

Constitution

Thorne Harbour Health Ltd

ACN: 606 806 204

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1. Name

The name of the Company is Thorne Harbour Health Limited (the **Company**).

2. Principal Purpose and Powers

- (a) The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a Charity.
- (b) The Principal Purpose for which the Company is established is to be a health promotion charity to:
 - (i) promote the prevention or control of HIV as its main activity, including by:
 - (A) designing and delivering programs and health services for all persons living with, affected by, or at risk of HIV, including affected communities such as lesbian, gay, bisexual, transgender, intersex, queer and other sexuality, sex and gender diverse people (collectively, **LGBTIQ+**), people who inject drugs, sex workers and Aboriginal and Torres Strait Islanders;
 - (B) providing information, education and training to health professionals, service providers, businesses, the LGBTIQ+ community, the general public and persons living with, affected by, or at risk of HIV;
 - (C) undertaking, participating in, or commissioning research; and
 - (D) undertaking advocacy work on behalf of key affected populations in all matters relating to the prevention and transmission of HIV and related health matters.
 - (ii) collaborate with other organisations and the public to support, develop and deliver innovative programs and initiatives to promote community awareness of HIV/AIDS and to support the health and wellbeing of persons living with, affected by, or at risk of HIV in a manner consistent with the principles and practices of self-empowerment and community development;
 - (iii) promote the health and wellbeing of people living with HIV and to design and deliver programs in a manner that encourages and welcomes active participation of such persons in the work of the organisation;
 - (iv) promote the health and wellbeing of LGBTIQ+ persons and to design and deliver programs in a manner that encourages and welcomes active participation of such persons in the work of the organisation;
 - (v) promote, defend, preserve and extend the rights and liberties of the LGBTIQ+ community and persons living with, or affected by HIV in the context of social and political issues impacting on the health and well-being of community members; and
 - (vi) do such other things as are incidental or conducive to the attainment of the Principal Purpose.
- (c) Solely to carry out the Principal Purpose, the Company may exercise all of the powers of an individual and a company under the Act

3. Not-For-Profit

- (a) The income and property of the Company must be applied solely towards the Principal Purpose.
- (b) No part of the income or property of the Company may be paid or transferred directly or indirectly to the Member or Directors by way of dividend, bonus or other profit distribution in their capacity as Member or Directors.
- (c) Clause 3(b) does not stop the Company from making a payment:
 - (i) to the Member for goods or services provided or expenses properly incurred at fair and reasonable rates or rates more favourable to the Company;
 - (ii) to the Member in carrying out the Company's Principal Purpose;
 - (iii) of premiums for insurance indemnifying Directors to the extent allowed for by law and this Constitution; or
 - (iv) with the prior approval of the Board, to a Director:

- (A) 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) as reimbursement for out-of-pocket expenses properly incurred in performing a duty as Director.

4. Membership

4.1 General

- (a) The Company has a sole Member.
- (b) The rights of the Member are not transferable.

4.2 Cessation of membership

- (a) The sole Member will cease to be the Member on:
 - (i) resignation; or
 - (ii) being dissolved or otherwise ceasing to exist.
- (b) If the sole Member ceases to be the Member pursuant to clause 4.2(a), the Board may admit a new Member.
- (c) The Member may not be suspended or expelled while it is the sole Member.

5. Meetings and resolutions of the Member

5.1 Annual reporting to the Member

- (a) The Company is not required to hold any general meeting while it has a sole Member.
- (b) The Board must report to the Member annually in relation to the following matters:
 - (i) provision of the annual financial statements, Board's report and any auditor's report;
 - (ii) anticipated Board vacancies and any proposed Director appointments;
 - (iii) the appointment of any auditor;
 - (iv) fixing of the auditor's remuneration; and
 - (v) any questions for determination by the Member.

(the Annual Report).

5.2 Notice of the Annual Report

Notice of the Annual Report and any questions for determination by the Member must be given:

- (a) to the Member's Representative; and
- (b) to every Director and any auditor for the time being of the Company.

