

Constitution of EverAbility Group

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A company limited by guarantee

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Preliminary

1. Name of the company

The name of the **company** is EverAbility Group Ltd (the **company**).

2. Type of company

The **company** is a not-for-profit public **company** limited by guarantee which is established to be, and to continue as, a charity.

3. Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 4.

4. The guarantee

Each member must contribute an amount not more than \$1 (the guarantee) to the property of the **company** if the **company** is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- (a) debts and liabilities of the **company** incurred before the member stopped being a member, or
- (b) costs of winding up.

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 47 and 49.

Charitable purposes and powers

6. Object

The **company**'s object is to pursue the following charitable purpose(s):

Inclusion and independence for all by:

- (a) giving everyone living with vision loss the support and confidence they need to thrive in the community;
- (b) ensuring children, and their families, are not defined by the challenges they face, but emboldened by them;

- (c) breeding and training world-class guide and assistance dogs that support people to flourish in their communities;
- (d) creating a place where people from all walks of life can connect and thrive.

7. Powers

Subject to clause 8, the **company** has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:

- (a) the powers of an individual, and
- (b) all the powers of a **company** limited by guarantee under the **Corporations Act**.

8. Not-for-profit

- 8.1 The **company** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 46.
- 8.2 Clause 8.1 does not stop the **company** from doing the following things, provided they are done in good faith:
 - (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the company, or
 - (b) making a payment to a member in carrying out the company's charitable purpose(s).

9. Amending the constitution

- 9.1 Subject to clause 9.2, the members may amend this constitution by passing a **special resolution**.
- 9.2 The members must not pass a **special resolution** that amends this constitution if passing it causes the **company** to no longer be a charity.

Members

10. Membership and register of members

- 10.1 The members of the **company** are its directors.

10.2 The **company** must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:

- (a) for each current member:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices, and
 - iv. date the member was entered on to the register.
- (b) for each person who stopped being a member in the last 7 years:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices, and
 - iv. dates the membership started and ended.

10.3 The **company** must give current members access to the register of members.

10.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

11. Who can be a member

Each director of the Company is eligible to be a member for the period they are a director of the Company.

12. When a person becomes a member

A person will become a member upon the person being appointed as a Director and the secretary will record the person's name in the register of members.

13. When a person stops being a member

A person immediately stops being a member if they:

- (a) die

- (b) resign, by writing to the secretary
- (c) cease being a director, or
- (d) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

Dispute resolution and disciplinary procedures

14. Dispute resolution

- 14.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a director and:
- (a) one or more directors, or
 - (b) the **company**.
- 14.2 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 14.3 If those involved in the dispute do not resolve it under clause 14.2, they must within 10 days:
- (a) tell the directors about the dispute in writing
 - (b) agree or request that a mediator be appointed, and
 - (c) attempt in good faith to settle the dispute by mediation.
- 14.4 The mediator must:
- (a) be chosen by agreement of those involved, or
 - (b) where those involved do not agree a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **company** has its registered office.
- 14.5 A mediator chosen by the directors under clause 14.4(a):
- (a) may be a former member of the **company**
 - (b) must not have a personal interest in the dispute, and

- (c) must not be biased towards or against anyone involved in the dispute.

14.6 When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard
- (b) allow those involved a reasonable chance to review any written statements
- (c) ensure that those involved are given natural justice, and
- (d) not make a decision on the dispute.

Directors

15. Number of directors

15.1 Subject to clause 15.2 the **company** must have at least five and no more than eleven directors. Of whom, at least two of must ordinarily live in Australia.

15.2 At all time,

- (a) where there are nine or more Directors, at least two Directors must be permanent residents of Tasmania; and
- (b) where there are eight or less Directors, at least one Director must be a permanent resident of Tasmania.

16. Election and appointment of directors

16.1 Apart from directors appointed under clause 16.4, the members may elect a director by a resolution.

16.2 Each of the directors must be appointed by a separate resolution, unless:

- (a) the directors present have first passed a resolution that the appointments may be voted on together, and
- (b) no votes were cast against that resolution.

16.3 A person is eligible for election as a director of the **company** if they:

- (a) are nominated by two directors entitled to vote,

- (b) give the **company** their signed consent to act as a director of the **company**, and
- (c) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.

