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Constitution

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Order of Malta Hospice Home Care (VIC) Limited
ABN 39 196 128 141
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draft

Constitution

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1. Preamble

The Sovereign Military and Hospitaller Order of Saint John of Jerusalem, Rhodes and Malta (**Order**) is a lay religious institution of the Roman Catholic Church that exists for the purpose of the promotion of the glory of God through sanctification of its members by providing service to the Supreme Pontiff and assistance to one's neighbours in accordance with its ancient traditions.

The Order operates in Australia and is known as the Australian Association of the Sovereign Order of St John of Jerusalem, of Rhodes and Malta (**Australian Association**) where its membership comprises the Australian Association of the Order of Malta Limited (**AAOML**) formed to support and represent them in the conduct of their charitable works for the sick, the needy and the dying.

AAOML has formed the Company to facilitate and represent the Order and on its behalf engage in legal transactions that relate to certain charitable works conducted and administered by members of the Order who constitute the South Eastern Region of the Australian Association (**South Eastern Region**).

The South Eastern Region is administered by a Regional Council comprised of elected and appointed members of the Order of that Region and who, from time to time, constitute the Board of Directors of the Company.

AAOML is the sole member of the Company and its Board of Directors are subject to its direction.
(This preamble is for reference only and does not form part of this constitution)

2. Preliminary

2.1 Defined terms, interpretation and replaceable rules

- (a) Schedule 1 sets out the defined terms and the rules of interpretation that apply to this constitution.
- (b) The replaceable rules contained in the Corporations Act from time to time do not apply to the Company.

2.2 Nature and Powers of the Company and liability

- (a) The Company is a public company limited by guarantee
- (b) The liability of the sole member is limited. The sole member guarantees to contribute up to a maximum of ten dollars to the assets of the Company if it is wound up and the debts and liabilities exceed its assets.
- (c) The Company has all the powers of a natural person and of a body corporate including those set out in the Corporations Act.

3. Objects

The objects of the Company are to propagate the Christian virtues of charity and brotherhood in the performance of works of mercy within the South Eastern Region, particularly by aiding the sick, migrants, refugees and exiles, abandoned children and the poor and generally to exercise the charisms of the Order in the performance of such works of mercy within the South Eastern Region (**Charitable Objects**).

4. Sole Member

4.1 Sole member of the Company

The sole member of the Company is AAOML (**Member**).

4.2 Membership is not transferable

Membership in the Company is not transferable.

4.3 Membership fees

No fees are payable by the Member for membership in the Company.

4.4 Resolutions of single member company

The member may pass a resolution by recording it and signing it as a record. That record is to be taken as a minute of the passing of that resolution.

4.5 Rights and powers of the Member

The Member has all the rights and powers of an individual and a body corporate and must exercise its rights and powers according to this, and its own constitution.

5. No profits for Member

5.1 Transfer of income or property

The assets and income of the Company must be applied solely in furtherance of its Charitable Objects and no portion of its income or assets may be paid or transferred, directly or indirectly, to the Member.

5.2 Permitted payments

The Company may, with the approval of the Directors, make payment to the Member:

- (a) by way of reasonable and proper remuneration for any goods supplied or services rendered to the Company (including remuneration as a consultant);
- (b) for authorised out-of-pocket expenses reasonably and properly incurred by the Member in connection with the affairs of the Company; and
- (c) by way of distribution, but only if the Member is an Eligible Recipient.

6. Directors

6.1 Directors

- (a) The minimum number of Directors is three. The maximum number of Directors is ten.
- (b) The Board of Directors of the Company shall comprise the Regional Council of the South Eastern Region of the Australian Association constituted as referred to in Schedule 2.
- (c) The Member may, in accordance with its constitution, appoint such other personnel as Directors.

6.2 Appointment and removal of Directors

- (a) The Member may appoint any natural person to be Director who has signed a consent to be a Director and who is not ineligible under the Corporations Act or the ACNC Act.
- (b) Each Director is to remain as a Director until he or she resigns, his or her term of appointment (if any) expires, or is removed as a Director in accordance with the law and this constitution. For the avoidance of doubt, a previous Director is, subject to the law and this constitution, eligible for reappointment at any time.
- (c) The Member may in accordance with its constitution, remove and replace one or more Directors. For the avoidance of doubt, this includes the removal and replacement of all Directors.