5.3 Resolutions of the Member

The Representative for the Member may pass a resolution in relation to any question for determination by the Member by signing a minute of the resolution.

5.4 Meetings with the Member

- (a) Either:
 - (i) a Director;
 - (ii) the Member's Representative; or
 - (iii) any auditor appointed by the Company;

may ask the Secretary to convene a meeting between any of the Member, the Board and any auditor appointed by the Company, to discuss matters including the Annual Report and any questions for determination by the Member.

- (b) The Secretary must convene a meeting as soon as practicable and within 30 days after any request is made pursuant to clause 5.4(a).

5.5 Representative

- (a) The Member must appoint an individual as its Representative. The appointment may be a

standing one.

- (b) A Representative may exercise any and all powers of the Member unless the appointment specifies otherwise.
- (c) The appointment may be made by reference to a position held.
- (d) The Member may appoint more than one Representative but only one Representative may exercise the Member's powers at any one time.

5.6 Liability of Member

The Member's liability is limited to the Guaranteed Amount of \$10.

6. Appointment and Removal of Directors

6.1 Number and composition of Directors

The Company must have at least seven and no more than ten Directors.

6.2 Eligibility

- (a) Any natural person committed to the Principal Purpose is eligible to be a Director provided the person:
 - (i) has consented in writing to be a Director;
 - (ii) is a current Director of VAC/GMHC Ltd; and
 - (iii) is not ineligible to be a Director under:
 - (A) the Act; or
 - (B) the ACNC Legislation.
- (b) Clause 6.2(a)(iii)(B) will not apply to disqualify a person if an exemption is obtained from the ACNC Commissioner.
- (c) Employees of the Company and VAC/GMHC Ltd are ineligible to be Directors.

6.3 Appointment of Directors

The Member may appoint a person to be a Director by resolution.

6.4 Term of office

A Director's term of office:

- (a) commences on the date of their appointment; and
- (b) ceases when they cease to be a director of VAC/GMHC Ltd (unless terminated sooner pursuant to clause 6.5).

6.5 Ceasing to be a Director

- (a) A person stops being a Director, and a casual vacancy is created, if they:
 - (i) resign by written notice to the Company;
 - (ii) are removed by the Member under the Act;
 - (iii) are absent without leave of the Board from three consecutive Board meetings;
 - (iv) die, or become subject to a Court order to receive treatment or have their finances managed by another person due to being of unsound mind or having a mental illness;
 - (v) are directly or indirectly interested in any contract or proposed contract with the Company and fail to declare the nature of the interest as required by the Act; or
 - (vi) become ineligible to be a Director under the Act or the ACNC Legislation.

6.6 Insufficient Directors

If the number of Directors insufficient to constitute a quorum, the remaining Directors may, except in an emergency, act only to:

- (a) increase the number of Directors to a number sufficient to constitute a quorum; or
- (b) convene a General Meeting of the Company.

6.7 Defects in appointment of Directors

An act done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting or taking the relevant step.

7. Board Decision Making

7.1 Frequency of Board meetings

The Board must meet at least six times a year.

7.2 Convening Board meetings

The President or any three Directors may convene or ask the Secretary to convene a Board meeting in accordance with this clause 7.

7.3 Notice of Board meetings

- (a) Written notice of Board meetings must be given to every Director at least 48 hours prior to the meeting (unless the Board unanimously waives this requirement).
- (b) A notice of a Board meeting:
 - (i) must specify the place, day and time of the meeting;
 - (ii) must, if virtual meeting technology is to be used, provide sufficient information to allow the Directors to participate by means of technology; and
 - (iii) does not need to specify the nature of the business to be transacted at the meeting.

7.4 Quorum for Board meetings

- (a) No business may be transacted at any Board meeting unless a quorum is present.
- (b) A quorum of Directors for Board meetings is five Directors.
- (c) A Director on a leave of absence approved by the Board should not be included when calculating the total number of Directors for the purposes of this clause.

