

**CONSTITUTION OF  
MSBASE FOUNDATION LIMITED  
(ACN 109 714 310)**

**A COMPANY LIMITED BY GUARANTEE**  
**CONSTITUTION OF**  
**MSBASE FOUNDATION LIMITED**

**1. INTERPRETATION**

**1.1. Definitions**

In this Constitution:

- (a) **“Annual General Meeting”** means a meeting of Members held at least once each calendar year;
- (b) **“Board of Directors”** means the Board of Directors of the Foundation;
- (c) **“Chairman”** means the chairman of the Board of Directors as appointed by the Board of Directors from time to time;
- (d) **“Constitution”** means the Constitution of the Foundation;
- (e) **“Director”** means a director of the Foundation;
- (f) **“Donation”** means a donation of cash or a donation of a tangible or intangible asset;
- (g) **“Foundation”** means MSBase Foundation Limited;
- (h) **“General Meeting”** means a meeting of Members convened in accordance with the Law and this Constitution;
- (i) **“Gift”** means a Donation or other gift which is tax deductible to the donor under Division 30 of the *Income Tax Assessment Act 1997* (Cth) and is to be included in the Gift Fund;
- (j) **“Gift Fund”** means the gift fund established under clause 2.3;
- (k) **“Law”** means the *Corporations Act 2001* (Cth);
- (l) **“Member”** means a member of the Foundation;
- (m) **“Observational Plan”** means any observational plan determined from time to time by the Foundation;
- (n) **“Project Regulations”** means any project regulations to apply to the SLG which are adopted by the Foundation from time to time; and
- (o) **“SLG”** has the meaning given to that term in clause 6.1.

**1.2. Interpretation**

In this Constitution:

- (a) the singular includes the plural and conversely;
- (b) a reference to legislation or to a provision of legislation includes a modification, re-enactment of or substitution for it and a regulation or statutory instrument issued under it;

- (c) unless stated otherwise, one word or provision does not limit the effect of another;
- (d) reference to the whole includes part;
- (e) a reference to a “clause” is a reference to a clause of this Constitution unless otherwise specified; and
- (f) words importing any gender includes the other genders.

### **1.3. Company Name**

The name of the company is MSBase Foundation Limited.

## **2. OBJECTS AND REPLACEABLE RULES**

### **2.1. Objects of the Foundation**

The objects of the Foundation are to:

- (a) promote the prevention and/or the control of diseases in human beings including, without limitation, the disease of multiple sclerosis;
- (b) create and maintain a database to facilitate research into such prevention and/or control including, without limitation, tracking and evaluating outcomes data;
- (c) facilitate and at the behest of the SLG conduct research using the database mentioned in paragraph (b)
- (d) raise funds for the other objects referred to in this clause 2.1; and
- (e) any other objects consistent with the object specified in clause 2.1(a) which are determined by the Foundation from time to time.

### **2.2. Distribution of the Foundation’s Assets and Income**

The assets and income of the Foundation shall, after meeting normal management operating and collecting costs, be applied solely in the furtherance of its abovementioned objects and no portion shall be distributed directly or indirectly to the Members except as bona fide compensation for services rendered or expenses incurred on behalf of the Foundation.

### **2.3. Gift Fund**

The Board of Directors must establish and maintain a separate Gift Fund for the receipt and distribution of Gifts received by the Foundation. All Gifts in the Gift Fund are to be used for the objects specified in clause 2.1. The Gift Fund must at all times (including upon winding up) comply with the requirements of Subdivision 30-BA of the *Income Tax Assessment Act 1997* (Cth).

### **2.4. Charitable Institution**

The Foundation is and must remain a charitable institution for the purposes of item 1.1.6 of Section 30-20 of the *Income Tax Assessment Act 1997* (Cth).

### **2.5. Replaceable Rules**

Each of the provisions of the sections or sub-sections of the Act which would but for this clause apply to the Foundation as a replaceable rule, are displaced and do not apply to the Foundation

### **3. MEMBERSHIP**

#### **3.1. Members**

Initially, there will be one Member. However, the Board of Directors may admit additional Members following a resolution of Members by simple majority in favour of such admission.