6.3 Ceasing to be a Director

- (a) In addition to the circumstances prescribed by law (including the Corporations Act and the ACNC Act), the office of any Director becomes vacant if the Director dies or, unless the Directors otherwise resolve to confirm the Director's position, if the Director:

- (i) is, due to physical or mental impairment, unable to properly perform his or her duties as a Director as determined by a suitably qualified professional, acting reasonably;
 - (ii) becomes bankrupt;
 - (iii) is convicted of an indictable offence; or
 - (iv) is not present at meetings of the Directors for a continuous period of six months.
- (b) A Director may resign from office by providing a written notice of such to the Chair or the Secretary.

6.4 Payments to Directors

- (a) Directors must not receive any payments for acting as a director, but any director is entitled to be:
- (i) reimbursed for all authorised travelling and other expenses properly incurred in connection with the affairs of the Company; and
 - (ii) paid for all services rendered to the Company in a technical capacity other than as a director, provided that the amount is not more than what is reasonable for the work done.
- (b) Notwithstanding anything else in this constitution, a payment of any kind which is permitted to be paid to a Director by this Constitution can be made by the Company to a Director only if that payment:
- (i) does not contravene and any directives, policies, procedures and protocols as determined by the Member from time to time relating to payments to Directors; and
 - (ii) is approved by the Directors or such other person or persons to whom the Directors may have delegated authority.

6.5 Interested Directors

- (a) A Director may be a director or other officer of:
- (i) a related body corporate;
 - (ii) a body corporate promoted by the Company; or
 - (iii) a body corporate in which the Company is interested as a shareholder or otherwise.
- (b) No contract or other arrangement made between a Director and the Company is void merely because the Director holds office as a Director or because of the fiduciary obligations arising out of that office.
- (c) Each Director must disclose all personal interests and other matters that could, or do, give rise to a conflict of interest in relation to a matter or decision being considered by the Directors.
- (d) Where a Director has a material personal interest in a matter to be considered at a meeting, that Director must not be present while the matter is being considered at the meeting or vote on the matter, unless the Directors who do not have a material personal interest pass a resolution in accordance with the law which permits that Director to do so.
- (e) Except where the personal interest is material, a Director who has a personal interest in an arrangement may, despite the interest:
- (i) be counted counted in determining whether a quorum is present at any meeting of Directors determining that arrangement; and
 - (ii) vote in respect of the arrangement or any matter arising out of it.

6.6 Powers and duties of Directors

- (a) The Directors are responsible for managing the business of the Company and may exercise all the powers of the Company that are not required by law or this constitution to be exercised by the Member.
- (b) Without limiting these powers and duties the Directors must ensure that the Company conducts its activities in the fulfillment of its essential objects in conformity with the traditions of the Order and the directions of the Member.
- (c) The Directors must provide the Member with all information, material and documents as the Member may request.

6.7 Directors' meetings

The Directors may hold meetings (including by technological means) for the conduct of business and regulate them as they see fit.

6.8 Convening of meetings of Directors

The Member, the Chair or any two Directors may convene a Directors' meeting.

6.9 Notice of, and attendance at Directors' meetings

- (a) A notice of a Directors' meeting must:
 - (i) be given to the Member and each current Director, other than a Director on leave of absence approved by the Directors;
 - (ii) be given with sufficient time for the Directors to properly review and consider the material provided with the notice and the matters arising from it;
 - (iii) specify the time and place of and, if relevant, the form of technology of the meeting; and
 - (iv) state the nature of the business to be transacted at the meeting.
- (b) A resolution passed at a Directors' meeting is not invalid just because a person entitled to receive notice of the meeting, did not do so.
- (c) The Member (through its Representative) is entitled to attend any meeting of the Directors and may speak, but not vote, at any meeting.
- (d) The Directors may resolve to invite such advisers as they may wish to attend their meetings. Such advisers have a right to speak, but not vote, at Directors' meetings.

