

**Dated**

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**CONSTITUTION OF PROCARE  
HEALTH (PHO) LIMITED**

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# CONSTITUTION OF PROCARE HEALTH (PHO) LIMITED

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Constitution, unless the context otherwise requires:

**Act** means the Companies Act 1993;

**Associated Person** has the meaning given in clause 3.1(f);

**Board** means the Directors who number not less than the required quorum acting together as a board of Directors, or, if the Company has only one Director, that Director;

**Company** means ProCare Health (PHO) Limited (company number: 1301340);

**Director** means a person appointed as a director of the Company in accordance with this Constitution;

**Health Services** has the meaning given to it under the Health Practitioners' Competence Assurance Act 2003;

**Holding Company** means ProCare Network Limited (company number 650461);

**Share** means a share in the capital of the Company;

**Shareholder** means a shareholder in the Company; and

**Working Day** means any day other than a Saturday, a Sunday, or a public holiday (as defined in the Holidays Act 2003) in Auckland.

### 1.2 Interpretation

In this Constitution, unless the context requires otherwise:

- (a) **capitalised words** or **expressions** that are not defined in clause 1.1 have the same meaning as in the Act;
- (b) references to **clauses** are to clauses of this Constitution;
- (c) **derivations** of any defined word or term shall have a corresponding meaning;
- (d) the **headings** to clauses are inserted for convenience only and shall be ignored in interpreting this Constitution;
- (e) the word **including** and other similar words do not imply any limitation;
- (f) the **plural** includes the **singular** and vice versa; and
- (g) a reference to a **statute** includes all regulations and other subordinate legislation made under that statute. A reference to a statute, regulation or other subordinate legislation includes that statute, regulation or subordinate legislation as amended or replaced from time to time.

## **2. CHARITABLE PURPOSE**

- 2.1 The Company has been established as a primary health organisation and operates exclusively for the charitable purposes set out in this clause 2. The objects of the Company are to promote and enhance the health and wellbeing of all individuals, families, and communities within New Zealand.
- 2.2 Accordingly, all income of the Company will be applied to carrying out and fulfilling those charitable purposes. To fulfil those charitable purposes, the Company will:
- (a) provide comprehensive, quality primary Health Services;
  - (b) identify and fulfil specific areas of primary health care need in the community;
  - (c) facilitate coordination and integration between the primary healthcare sector, the rest of the health sector and other associated sectors including housing, education, employment and social welfare;
  - (d) develop closer links with the community by promoting participation of community groups in primary Health Services; and
  - (e) develop strategic partnerships and associations with other primary health organisations as well as regional and national health authorities to improve the provision of primary Health Services, the health of the community and the health of New Zealand as a whole.

## **3. POWERS**

- 3.1 The Company intends to carry out the above objects in New Zealand. To this end:
- (a) The Company may do anything that is incidental or conducive to attaining the objects set out in clause 2.
  - (b) Subject to the Act and any other relevant law, the Company has (both within and outside New Zealand):
    - (i) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and
    - (ii) for the purposes of clause 3.1(a), the full rights, powers and privileges of a natural person.
  - (c) All income, benefit or advantage of the Company must be used to advance the objects set out in clause 2.
  - (d) Any payments made by the Company must be for goods and services that directly or indirectly advance the charitable objects of the Company and must be reasonable and relative to payments that would be made between unrelated parties.
  - (e) Nothing in this clause 3 prevents the payment in good faith of any of the following:
    - (i) reasonable and proper remuneration to any Director, officer, employee or agent of the Company for services actually rendered to the Company;
    - (ii) reasonable and proper remuneration to any Director, officer, employee or agent of the Company that is properly payable to that Director, officer, employee or agent by any

company or undertaking with which the Company may be in any way concerned or involved for which that Director, officer, employee or agent has acted in any capacity whatsoever, notwithstanding that that Director, officer, employee or agent's connection with that company or undertaking is in any way attributable to that Director, officer, employee or agent's connection with the Company;

- (iii) reasonable and proper amounts paid to any Shareholder, Director or Associated Person in return for services actually rendered to the Company or for goods supplied in the ordinary and usual course of business;
  - (iv) reasonable and proper interest on any money borrowed from a Shareholder, Director or Associated Person; and
  - (v) reasonable and proper rent for any premises let by any Shareholder, Director or Associated Person to the Company.
- (f) No Shareholder or Director of the Company, or anyone associated with such a Shareholder or Director under subpart YB of the Income Tax Act 2007 ("**Associated Person**"), is allowed to take part in or influence (either directly or indirectly), any decision made by the Company relating to any income, benefit or advantage arising to, or on behalf of, the Shareholder, Director or associated person. This clause does not prevent the payment of a donation to a tax exempt charity which holds the payment exclusively for charitable purposes in New Zealand, as long as the payment does not result in the Company losing its status as a tax exempt charity for New Zealand tax purposes.