7.5 Use of virtual meeting technology in Board meetings

- (a) The Board may hold its meetings using any virtual meeting technology that is agreed to by the Board.
- (b) The use of any virtual meeting technology must give the Director a reasonable opportunity to participate including a reasonable opportunity to exercise a right to speak.
- (c) The Board's agreement may be a standing one.
- (d) A Director participating through the use of virtual meeting technology will be deemed to be present at the meeting in person.
- (e) If, before or during the meeting, any technical difficulty results in one or more Director being unable to participate, the chairperson may adjourn the meeting until the difficulty is remedied or may, provided a quorum of Board members remains present, continue with the meeting.

7.6 Chairperson of Board meetings

- (a) The President will preside as chairperson at Board meetings.
- (b) If the President is not present within 15 minutes after the commencement time or is unwilling to act as chairperson for all or part of the meeting then:
 - (i) the Vice-President will be the chairperson; and
 - (ii) if the Vice-President is not present or is not willing and able to be the chairperson during all or part of the meeting, the Directors present may elect a Director to be chairperson of the meeting or part of it.

7.7 Voting at Board meetings

- (a) A question arising at a Board meeting is to be decided by a majority of votes of Directors present and entitled to vote.
- (b) The chairperson has a deliberative vote. If the votes cast on a motion are equal, the

chairperson will have a casting vote.

7.8 Resolutions without meetings

- (a) A Board resolution may be passed without a meeting if all of the Directors entitled to vote on the resolution sign a notice stating that they are in favour of the resolution.
- (b) The resolution is passed at the time when the last Director necessary to constitute unanimous consent in favour of the resolution signs.
- (c) For the purpose of this clause:
 - (i) the notice must include the wording of the resolution;
 - (ii) the notice may be distributed by any means;
 - (iii) separate copies of the notice may be signed; and
 - (iv) the resolution fails if it has not achieved unanimous consent within four business days after the notice was given.

8. Directors' Powers and Duties

8.1 Powers of the Board

- (a) The Directors are responsible for managing the business of the Company and furthering the Principal Purpose.
- (b) The Directors may exercise all the powers of the Company that are not, by the Act or by this Constitution, required to be exercised by the Member.
- (c) The Board cannot remove a Director or auditor.
- (d) The Board may delegate any of its powers to one or more Directors, the Executive Officer, a committee, an employee or any other person.
- (e) The Board may specify terms of the delegation (including the power to further delegate) and revoke a delegation.

8.2 Duties of Directors

Directors must comply with any duties imposed on them by the Act and with the duties described in governance standard 5 of the ACNC Legislation.

8.3 Establishment of committees

- (a) The Board may establish committees.
- (b) A committee may include, or be comprised of, non-Directors.
- (c) The meetings and proceedings of committees are:
 - (i) subject to any terms of reference and/or delegation; and
 - (ii) otherwise governed as far as possible by the provisions of this Constitution which regulate the proceedings of the Board.

8.4 By-laws

- (a) The Board may make regulations or by-laws for the general conduct and management of the Company and the business of the Board.
- (b) The Board may revoke and alter by-laws or regulations as it deems fit.

9. Directors' Interests

9.1 Conflicts of interest

- (a) A Director must disclose the nature and extent of any perceived or actual material conflict of interest to the other Directors (or the Member if the other Directors share that conflict).
- (b) A Director who has a material personal interest in a matter that is being considered by the Board:
 - (i) must not be present while the matter is being considered at a Board meeting; or
 - (ii) vote on the matter;
 unless permitted by clause 9.1(c).

- (c) Provided the Board approves and it is permitted by law, a Director may be present or vote if:
- (i) the interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as an officer of the Company;
 - (ii) the interest relates to any payment by the Company under clause 10.4 in respect of an indemnity permitted under the Act or any contract relating to such an indemnity;
 - (iii) the Australian Securities and Investments Commission makes an order allowing the Director to vote on the matter;
 - (iv) the interest relates to a contract the Company is proposing to enter into that:
 - (A) is subject to approval by the Member; and
 - (B) will not impose any obligation on the Company if it is not approved by the Member;
 - (v) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (A) 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
 - (B) states that those Directors are satisfied that the interest should not stop the Director from voting or being present; or
 - (vi) the interest arises merely because the Director has a right of subrogation in relation to a guarantee or indemnity referred to in clause 11.