6.10 Quorum for Directors' meetings

- (a) No business may be transacted at a Directors' meeting unless there is a quorum of Directors at the time the business is dealt with.
- (b) Unless otherwise resolved by the Member, a quorum consists of 50% in number of current Directors. If 50% is not a whole number, then the number is to be rounded up.
- (c) For the avoidance of doubt, a Director is present at a meeting if participating by technological means such as by telephone and can therefore be counted towards a quorum.
- (d) If within 30 minutes after the time appointed for the meeting, a quorum is not present, then, without prejudice to the right of those present to discuss but not to vote on any matter, the meeting will be dissolved.

6.11 Chair and Deputy-Chair

- (a) The Member must appoint a Director to the office of Chair and may specify that person's term as chair (**Chair**).
- (b) The Member may appoint a different Director to the office of deputy-chair and may specify that person's term as deputy-chair (**Deputy-Chair**).

- (c) The Member may remove and replace the Chair and Deputy-Chair (if any) with another Director at any time. Removal of a person from the position of the Chair or Deputy-Chair does not in and of itself result in that person ceasing to be a Director.
- (d) A person must only fill the office of Chair or Deputy-Chair for so long as that person is a Director.
- (e) The Chair must preside as chair at each Directors' meeting unless the Chair is unable to attend or unwilling to act.
- (f) If the Chair is unable to attend a Directors' meeting or unwilling to act, then the Deputy-Chair, if one has been appointed, must preside as chair of that meeting.
- (g) If both the Chair and Deputy-Chair are unable to attend a Directors' meeting or are unable to act, then the Directors present at that meeting must elect a person from among their number to preside as chair for that meeting.

6.12 Decisions of Directors

- (a) A Directors' meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Directors under the law and this constitution.
- (b) Questions arising at a Directors' meeting are to be decided by a majority of votes cast by the Directors present and a decision of that kind is for all purposes a determination of the Directors.
- (c) If there are an equal number of votes cast for and against a resolution at a Directors' meeting, then the Chair may cast a second vote.

6.13 Decision without meetings

Directors may pass resolutions and otherwise make decisions outside of a Directors' meeting in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the passing of Director resolutions without meetings as determined by the Member from time to time.

6.14 Committees

- (a) So long as doing so is consistent with any directives, policies, procedures and protocols provided by the Member, the Directors may resolve to establish one or more committees consisting of such persons, being members of the Order, and for such purposes as they determine.
- (b) The Directors may change the make-up of a committee at any time or dissolve it.
- (c) The Directors may continue to exercise all of their powers despite any delegation made to a committee.

6.15 Delegation to individuals

- (a) So long as doing so is consistent with any directives, policies, procedures and protocols provided by the Member, the Directors may resolve to delegate any of their powers to one or more Directors, or to one or more members of the Order and may vary or revoke any power so delegated.
- (b) A person to whom any powers have been delegated must exercise the powers delegated in accordance with the direction of the Directors.
- (c) The Directors may continue to exercise all of their powers despite any delegation.

6.16 Validity of acts

An act done by a Director or by a meeting of the Directors or a committee attended by a Director is not invalidated just because:

- (a) of a defect of appointment;

- (b) the person is disqualified from being a Director or has vacated office; or
- (c) the person is not entitled to vote,

if that circumstance was not known by the person or the Directors, as the case may be, when the act was done.

7. Secretary

- (a) The Directors must appoint a secretary who may be, but does not need to be, a Director (**Secretary**).
- (b) The appointment of the Secretary may be for the period, on the conditions and, excluding if a Director, at the remuneration the Directors determine.
- (c) Subject to any contract between the Company and the Secretary, the Secretary may be removed or dismissed by the Directors at any time with or without cause. If that person is a Director, such removal or dismissal does not of itself remove that person as a Director.
- (d) A Director may not be remunerated in his or her capacity as a Secretary.
- (e) The duties of the Secretary include, but are not limited to:
 - (i) ensuring that the necessary registers required by law are established and properly maintained;
 - (ii) ensuring that any required annual returns and annual reports are lodged with the appropriate regulator on time; and
 - (iii) ensuring the organisation of, and attend, any meetings of the Directors, including the sending out of notices, the preparation of agenda and the compilation of minutes.
- (f) An act done by a person acting as Secretary is not invalidated just because:
 - (i) of a defect in the person's appointment as the Secretary; or
 - (ii) the person is disqualified from being a secretary,if that circumstance was not known by the person when the act was done.