#### **3.2. Donations**

(a) The Foundation is entitled to receive Donations from Members or non-Members.

(b) The Foundation is entitled to accept or reject any Donation, whether in the form of money or otherwise, from any person, whether a Member or not, in its absolute discretion without giving any reasons for doing so.

(c) The Foundation will not accept any Donations which are conditional upon the admission of any particular Member or appointment of any particular Director.

(d) The Foundation is entitled to use any Donation for any or all of its objects unless otherwise agreed with the relevant donor.

#### **3.3. Cessation of Membership**

(a) Subject to the provisions of the Law, a Member shall cease being a Member:

(b) if the Member fails to comply with any provision of this Constitution or any by-law of the Foundation and does not remedy such failure within a reasonable period of receiving notice from the Board of Directors to do so;

(c) if the Member resigns their Membership by notice in writing to the Foundation;

(d) if the Member becomes bankrupt or makes an arrangement or composition with his or her creditors;

(e) if the Member becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

(f) if the Member dies; or

(g) if the Board of Directors recommends to the Members that a particular Member should cease to be a Member and the Members resolve by simple majority that the relevant Member should cease to be a Member.

#### **3.4. Liability of Members**

The liability of each Member is limited to \$1.

### **4. FOUNDATION CODE OF SPONSORSHIP**

The Foundation may establish a Foundation Code of Sponsorship (**Code**) to govern the relationships between sponsors and the Foundation. Amongst other things, the Code may include the following matters:

(a) all sponsorship must be honest, truthful, legal and in the best interests of the Foundation;

(b) the terms, conditions and conduct of the sponsorship must be based upon principles of fairness and good faith between all parties to the sponsorship;

(c) all sponsors are required to respect the autonomy and self-determination of the Foundation in the management of its own activities and operations, including, without limitation, respect for the creative, scientific and intellectual freedom of the Foundation;

(d) all sponsorship activities must be fully disclosed to the public, including all details of sponsorship agreements and agreed objectives (such disclosure may take the form of a posting on the public access section of the MSBase website (msbase.org));

(e) all sponsors must take particular care to safeguard the identity, dignity and reputation of the Foundation;

(f) the Foundation must not enter into any dealings or arrangements for endorsement of a particular product, service or service provider as part of a sponsorship arrangement; and

(g) all sponsorship contracts, arrangements or undertakings with the Foundation must be specified in a written agreement between the Foundation and the relevant sponsor which specifies the rights and obligations of each party.

## **5. MANAGEMENT**

### **5.1. Management of the Foundation**

(a) Subject to the Law and any other provision of this Constitution, the control, management and conduct of the Foundation shall be managed by the Board of Directors, who may pay all expenses incurred in the day to day administration and operations of the Foundation out of the Donations (or any other income) received by the Foundation.

(b) Subject to the Law and to any other provision of this Constitution the investment of the Foundation's funds shall be managed by the Board of Directors.

### **5.2. Number of Directors**

The Foundation may, by special resolution of the Members, alter the number of Directors provided that after such alteration the number of Directors is no less than 3 or the minimum number required by Law if greater than 3.

### **5.3. Election of Board of Directors**

Subject to the appointment of Directors upon the incorporation of the Foundation, the Board of Directors shall be elected at the Annual General Meeting of the Foundation in each year and shall hold office until the second anniversary of the Annual General Meeting at which they were elected, when they shall retire from office but shall be eligible for re-election. Directors must be Members.

### **5.4. Ability to Fill casual vacancies of Directors**

The Board shall have the power at any time and from time to time to appoint any member as a Director either to fill a casual vacancy or as an addition to the existing office-bearers or other. Any Director so appointed shall hold office until the commencement of the Annual General Meeting at which the Director whose place the appointee fills become vacant by application of the rotation created by these Rules but shall be eligible for re-election.