9.2 Permissible conduct

Provided a Director complies with clause 9.1 and clause 6.2(c) they may:

- (a) hold other positions in the Company, except that of auditor;
- (b) hold any office or place of profit in any other entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company;
- (d) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (e) sign or participate in the execution of a document by or on behalf of the Company; and
- (f) do any of the above despite the fiduciary relationship of the Director's office:
 - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
 - (ii) without affecting the validity of any contract or arrangement.

10. Office Bearers and Executive Officer

10.1 Appointment of Office Bearers

- (a) From time to time as required, the Board must appoint a President, a Vice-President, a Treasurer, a Secretary and any other Office Bearers from among the Board. All appointments must mirror the Office Bearer appointments on the Board of VAC/GMHC Ltd.
- (b) Office Bearers of the Company hold office for the duration of their appointment on VAC/GMHC Ltd.
- (c) The Board may remove or suspend a person from holding any Office Bearer position by resolution passed at a Board meeting provided:
 - (i) the individual is no longer an Office Bearer on the Board of VAC/GMHC Ltd;
 - (ii) the resolution is passed by not less than two-thirds of the Directors present; and
 - (iii) at least 21 days' notice in writing of the resolution has been given to the Secretary and to the person who is the subject of the resolution.

10.2 Secretary

- (a) The Directors must appoint at least one Secretary, who may be the Executive Officer or a Director (if the Executive Officer is not appointed to the role of Secretary).

- (b) The Secretary is to be appointed on such terms and conditions as the Board deems fit.
- (c) A person may not be appointed as Secretary unless the person:
 - (i) consents in writing to being appointed as Secretary;
 - (ii) is at least 18 years of age; and
 - (iii) is resident in Australia.
- (d) The Board may suspend or remove a Secretary.
- (e) The position of Secretary must not remain vacant for more than 14 days.

10.3 Treasurer

- (a) There must be at least one Treasurer, who may also be a Director.
- (b) The Treasurer is to be appointed on such terms and conditions as the Board deems fit.
- (c) The Treasurer must ensure that the financial records of the Company are kept in accordance with the requirements of the Act and the ACNC Legislation.
- (d) The Treasurer must ensure that at least one other Board member has access to the accounts and financial records of the Company.

10.4 Executive Officer

- (a) The Board may appoint an Executive Officer who may also be appointed to act as Secretary for a term, at the remuneration and on the conditions that the Board deems fit.
- (b) The Executive Officer may not be a Director.
- (c) Subject to any contract between the Company and the Executive Officer, the Board may remove the Executive Officer at any time, with or without cause.
- (d) The Executive Officer may attend and speak at all Board meetings (unless otherwise directed by the Board) and meetings with the Member pursuant to clause 5.4 but may not vote at Board meetings.
- (e) The Board may:
 - (i) confer powers, discretions and duties on the Executive Officer as it deems fit;
 - (ii) withdraw, suspend or vary any powers, discretions and duties conferred; and
 - (iii) authorise the Executive Officer to delegate all or any of the powers, discretions and duties conferred.
- (f) An act done by a person acting as Executive Officer is not invalidated merely because of:
 - (i) a defect in their appointment as Executive Officer; or
 - (ii) the person being disqualified from being Executive Officer;
 if that circumstance was not known by the person when the act was done.

11. Indemnities and Insurance

- (a) The Company indemnifies every present and past Director and Executive Officer of the Company to the full extent permitted by law against all losses and liabilities incurred as a result of their position as an officer of the Company.
- (b) This indemnity:
 - (i) is a continuing obligation and is enforceable even if the person has ceased to be an officer of the company;
 - (ii) is not subject to any requirement to first incur an expense or make a payment; and
 - (iii) operates only to the extent that the relevant loss or liability is not covered by insurance.
- (c) The Company may, to the extent permitted by law, pay or agree to pay, a premium in respect of a contract insuring its officers.
- (d) Nothing in this clause 11 limits the Company's ability to indemnify or pay for insurance for any person not expressly covered by this clause.