8. Powers of the Member

The Member may at any time give to the Directors, and the Directors must comply with, such guidance and direction in such matters as it deems appropriate to ensure the Company has the character of an organization of the Order and that the operations and activities that it carries on are consistent with the traditions of the Order.

9. Administrative matters

9.1 Minutes and records

- (a) The Directors must ensure that the following minutes are recorded, approved and kept in accordance with the law:
 - (i) resolutions and declarations of the Member;
 - (ii) meetings and resolutions of Directors; and
 - (iii) meetings and resolutions of committees.
- (b) Subject to the law, the Directors must make the minute books, accounting records and other documents of the Company available to the Member upon the Member's request (as the case may be).
- (c) The Company must establish and administer all registers required to be kept by law and the Member must provide the Company with such information as is required for the

Company to comply with this rule. If events occur which would cause the information contained in a register maintained by the Company to be inaccurate, the Member must notify the Company in writing of the change within 21 days of the date of such change occurring.

- (d) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.
- (e) The Company must keep all financial and other records required by law.

10. Winding up

- (a) If the Company is wound up:
 - (i) each Member; and
 - (ii) each person who has ceased to be a Member in the preceding 12 months, undertakes to contribute to the property of the Company for the:
 - (iii) payment of debts and liabilities of the Company (in relation to paragraph (b) of this Article, contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
 - (iv) adjustment of the rights of the contributories amongst themselves,such amount as may be required, not exceeding \$50.00 (and otherwise has no liability for the payment of debts and liabilities of the Company nor obligation to contribute to the property of the Company).
- (b) If the Company is endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act then on the earlier of the winding up or revocation of endorsement of the Company any surplus of the following assets, namely:
 - (i) gifts of money or property for the principal purpose of the Company;
 - (ii) contributions described in item 7 or 8 of the table in section 30-15 of the Tax Act in relation to a fund-raising event held for that principal purpose; and
 - (iii) money received by the Company because of such gifts or contributions,will, as required by the Tax Act, be given or transferred to another fund, authority or institution gifts to which are deductible under Division 30 of the Tax Act and which, by its constitution or governing rules, is:
 - (iv) required to pursue charitable purposes only (being charitable purposes similar, as far as possible, to those of the Company);
 - (v) required to apply its income in promoting its charitable purposes; and
 - (vi) prohibited from making any distribution to its members and paying fees to its directors, to at least the same extent of such prohibitions under this Constitution,such fund, authority or institution to be the Member if it then satisfies the above specified conditions but if not then to be determined by the Directors with the approval of the Grand Master of the Order and the Sovereign Council, and in default, by application to the Supreme Court of Victoria for determination.
- (c) Subject to clause 10(b), on the winding up of the Company, any surplus remaining following the satisfaction of all debts and liabilities of the Company will not be paid to or distributed among members, but will, unless otherwise required by law, be given or transferred to another corporation or body which, by its constitution or governing rules, is:
 - (i) required to pursue charitable purposes only (being charitable purposes similar, as far as possible, to those of the Company);
 - (ii) required to apply its income in promoting its charitable purposes; and
 - (iii) prohibited from making any distribution to its members and paying fees to its directors, to at least the same extent of such prohibitions under this Constitution,

such corporation or body to be the Member if it then satisfies the above specified conditions but if not then to be determined by the Directors with the approval of the Grand Master of the Order and the Sovereign Council, and in default, by application to the Supreme Court of Victoria for determination.

11. Indemnity and insurance

- (a) To the extent permitted by law, the Company indemnifies its Directors and other officers (both current and past) for all losses or liabilities incurred by the person as a Director or other officer of the Company including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.
- (b) This indemnity:
 - (i) may only be for losses or liabilities incurred as a Director or other officer of the Company; and
 - (ii) operates only to the extent that the loss or liability is not paid by insurance.
- (c) To the extent permitted by law, the Company may take out and pay for insurance for the benefit of its Directors and other officers (both current and past) against any liability incurred by the person as a Director or other officer of the Company including, but not limited to, a liability for negligence or for legal costs.