### **5.5. Vacation of Office**

A Director shall cease to be a Director if he or she:

- (a) becomes bankrupt or makes an arrangement or composition with his or her creditors;
- (b) is disqualified from acting as a Director as a consequence of any provision of the Act;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

(d) Dies;

(c) resigns his or her office by notice in writing to the Foundation; or

(d) for more than 6 months is absent, without permission from the Board of Directors, from meetings of the Board of Directors held during that period.

## **5.6. Interested Directors**

(a) A Director is not disqualified by reason of his or her being a member of any corporation, society or association which has entered or proposes to enter into a contract with the Foundation.

(b) Nothing in this clause 5.5 affects the duty of a Director:

(i) who has a direct or indirect interest in a contract or proposed contract with the Foundation to declare the nature of that interest at a meeting of the Board of Directors; or

(ii) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as a Director, to declare at a meeting of the Board of Directors the fact and the nature, character and extent of the conflict,

but a general notice to the Board of Directors that a Director is an officer or member of a corporation or a member of a firm and is to be regarded as interested in any contract or arrangement with that firm or corporation and stating the nature and extent of the Director's interest in the corporation or firm will be sufficient disclosure under this clause 5.5.

## **5.7. Remuneration of Directors**

All payments made to the Directors must be approved by the Board of Directors.

## **5.8. Powers and Duties of the Board of Directors**

Subject to the Law and to any other provision in this Constitution, the Board of Directors have all powers of direction and management of the Foundation except to the extent required under the Law and this Constitution.

## **5.9. Proceedings of the Board of Directors**

(a) The Board of Directors must meet at least 2 times in each calendar year.

(b) The Board of Directors may meet together for the dispatch of business adjourned and otherwise regulate their meetings as they think fit.

(c) The contemporaneous linking together by telephone or other method of audio or audio visual communication of a number of the Directors sufficient to constitute a quorum, constitutes a meeting of the Directors and all the provisions in this Constitution relating to meetings of the Directors apply, so far as they can and with such changes as are necessary, to meetings of the Directors by telephone or audio or audio visual communication.

(d) A Director will be taken to leave a meeting by telephone or audio or audio visual communication if the Director's telephone or audio or audio visual communication device is disconnected in such a manner that all Directors participating are, or should be, aware that the Director has ceased to participate in the meeting. Unless the Directors participating in the meeting become aware that communications have been disrupted, it will be conclusively presumed that all Directors known to have been participating in the meeting at its commencement have been present and to have formed part of the quorum at all times during the meeting.

(e) The disruption of communications during a meeting by telephone, audio or audio visual communication will not invalidate proceedings at that meeting.

(f) Questions arising at any meeting shall be decided by a majority of votes and determination by a majority of the Board of Directors shall for all purposes be deemed a determination of the Board of Directors.

(g) In the case of an equality of votes the Chairman will have a second or casting vote.

(h) Any Director may at any time on 14 days written notice to the other Directors summon a meeting of the Board of Directors.

(i) The quorum necessary for transacting the business of the Board of Directors shall be 2 or such greater number as may be fixed from time to time by the Board of Directors.

(j) The Chairman shall preside at a meeting of the Board of Directors.

(k) If at any meeting the Chairman is not present within 15 minutes after the time appointed for holding the meeting, the Directors present shall choose one of themselves to be Chairman of the meeting.

(l) A resolution in writing signed by all the Board of Directors shall be as valid and effectual as if it had been passed at a meeting of the Board of Directors duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Directors.

(m) If there are not sufficient Directors to constitute a quorum at a meeting of the Board of Directors because of a vacancy or vacancies in the office of a Director or in the offices of the Board of Directors, then the remaining Directors may act but only for the purpose of:

(i) increasing the number of Directors to a sufficient number to constitute a quorum; or

(ii) convening a General Meeting of the Foundation.

(n) If there are not sufficient Directors to constitute a quorum at a meeting of the Board of Directors for reasons other than those contemplated in clause 5.8(m) then:

(i) the meeting shall be adjourned for 7 days and shall take place at the same time and place as the adjourned meeting; and

(ii) the quorum necessary for transacting the business of the Board of Directors at this further meeting shall be 1.