12. Administration

12.1 Minutes and records

- (a) The Board must ensure that:
- (i) minutes of all meetings convened pursuant to clause 5.4, Board meetings and committee meetings; and
 - (ii) records of resolutions passed by the Member, Directors and committees without a meeting;
- are recorded and kept with the Company's records as soon as practicable (being no later than one month after the meeting or passing of the resolution).
- (b) The Company must ensure that minutes of a Board or meeting convened pursuant to clause 5.4 are signed within a reasonable time by the chairperson of the meeting or of the next meeting.

12.2 The Member's access to Company records

The Company must give the Member access to Company records as required by the Act.

12.3 Common seal

The Company does not have a common seal.

12.4 Execution of documents

The Company may execute documents by the signature of:

- (a) two Directors;
- (b) one Director and the Secretary; or
- (c) such other persons appointed by the Board for that purpose.

13. Records, Accounting and Audit

13.1 Accounts and other records of the Company

- (a) The Board must:
- (i) ensure that proper financial records are kept in accordance with all legal and regulatory requirements;
 - (ii) ensure that records of its operations are kept; and
 - (iii) take reasonable steps to ensure that the Company's records are kept safe.
- (b) The Company must retain its records for at least seven years.

13.2 Audit

- (a) If required by law, the Company must appoint and remunerate an auditor.
- (b) Any auditor is entitled to attend any meeting with the Member convened pursuant to clause 5.4 and to be heard by the Member on any business of the meeting that concerns the auditor in their capacity as auditor.
- (c) The Company may give any auditor all communications provided to the Member;
 - (i) under clause 5.1; and
 - (ii) in connection with any meeting convened pursuant to clause 5.4.

13.3 Financial year

The financial year will begin on 1 July and end on 30 June, unless the Board passes a resolution to change the financial year.

14. Amending This Constitution

- (a) The Company may only alter this Constitution by resolution of the Member in accordance with the Act.
- (b) The Member must not pass a resolution that amends this Constitution if passing it causes the Company to no longer be a Charity.

15. Notices

- (a) The Company may give notice (subject to any election or request made by a Member in accordance with the Act) and any communication personally, by post, email or other electronic means.
- (b) Notices to the Company may be given personally, by post, email or other electronic means.
- (c) Notices are deemed to be received:
 - (i) in the case of a properly addressed and posted notice, five Business Days after the date of posting; and
 - (ii) in the case of a notice sent by email or other electronic means, at the time of sending.
- (d) The non-receipt of notice or a failure to give notice, does not invalidate any thing done or resolution passed at the meeting if:
 - (i) the non-receipt or failure occurred by accident or error;
 - (ii) the individual waives notice before or after the meeting (including by attending the meeting); or
 - (iii) the individual notifies the Company of their agreement to that thing or resolution before or after the meeting.
- (e) In calculating a period of notice, both the days on which the notice is given or taken to be given and the day of the meeting must be disregarded.

16. Winding Up or Revocation of Endorsement

16.1 Contribution of the Member on winding up

If required, the Member must contribute an amount (not more than the Guaranteed Amount) to the assets of the Company if it is wound up while they are the Member, or within one year of the Member ceasing to be the Member, for the:

- (a) payment of the debts and liabilities of the Company incurred before they ceased to be the Member; and/or
- (b) costs, charges and expenses of winding up.