12. Notices

Any notice, document or other communication required or permitted to be given under this constitution or by law may be given in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any directives, policies, procedures and protocols relating to the giving and receiving of notices, documents and other communications as determine by the Member from time to time.

13. General

13.1 Common seal

Unless otherwise required under any directive, policy, procedure or protocol relating to the common seal of the Company as may be issued by the Member from time to time, the Company may choose whether it has a common seal. If the Company does have a common seal it must be kept and used in accordance with the law and with that directive, policy, procedure or protocol.

13.2 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of Victoria, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

Schedule 1 - Defined Terms

1. Defined terms

In this constitution unless the context otherwise requires:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

AAOML means Australian Association of the Order of Malta Limited ABN 37 142 209 121.

Australian Association means Australian Association of the Sovereign Order of St John of Jerusalem, of Rhodes and Malta.

Chair means the chair of the Company as appointed under clause 6.11(a).

Charitable Object has the meaning in clause 3.

Company means Order of Malta Hospice Home Care (VIC) Ltd.

Corporations Act means the *Corporations Act 2001* (Cth).

Deputy-Chair means the deputy-chair of the Company as may be appointed under clause 6.11(b).

Director means a director of the Company.

Eligible Recipient means an organisation in Australia that:

- (a) has one or more objects or purposes similar to the Charitable Object and agrees to use any distribution provided to it by the Company to further such objects or purposes;
- (b) is registered as a charity with the Australian Charities and Not-for-profits Commission;
- (c) by law or its constituent rules, is prohibited from distributing, and does not distribute, its income and property amongst its members (either while it is operating or upon winding up) to an extent at least as great as is imposed upon the Company; and
- (d) if the Company is endorsed as a deductible gift recipient for the purpose of any Commonwealth income tax laws, is likewise endorsed as a deductible gift recipient.

Member has the meaning given at clause 4.

Order means The Sovereign Military and Hospitaller Order of Saint John of Jerusalem, Rhodes and Malta.

Representative, in relation to a body corporate, means a representative of the body corporate appointed under section 250D of the Corporations Act, which is to apply regardless of whether that body corporate would ordinarily be governed by the Corporations Act.

Secretary means the secretary of the Company appointed under clause 7.

South Eastern Region means members of the Order who ordinarily reside in the States of Victoria and Tasmania, Australia.

Sovereign Council means the juridical body established for the governance of the Order under the Constitutional Charter of the Order as that body may be constituted at any specific time.

Surplus Assets has the meaning given in clause **Error! Reference source not found.**

Tax Act means the *Income Tax Assessment Act 1997* (Cth) and includes any regulations made under that Act and any rulings or requirements of the Commissioner of Taxation of the Commonwealth of Australia having application to the Company.

2. Interpretation

- (a) A reference in a clause in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.

- (b) In this constitution, headings are for convenience only and do not affect the interpretation of this constitution.
- (c) Unless the contrary intention appears:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words importing a gender include every other gender;
 - (iii) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated); and
 - (iv) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;

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Schedule 2 - The Regional Council of the South Eastern Region

The membership of the Order in the Australian Association is organized into regions where they gather to practise their faith and participate in those charitable works of the Order that are authorised and conducted under the supervision and direction of the Executive Council of AAOML.

The organizational structure of a region of the Australian Association is set out in the Constitution of AAOML and in the Regional Statutes appended appearing as Schedule A of that document.

The Constitution of AAOML establishes the South Eastern Region of the Australian Association to consist of members of the Order who ordinarily reside in the States of Victoria and Tasmania and the Regional Statutes provide that the Region is to be governed by a Regional Council.

The Regional Council of the South Eastern Region is comprised of the Regional Hospitaller, the Regional Chaplain and such other members of the Region who are elected by the Region according to the Regional Statutes.

The Constitution of AAOML provides that the Regional Council of the South Eastern Region shall until it otherwise determines constitute the Board of Directors of the Company.

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