16.4 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:

- (a) gives the **company** their signed consent to act as a director of the **company**, and
- (b) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.

16.5 If the number of directors is reduced to fewer than five or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to five (or higher if required for a quorum).

17. Election of chairperson

The directors must elect a director as the **company's elected chairperson**.

18. Term of office

- 18.1 At each annual **designated meeting** any director appointed by the directors to fill a casual vacancy or as an additional director must retire.
- 18.2 Other than a director appointed under clause 16.4, a director's term of office starts at the end of the annual **designated meeting** at which they are elected and ends at the end of the annual **designated meeting** at which they retire.
- 18.3 Each director must retire at least once every three years.
- 18.4 A director who retires under clause 18.1 may nominate for election or re-election, subject to clause 18.5.
- 18.5 A director may not serve more than three consecutive terms as a director.
- 18.6 A director who has served a maximum term in accordance with clause 18.5 shall not be eligible to be a director for six years following the completion of their maximum term.

19. When a director stops being a director

A director stops being a director if they:

- (a) give written notice of resignation as a director to the **company**
- (b) die
- (c) are removed as a director by a resolution of the members
- (d) are absent for 3 consecutive directors' meetings without approval from the directors, or
- (e) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**.

Powers of directors

20. Powers of directors

- 20.1 The directors are responsible for managing and directing the activities of the **company** to achieve the purpose(s) set out in clause 6.
- 20.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.
- 20.3 The directors must decide on the responsible financial management of the **company** including:
 - (a) any suitable written delegations of power under clause 21, and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 20.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by members.

21. Delegation of directors' powers

- 21.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 21.2 The delegation must be recorded in the **company's** minute book.

22. Payments to directors

- 22.1 The **company** must not pay fees to a director for acting as a director.
- 22.2 The **company** may:
- (a) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done, or
 - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company**.
- 22.3 Any payment made under clause 22.2 must be approved by the directors.
- 22.4 The **company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

23. Execution of documents

The **company** may execute a document without using a common seal if the document is signed by:

- (a) two directors of the **company**, or
- (b) a director and the secretary.

Duties of directors

24. Duties of directors

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **company**
- (b) to act in good faith in the best interests of the **company** and to further the charitable purpose(s) of the **company** set out in clause 6
- (c) not to misuse their position as a director

- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 25
- (f) to ensure that the financial affairs of the **company** are managed responsibly, and
- (g) not to allow the **company** to operate while it is insolvent.

25. Conflicts of interest

- 25.1 A director must disclose to the other directors the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution).
- 25.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 25.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 25.4:
- (a) be present at the meeting while the matter is being discussed, or
 - (b) vote on the matter.
- 25.4 A director may still be present and vote if:
- (a) their interest arises because they are a member of the **company**, and the other members have the same interest
 - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **company** (see clause 43)
 - (c) their interest relates to a payment by the **company** under clause 42 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
 - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
 - (e) the directors who do not have a material personal interest in the matter pass a resolution that:

- (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the **company**, and
- (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

26. When the directors meet

The directors may decide how often, where and when they meet.

27. Calling directors' meetings

- 27.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 27.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

28. Chairperson for directors' meetings

- 28.1 The **elected chairperson** is entitled to chair directors' meetings.
- 28.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the **elected chairperson** is:
 - (a) not present within 30 minutes after the starting time set for the meeting, or
 - (b) present but does not want to act as chairperson of the meeting.

29. Quorum at directors' meetings

- 29.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors but cannot be less than 3 directors.
- 29.2 A quorum must be present for the whole directors' meeting.

30. Using technology to hold directors' meetings

- 30.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.

- 30.2 The directors' agreement may be a standing (ongoing) one.
- 30.3 A director may only withdraw their consent within a reasonable period before the meeting.

31. Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

32. Circular resolutions of directors

- 32.1 The directors may pass a circular resolution without a directors' meeting being held.
- 32.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 32.3 or clause 32.4.
- 32.3 Each director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 32.4 The **company** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 32.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 32.3 or clause 32.4.

Secretary

33. Appointment and role of secretary

- 33.1 The **company** must have at least one secretary, who may also be a director.
- 33.2 A secretary must be appointed by the directors (after giving the **company** their signed consent to act as secretary of the **company**) and may be removed by the directors.