16.2 Distribution of assets on winding up or revocation of endorsement

- (a) If the Company is a Deductible Gift Recipient any DGR gifts must be deposited in a separate bank account or otherwise identified so that they can be distinguished from other assets of the Company.
- (b) If the Company is a Deductible Gift Recipient and is wound up, or it ceases to be endorsed as a Deductible Gift Recipient, any DGR gifts remaining after satisfying the Company's liabilities and expenses must be transferred to a Charity or Charities endorsed as a Deductible Gift Recipient.
- (c) On the winding up of the Company, any assets remaining after complying with clause 16.2(a) and 16.2(b):
 - (i) must not be paid or distributed to the Member in its capacity as Member, and
 - (ii) must be given or transferred to a Charity or Charities which:
 - (A) has a similar purpose to the Principal Purpose, and
 - (B) prohibits the distribution of income, profit or assets to its Members in their capacity as Members.
- (d) The Member must decide before any winding up or revocation which Charity or Charities will receive a distribution under clause 16.2(a) or 16.2(b). If the Member fails to decide, the matter must be determined by application to the Supreme Court in the State of Victoria.

17. Interpretation

17.1 Definitions

In this Constitution:

“**ACNC**” means the Australian Charities and Not-for-profits Commission.

“ACNC Legislation” means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (Cth).

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

“Annual Report” means a report provided once in every calendar year to the sole Member pursuant to clause 5.1(b).

“auditor” may mean a reviewer, if permitted by the Act or ACNC Legislation.

“Board” means the group of individuals that are responsible for the governance, strategy and management of the Company.

“chairperson” means the person chairing a meeting.

“Charity” means a charity registered under the ACNC Legislation.

“day” means calendar day except public holidays.

“Deductible Gift Recipient” means an entity to which tax deductible gifts may be made pursuant to Division 30 of the ITAA 97.

“DGR Gifts” means:

- (a) gifts of money or property for the Principal Purpose received during any time that the Company is endorsed as a Deductible Gift Recipient;
- (b) contributions described in item 7 or 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event (as defined by section 995-1 of the ITAA 97) held for that purpose during any time that the Company is endorsed as a Deductible Gift Recipient; and
- (c) money received by the Company because of such gifts or contributions during any time that the Company is endorsed as a Deductible Gift Recipient.

“Executive Officer” means the Company’s senior employee whose job title may vary from time to time, for example, the Chief Executive Officer, General Manager or Executive Director.

“Guaranteed Amount” means the amount set out in clause 5.6.

“ITAA 97” means the *Income Tax Assessment Act 1997* (Cth).

“Member” means VAC/GMHC Ltd.

“Office Bearer” means the President, Vice-President, Secretary and Treasurer.

“person” includes a natural person and a corporation within the meaning of s 57A of the Act.

“President” means the person appointed to the position of President under clause 10 who may also be known as the Chair of the Board.

“Principal Purpose” means the purpose set out in clause 2.

“Representative” means a person appointed to represent a body corporate Member in accordance with clause 5.5.

17.2 Interpretation

In this Constitution:

- (a) If an expression in the Constitution has a meaning in the Act, the meaning from the Act will apply to the expression - except where a contrary intention appears in this Constitution.
- (b) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.

17.3 Exclusion of replaceable rules

- (a) The replaceable rules contained in the Act do not apply to the Company.
- (b) If at any time, the company is not a Charity, the Act (unless it is a replaceable rule) overrides any part of this Constitution or policy of the Company to the extent of any inconsistency.

18. Transitional Provisions

The following clauses apply notwithstanding anything to the contrary in this Constitution.

18.1 Members

The Member immediately following the adoption of this Constitution will be VAC/GMHC Ltd.

18.2 Directors

- (a) The initial Directors will be those named in the application to register the Company.
- (b) Notwithstanding any other provision in this Constitution, the Company may have more than ten initial Directors.
- (c) The terms of office of the initial Directors will end on the earlier of:
 - (i) the dates specified in the Company's Directors' Register; or
 - (ii) the Director ceasing to be a director of VAC/GMHC Ltd.
- (d) The maximum terms of office of the initial Directors is set out in the Company's Directors' Register.

Initial Member

VAC/GMHC Ltd consents to be the initial Member of the Company and adopts, on registration of the Company, the attached Constitution in accordance with section 136(1) of the *Corporations Act 2001 (Cth)*.

Full Name of authorised representative of
VAC/GMHC Ltd

Signature