#### **4. GIFTS FOR SPECIFIC PURPOSES**

4.1 If the Company accepts a gift on condition that it is used for a specific purpose within the objects of the Company set out in clause 2, the Company must:

- (a) keep that gift and any income arising from it separate from the other assets of the Company; and
- (b) use that gift and any income arising from it only for the specific purpose for which it has been given and to meet any expenses which the Company considers relate (directly or indirectly) to the administration of that specific purpose.

4.2 The Board must exercise its functions in a way that is consistent with its obligations and powers under clause 4.1.

#### **5. SHARES**

##### **5.1 Issue of Shares**

- (a) Any further Shares may be issued at any time, to any person, and in any number authorised in writing by the Holding Company.
- (b) Shares may be issued (including different classes of Shares), which:
  - (i) rank equally with, or in priority to, existing Shares; and/or

- (ii) have deferred, preferred or other special rights or restrictions, whether as to voting rights or otherwise.
- (c) Section 45 of the Act shall not apply.
- (d) Any reissue of Shares or transfer of Shares held by the Company in itself pursuant to section 67C of the Act must be authorised in writing by the Holding Company in accordance with clause 5.1(a).

## 5.2 **No distributions**

The Company is not carried on for the private pecuniary profit of any individual. Shares will not attract dividends or other distributions.

## 5.3 **Redeemable Shares**

The Company may issue Shares that are redeemable within the meaning of section 68 of the Act.

## 5.4 **Acquisition of own Shares**

The Company may purchase or otherwise acquire its own Shares in accordance with the Act including by making an offer to all Shareholders or to one or more Shareholders to acquire shares.

## 5.5 **Treasury stock**

The Company may hold its own Shares in accordance with the Act.

# 6. **APPOINTMENT AND REMOVAL OF DIRECTORS**

6.1 **Composition of Board:** The Board will consist of no more than 9 and no less than 6 Directors and should comprise persons having skills and expertise in health, business, community knowledge and consultation. The composition of the Board should, whenever possible, include a minimum of:

- (a) 1 community member who represents the interests of Maori;
- (b) 1 community member who represents the interests of the Pasifika community;
- (c) 1 practice nurse who is an employee of a shareholder of the Holding Company;
- (d) 1 medical practitioner who is a shareholder of the Holding Company or who has a Qualifying Relationship (as that term is defined in the Holding Company's constitution) with a shareholder of the Holding Company;
- (e) 1 person who has commercial and financial skills which will benefit the Board; and
- (f) up to 4 persons who each have either clinical, community, patient or commercial skills which will benefit the Board, and

the number of Directors appointed under sub-clauses 6.1(a) and 6.1(b) should, whenever possible, be the same.

## 6.2 **Appointment of Directors**

- (a) Subject to sub-clauses 6.2(b) and 6.2(c) and clause 6.3, the Directors are the persons appointed or reappointed from time to time as Directors by a notice in writing signed by the

Holding Company and who have not been removed under this Constitution or resigned or disqualified from office.

- (b) A Director may be removed from office at any time by a notice in writing signed by the Holding Company.
- (c) A notice given under sub-clauses 6.2(a) or 6.2(b) takes effect upon receipt of it at the registered office of the Company unless the notice specifies a later time at which the notice will take effect.

6.3 **Term of office:** Subject to clause 6.2(b), unless an earlier date is specified in a notice given by the Holding Company under clause 6.2(a), Directors appointed or reappointed under clause 6.2(a) will retire from office on the third anniversary of their appointment or reappointment but will be eligible for re-appointment by the Holding Company in accordance with clause 6.2(a).

6.4 **Meetings of the Board:** Schedule 1 of this Constitution applies at meetings of the Board.

## 7. REMUNERATION OF DIRECTORS

The Board may only exercise the power conferred by section 161(1) of the Act to authorise any payment or other benefit of the kind referred to in that section with the approval of the Holding Company.

## 8. INDEMNITY AND INSURANCE

The Company may effect all or any of such indemnities and insurances as are referred to in subsections 162(3), (4) and (5) of the Act to the full extent referred to in those subsections.

