remains following the winding up of the Company, the surplus must not be paid to or distributed amongst Members, but will be given or transferred to another organisation which, by its constitution, is:

(a) a not-for-profit organisation;

(b) required to pursue charitable purposes only and be regarded as an exempt entity under Division 50 of the Income Tax Assessment Act 1997;

(c) required to apply its profits (if any) or other income in promoting its objects similar to those of the Company;

(d) if the Company has been endorsed under Sub-division 30-B of the ITAA, is similarly endorsed as a deductible gift; and

(e) prohibited from making any distribution to its members or paying non-commercial fees to its directors,

such organisation to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of Queensland for determination.

INDEMNITY

53 Indemnity

- 53.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against any liability (other than for legal costs) incurred by that person as such an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 53.2 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against reasonable legal costs incurred in defending an action for a liability incurred by that person as such an officer of the Company (including such legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 53.3 The amount of any indemnity payable under clauses 53.1 or 53.2 will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a Tax Invoice for the GST Amount.
- 53.4 For the purposes of this clause, **officer** means:
- (a) a Director; or
 - (b) a Secretary.

AMENDMENTS

54 Amendments

- 54.1 This Constitution must not be amended other than in accordance with the Corporations Act.
- 54.2 Subject to clause 54.1, the Company may revoke, add to or vary the Constitution provided that:
- (a) no part of the Gift Fund Account or the income of the Gift Fund Account becomes subject to any institution, organisation, fund or authority that is not a charitable organisation endorsed to receive donations under subdivision 30-B of the ITAA; and
 - (b) unless the Commissioner of Taxation consents to the revocation, addition or variation;
 - (i) no amendment is allowed to be made to or affecting the objects of the Company; and
 - (ii) no amendment is allowed to be made which authorises the Company to invest money of the Gift Fund Account other than in a

manner which trustees are permitted to invest under the laws of Australia or any Australian State or Territory.

Schedule 1 Definitions

Alternate Director	means a person appointed as an alternate director under clause 34.1.
Auditor	means the Company's auditor.
Company	means the Aged Care Industry I.T Company Limited.
Constitution	means the constitution of the Company as amended from time to time.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.
Director	includes any person occupying the position of executive director or other director of the Company and, where appropriate, includes an Alternate Director.
Directors	means all or some of the Directors acting as a Directors.
Financial Year	means the period of 12 months beginning on 1 July of any year and ending on 30 June of the succeeding year.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) or any replacement or other relevant legislation and regulations.
GST Amount	means GST as defined in the GST Act.
ITAA	means the <i>Income Tax Assessment Act 1936</i> (Cth) or the <i>Income Tax Assessment Act 1997</i> (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.
Member	means a member registered in the Register of the Company as a member of the Company.
Office	means the registered office from time to time of the Company.
Representative	means a person appointed as such under Clause 8.
Register	means the register of Members of the Company.
Seal	means the Company's common seal (if any).
Secretary	means any person appointed for the time being as, or to perform the functions of, secretary of the Company.
Tax Invoice	has the same meaning as in the GST Act, including any applicable legislative determinations and public rulings issued through the Australian Taxation Office.

Schedule 2 Subscribing Members

We, the persons whose names and addresses are set out below, wish to form a company under the terms of this Constitution.

Subscribing Member's Consent:

The undersigned person consents to being a subscribing member of Aged Care Industry IT Company Ltd and agrees to pay the amount of the guarantee if required in accordance with this Constitution.

Name and Address of Subscriber	Signature of Subscriber	Signature and Name and Address of Witness