- 33.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 33.4 The role of the secretary includes:
- (a) maintaining a register of the **company's** members, and
 - (b) maintaining the minutes and other records of **meetings** (including notices of meetings), directors' meetings and circular resolutions.

Minutes and records

34. Minutes and records

- 34.1 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
 - (b) minutes of circular resolutions of directors.
- 34.2 The directors must ensure that minutes of a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
 - (b) the chairperson of the next meeting.
- 34.3 The directors must ensure that minutes of the passing of a circular resolution are signed by a director within a reasonable time after the resolution is passed.

35. Financial and related records

- 35.1 The **company** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 35.2 The **company** must also keep written records that correctly record its operations.

- 35.3 The **company** must retain its records for at least 7 years.
- 35.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.

By-laws

36. By-laws

- 36.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 36.2 Directors must comply with by-laws as if they were part of this constitution.

Notice

37. What is notice

Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 38 to 40, unless specified otherwise.

38. Notice to the company

Written notice or any communication under this constitution may be given to the **company**, the directors or the secretary by:

- (a) delivering it to the **company's** registered office
- (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided
- (c) sending it to an email address or other electronic address notified by the **company** as its email address or other electronic address, or
- (d) sending it to the fax number notified by the **company** as its the **company's** fax number.

39. Notice to members

- 39.1 Written notice or any communication under this constitution may be given to a member:

- (a) in person
- (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
- (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any)
- (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any), or
- (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

39.2 If the **company** does not have an address for the member, the **company** is not required to give notice in person.

40. When notice is taken to be given

A notice:

- (a) delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 39.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

41. Company's financial year

The **company's** financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

Indemnity, insurance and access

42. Indemnity

- 42.1 The **company** indemnifies each officer of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company**.
- 42.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 42.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so, and
 - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 42.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

43. Insurance

To the extent permitted by law (including the **Corporations Act**), and if the directors consider it appropriate, the **company** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **company** against any liability incurred by the person as an officer of the **company**.

44. Directors' access to documents

- 44.1 A director has a right of access to the financial records of the **company** at all reasonable times.
- 44.2 If the directors agree, the **company** must give a director or former director access to:
- (a) certain documents, including documents provided for or available to the directors, and
 - (b) any other documents referred to in those documents.

Winding up

45. Surplus assets not to be distributed to members

If the **company** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **company**, unless that member or former member is a charity described in clause 46.1.

46. Distribution of surplus assets

46.1 Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets (including 'gift funds' defined in clause 46.4) that remain after the company is wound up must be distributed to one or more charities:

- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6
- (b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company, and
- (c) that is or are deductible gift recipients within the meaning of the Income Tax Assessment Act 1997 (Cth).

46.2 The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the company may apply to the Supreme Court to make this decision.

46.3 If the company's deductible gift recipient endorsement is revoked (whether or not the company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of 46.1(a), (b) and (c), as decided by the directors.

46.4 For the purpose of this clause:

- (a) 'gift funds' means:
 - (i) gifts of money or property for the principal purpose of the company
 - (ii) contributions made in relation to a fund-raising event held for the principal purpose of the company, and
 - (iii) money received by the company because of such gifts and contributions.

- (b) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the Income Tax Assessment Act 1997 (Cth).

Definitions and interpretation

47. Definitions

In this constitution:

- **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth)
- **company** means the **company** referred to in clause 1
- **Corporations Act** means the *Corporations Act 2001* (Cth)
- **annual designated meeting** means a meeting of directors, held every twelve months, during which at least one item of business must be the election of directors
- **elected chairperson** means a person elected by the directors to be the **company's** chairperson under clause 17
- **registered charity** means a charity that is registered under the **ACNC Act**
- **special resolution** means a resolution that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution, and
- **surplus assets** means any assets of the **company** that remain after paying all debts and other liabilities of the **company**, including the costs of winding up.

48. Reading this constitution with the Corporations Act

- 48.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.
- 48.2 While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.

- 48.3 If the **company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.
- 48.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

49. Interpretation

In this constitution:

- (a) the words ‘including’, ‘for example’, or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).