## 9. CONTRACTING BY THE COMPANY

In addition to the methods of contracting set out in section 180 of the Act, an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by a single Director, or by any other person or class of persons authorised by the Board for that purpose whose signature or signatures must be witnessed.

## 10. LIQUIDATION

### 10.1 Surplus Assets

If upon the winding up, liquidation or dissolution of the Company any property remains after the satisfaction of all its debts and liabilities, that property must be given or transferred to another organisation for a similar charitable purpose or purposes as defined in section 5(1) of the Charities Act 2005.

## 11. NOTICES

11.1 **Writing:** Each notice given under this Constitution (each a **notice**) shall be in writing and delivered personally or sent by post or email.

11.2 **Addresses:** Each notice shall be delivered to the address of the relevant party which is from time to time designated for that purpose by at least 5 Working Days' prior notice to the Company.

11.3 **Receipt:** A notice under this Agreement is deemed to be received if:

- (a) **Delivery:** delivered personally, when delivered;
- (b) **Post:** posted, 3 Working Days after the date of posting;
- (c) **Email:** sent by email, one hour after the time on the Working Day it actually comes to the recipient's attention in readable form,

provided that any notice deemed received after 5 pm on a Working Day or on a non-Working Day shall be deemed to have been received on the next Working Day.



## SCHEDULE 1

### Proceedings of the Board

#### 1. CHAIRPERSON

- 1.1 The Holding Company will appoint a Director as chairperson of the Board.
- 1.2 The Director appointed as chairperson will hold that office until he or she dies or resigns or the Holding Company appoints a chairperson in his or her place.
- 1.3 If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within 10 minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

#### 2. NOTICE OF MEETING

- 2.1 A Director or if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board.
- 2.2 Not less than 3 days' notice of a meeting of the Board must be given to every Director who is in New Zealand. The notice must include the date, time, and place of the meeting. The notice need not be in writing.
- 2.3 An irregularity in the notice of a meeting is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- 2.4 A meeting of the Board in respect of which less than 3 days' notice has been given may be held if all Directors who are in New Zealand have agreed to the meeting being held at short notice.

#### 3. METHODS OF HOLDING MEETING

- 3.1 A meeting of the Board may be held either:
  - (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
  - (b) by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

#### 4. QUORUM

- 4.1 A quorum for a meeting of the Board is a majority of the Directors.
- 4.2 No business may be transacted at a meeting of Directors if a quorum is not present.
- 4.3 If notice of a meeting of the Board has been properly given under clause 2 of this Schedule and a quorum is not present within 30 minutes after the time appointed for the meeting any Director may by not less than 2 days' notice to every Director who is in New Zealand convene a further meeting of the Board. If at that further meeting a quorum is not present within 30 minutes after the time appointed for the meeting any Director present shall constitute a quorum for that meeting.

## **5. VOTING**

- 5.1 Every Director has one vote.
- 5.2 The chairperson does not have a casting vote.
- 5.3 A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it.
- 5.4 Any Director who abstains from voting shall not be deemed to have voted for or against the proposal or issue being voted on, and accordingly shall not be required to execute any director's certificates required under the Act.

## **6. MINUTES**

- 6.1 The Board must ensure that minutes are kept of all proceedings at meetings of the Board.
- 6.2 Minutes that have been signed correct by the chairperson of the meeting, or by the chairperson of the next meeting, are prima facie evidence of the proceedings.
- 6.3 A copy of any written resolution under Clause 8.1 of this Schedule shall be entered in the minute book of board proceedings.

## **7. UNANIMOUS RESOLUTION**

- 7.1 A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 7.2 Subject to clause 7.3 of this Schedule, a resolution in writing, signed or assented to by a majority of the Directors then entitled to receive notice of a Board meeting is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 7.3 If a written resolution is signed or assented to under clause 7.2 of this Schedule the chairperson shall certify on the resolution that all of the Directors entitled to receive notice of a Board meeting were given written notice of the proposed resolution no later than the Working Day prior to the date the resolution was signed or assented by the majority of Directors.
- 7.4 A resolution in writing for the purposes of clauses 7.1 or 7.2 of this Schedule may be executed in any number of counterparts (including by scanned PDF counterpart or other like electronic copy), each of which shall be deemed an original, but all of which together shall constitute the same instrument.

## **8. COMMITTEE**

- 8.1 The proceedings of committees of Directors shall be governed by this Schedule with all necessary modifications.

## **9. OTHER PROCEEDINGS**

- 9.1 Except as provided in this Schedule, the Board may regulate its own procedure.