## **5.10. Appointment of staff**

The Board of directors may engage all such officers and employees as it may consider necessary, regulate their duties and fix their salaries.

## **6. MSBASE SLG**

### **6.1. Creation of SLG**

In order to assist in the promotion of the Foundation's objects, the Foundation may create a Scientific Leadership Group to:

(a) provide scientific assistance to the Foundation with respect to the Foundation's database and website;

(b) make recommendations to the Foundation with respect to financing of projects;

(c) act as custodian of the data on the Foundation's database; and

(d) become a self-constituting entity, subject to the Project Regulations, Observational Plan and any other requirements of the Foundation,

together with such other matters as the Foundation determines from time to time.

## **6.2. Operations of SLG**

Any SLG created by the Foundation will operate in such a manner and otherwise perform the functions required by the Foundation from time to time.

## **6.3. Project Regulations**

The operation of any SLG will be governed by the Project Regulations, Observational Plan and any other regulations or requirements of the Foundation from time to time.

# **7. MEETINGS AND VOTING**

## **7.1. General Meeting**

(a) The annual accounting year of the Foundation shall end on 30 June each year.

(b) Annual General Meetings shall be held in accordance with the provisions of the Law at such time and place as the Board of Directors may determine.

(c) The Board of Directors may whenever they think fit, convene a General Meeting and General Meetings shall be convened on such requisition or in default may be convened by such requisitions as are provided by the Law.

(d) A notice of General Meeting must:

(i) specify the place, the day and the hour of meeting;

(ii) in case of special business the general nature of that business shall be given to the Members of the Foundation; and

(iii) unless the Members consent to shorter notice in accordance with the Law, 21 days written notice must be given of a General Meeting of the Members.

## **7.2. Proceedings at General Meetings**

The business of an Annual General Meeting may include any of the following, even if not referred to in the notice of meeting:

(a) the consideration of the annual financial report, Board of Directors' reports and auditors' reports;

(b) the election of the Board of Directors;

(c) if required, to consider and if thought fit, to appoint auditors;

(d) if required, to consider and if thought fit, to fix the auditors' remuneration; and

(e) the transaction of any other business which under this Constitution ought to be transacted at an Annual General Meeting.



### **7.3. Quorum at General Meetings**

(a) No business shall be transacted at any General Meeting unless a quorum of at least 2 Members is present at the time when the meeting proceeds to business.

(b) If at any meeting of Members the Chairman is not present within 15 minutes after the time appointed for holding the meeting, the Members present shall choose one of themselves to be Chairman of the meeting.

(c) If there are not sufficient Members to constitute a quorum at a meeting of Members then the meeting shall be adjourned for 7 days and will commence at the same time and be held in the same place as the adjourned meeting.

(d) Whoever is present at that further meeting within 15 minutes after the time appointed for holding the meeting will constitute a quorum.

### **7.4. Chairman of General Meetings**

The Chairman shall preside as Chairman at every General Meeting of the Foundation.

### **7.5. Representation at General Meetings**

Subject to this Constitution, each Member entitled to vote at a meeting of Members may vote:

(a) in person;

(b) by not more than 1 proxy;

(c) by not more than 1 attorney; or

where the Member is a body corporate, by its representative.

### **7.6. Voting Rights of Body Corporate Representatives**

(a) A representative appointed to attend and vote for a Member who is a body corporate has the same rights as the Member.

(b) Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body corporate could exercise at a meeting or in voting on a resolution.

### **7.7. Members' Voting Rights**

Subject to the Law and this Constitution, at a General Meeting:

(a) on a show of hands, every Member present and entitled to vote has one vote; and

(b) on a poll every Member present has one vote.

### **7.8. Voting by Poll**

(a) A resolution put to the vote of a General Meeting must be decided on a show of hands unless a poll is demanded:

(i) before a vote is taken;

(ii) before the voting results on a show of hands are declared; or

(iii) immediately after the voting results on a show of hands are declared.

(b) A poll may be demanded by:

(i) the Chairman of the meeting;

(ii) not less than 2 Members having the right to vote at the meeting; or

(iii) a Member or Members representing not less than one tenth of the total voting rights of all Members having the right to vote at the meeting.

(c) A demand for a poll does not prevent the continuance of a General Meeting for the transaction of any business other than the question on which the poll has been demanded.

(d) Unless a poll is duly demanded, a declaration by the Chairman of a General Meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Foundation, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(e) The demand for a poll may be withdrawn.

## **7.9. Procedure for Polls**

(a) A poll may be demanded on any resolution.

(b) If a poll is duly demanded at a General Meeting, it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairman of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.

(c) A poll demanded at a General Meeting on the election of a Chairman of the meeting or on a question of adjournment must be taken immediately.

## **7.10. Chairman's Casting Vote**

In the case of equality of votes whether on a show of hands or on a poll the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

# **8. PROXIES**

## **8.1. Power to Appoint Proxies**

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

## **8.2. Appointment of Proxies**

An appointment of a proxy is valid if it is signed by the Member making the appointment.

## **8.3. Voting Rights of Proxies**

A proxy appointed to attend and vote for a Member has the same rights as the Member:

(a) to speak at the meeting;

(b) to vote (but only to the extent allowed by the appointment); and

join in a demand for a poll.

## **9. MINUTES AND RECORDS**

The Board of Directors must cause minutes of all proceedings of General Meetings and of meetings of the Board of Directors to be entered, within one month after the relevant meeting is held, in books kept for that purpose. Except in the case of documents which are taken to be minutes, minutes must be signed by the Chairman of the meeting or by the Chairman of the next succeeding meeting.

## **10. ACCOUNTS**

### **10.1. Accounts**

(a) The Board of Directors shall:

(i) cause proper accounts to be kept with respect to all sums of money received and expended by the Foundation and the manner in respect of which the receipt and expenditure takes place and the assets and liabilities of the Foundation; and

(ii) cause to be prepared a Balance Sheet and a Statement of Income and Expenditure drawn up for the 12 months ending on 30 June each year.

(b) The accounts shall be subject to audit and a duly audited copy of the Balance Sheet and Statement of Income and Expenditure shall be furnished to all Members and the Board of Directors not less than 21 days prior to the date for the Annual General Meeting at which the annual accounts are to be presented. A copy shall also be provided to the Chairman of the Board of Directors of the Foundation.

(c) The accounts shall be kept at the office of the Foundation or at such other place or places as the Board of Directors decide from time to time and shall be open for inspection during normal business hours by any Director.

### **10.2. Audit**

A qualified auditor shall be appointed and their duties regulated in accordance with the Law.

## **11. NOTICES**

### **11.1. Notices by the Foundation to Members**

A notice may be given by the Foundation to a Member:

(a) by serving it personally;

(b) by sending it by post in a prepaid envelope to the Member's address as shown in the register of Members or such other address (if any) nominated by the Member;

(c) by fax transmission to such fax number, as the Member has supplied to the Foundation for the giving of notices; or

(d) by electronic transmission to such electronic address, as the Member has supplied to the Foundation for the giving of notices.

### **11.2. Notices by Member or Directors to the Foundation**

Subject to this Constitution, a notice may be given by a Member or Director to the Foundation by serving it on the Foundation at the registered office of the Foundation.

### **11.3. Time of Service**

(a) Where a notice is sent by post, service of the notice is to be taken to be effected:

(i) in the case of a notice of a General Meeting, on the day after the date of its posting; or

(ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.

(b) Where a notice is sent by fax transmission, service of the notice is to be taken to be effected if the correct fax number appears on the fax transmission report generated by the sender's fax machine and to have been effected at the time the fax transmission is sent.

(c) Where a notice is sent by electronic transmission, service of the notice is taken to be effected at the time the electronic transmission is sent.

### **11.4. Notices in Writing**

A reference in this Constitution to a notice in writing includes a notice given by fax transmission, electronic transmission or any other form of written communication.

## **12. PROTECTION OF DIRECTORS**

### **12.1. Persons to Whom this Clause Applies**

This clause 12 applies:

(a) to each Director and any company secretary; and

(b) to such other officers and employees of the Foundation as the Board of Directors determines,

referred to in this clause 12 as an "Indemnified Person".

### **12.2. Indemnity**

Each Indemnified Person is entitled to be indemnified out of the assets of the Foundation against:

(a) subject to clause 12.3, all losses or liabilities incurred in relation to the execution of the Indemnified Person's duties as a Director, company secretary, officer or employee of the Foundation;

(b) any liability incurred by the Indemnified Person in that capacity:

(i) in defending any proceedings or in anticipation of defending any proceedings, whether civil or criminal, which are settled, discontinued or in which judgement is given in the Indemnified Person's favour or in which the Indemnified Person is acquitted;

(ii) in connection with any administrative proceedings relating to that person's position with the Foundation, except proceedings which give rise to civil or criminal proceedings against that person in which judgment is not given in that person's favour or in which that person is not acquitted or which arise out of conduct involving a lack of good faith or where the officer is subject to a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the Law;

(iii) in connection with any application in relation to any proceedings relating to that person's position with the Foundation whether civil or criminal, in which relief is granted to that person under the Law by the court; and

(iv) in connection with any application under the Law in which relief is granted to him or her by the court in respect of any negligence, default, breach of duty or breach of trust; and

(c) with regard to GST:

(i) the amount of any indemnity payable under this clause 12.2 will include an amount (**GST Amount**) equal to any GST payable by the Indemnified Person;

(ii) payment of the GST Amount of any indemnity is conditional upon the Indemnified Person providing to the Foundation a copy of the tax invoice for the GST Amount issued to the Indemnified Person; and

(iii) in this clause 12.2, "GST" refers to the Goods and Services Tax under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the terms used in this clause 12.2(c) have the same meaning as in that Act.

### **12.3. Breach of Duty**

Nothing in this Constitution exempts any Indemnified Person from, or indemnifies any Indemnified Person against, any liability in respect of which an exemption or indemnity cannot be validly granted (including, without limitation, by reason of the Law) or adversely affects the Foundation's capacity or power to take action in respect of any such liability.

## **13. WINDING UP**

### **13.1. Deficiency**

Every Member undertakes to contribute to the property of the Foundation in the event of the same being wound up while he or she is a Member, or within 1 year after he or she ceases to be a Member, for payment of the debts and liabilities of the Foundation contracted before he or she ceases to be a Member up to a maximum amount of \$1.

### **13.2. Distribution of Surplus**

If upon the winding up or dissolution of the Foundation there remains after satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid to or distributed among the Members of the Foundation but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Foundation and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Foundation under or by virtue of clauses 2.2 and 2.3. Such institution or institutions are to be determined by the Members of the Foundation (who shall give preference to institutions which undertake to continue the projects being carried out by the Foundation) at or before the time of dissolution and if and so far as effect cannot be given to the aforesaid provision, then to some charitable institution or institutions. In addition, if the Foundation is wound up or if the endorsement (if any) of the Foundation as a deductible gift recipient is revoked, any surplus assets remaining after the payment of the Foundation's liabilities shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made.

## **14. ADOPTION AND AMENDMENTS OF CONSTITUTION**

The members may amend or repeal this Constitution, or a provision of this Constitution, by special resolution passed at either an Annual General Meeting or at an Extraordinary General Meeting.

#### **14.1. Process for amending or repealing the Constitution**

A notice of the proposed alterations must be provided by written communication to every member at least 21 days prior to the date of the meeting.

A special resolution amending, adopting or repealing this Constitution takes effect:

- (a) if no later date is specified in the resolution, then on the date on which the resolution is passed; or
- (b) on a later date specified in , or determined in accordance with, the resolution.

#### **14.2. Distribution of a copy of the Constitution to members**

The Company must send a copy of this Constitution (as amended from time to time) to a member within 7 days if the member asks the Company, in writing for the copy.