

Draft Constitution

**NSW Chamber
of Fresh Produce Limited**

A Public Company Limited by Guarantee

24 November 2020

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1 Name of the Company

The name of the Company is NSW Chamber of Fresh Produce Limited.

2 Type of Company

- (a) The Company is a not-for-profit public company limited by guarantee.
- (b) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
 - (i) payment of debts and liabilities of the Company;
 - (ii) payment of the costs, charges and expenses of winding up; and
 - (iii) any adjustment of the rights of the contributories among Members.
- (c) Subject to this Constitution, the amount that each Member or past Member is liable to contribute is limited to \$10.00.

3 Replaceable Rules

Unless otherwise expressly stated, this Constitution displaces the Replaceable Rules. At the date of Registration Section 249X of the Corporations Act which deals with who can appoint a proxy applies to the Company (as a mandatory rule).

4 Definitions and Interpretation

4.1 Definitions

In this Constitution, except in so far as the context or subject-matter otherwise indicates or requires:

- (a) **AGM** means annual general meeting;
- (b) **Alternate Director** means a person of a Director's choosing who sits on the Board in that Director's place in the event that the Director cannot attend a meeting;
- (c) **Appointor** means a Director who has appointed an Alternate Director pursuant to **clause 9.1**;
- (d) **Authorised Representative** means such persons who are appointed as Authorised Representatives under **clause 7.3**;
- (e) **Associate Member** means an associate member of the Company in the Membership class defined in **clause 7.1(b)**;
- (f) **Board** means the board made up of the Elected Directors of the Company;

- (g) **Business Day** means a day that is not a Saturday, Sunday or public holiday in New South Wales;
- (h) **Chair** means the Director holding that position pursuant to **clause 8.6(i)** and in relation to meetings of the Company pursuant to **clause 14.2** and includes any assistant or acting Chair;
- (i) **Code of Ethics** means the Code of Ethics referred to in **Appendix 3** at point 11;
- (j) **Company** means the NSW Chamber of Fresh Produce Limited;
- (k) **Constitution** means this constitution as amended or supplemented from time to time;
- (l) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (m) **Directors** means the directors for the time being of the Company including, as the context permits, the Elected Directors, persons appointed to fill casual vacancies and the Alternate Directors;
- (n) **Elected Director** means each of the persons referred to as an "Initial Director" in clause 8.2(a) and any person holding the position of a director of the Company who was elected to office under this Constitution but does not mean or include persons who are appointed to fill casual vacancies or persons who are appointed as Alternate Directors of the Elected Directors;
- (o) **Financial Year** means the period from 1 July in a calendar year until 30 June in the next calendar year;
- (p) **Financial Member** means any Member who, at the date on which it is necessary to determine whether the Member is a Financial Member, has paid all monies due by that Member to the Company including all monies payable under **clause 7.7**;
- (q) **Incorporated Association** means the incorporated association named The New South Wales Chamber of Fruit and Vegetable Industries Inc. (incorporation number Y0936021) which applied for, and which was granted, a transfer of registration declaration pursuant to the Associations Incorporation Act 2009;
- (r) **IR Act** means the Industrial Relations Act, 1996;
- (s) **Life Member** means a Member in the Membership class defined in **clause 7.1(c)**;
- (t) **Member** means a member of the Company (and includes each of the Full Members, Associate Members and Life Members);
- (u) **Member Present** means, in connection with a meeting of Members, a Voting Member being present in person or by the presence of an Authorised Representative or by a proxy or attorney or, in the case of a body corporate, by a

Representative and “**Members Present**” means the group made up of each Member Present. For the avoidance of doubt any Voting Member being present in person or by the presence of an Authorised Representative or by a proxy or attorney or, in the case of a body corporate, by a Representative at meeting of Members convened in the manner set out in **clause 11.2(c)** shall be deemed to be present at that meeting.;

- (v) **Member’s Guarantee Amount** means the amount referred to in **clause 2(c)**;
- (w) **Membership** means membership of the Company;
- (x) **Membership Year** means each period of one (1) year which commences on 1 July on each year;
- (y) **Objects** means the objects of the Company as set out in **clause 5.1**;
- (z) **Office** means the registered office for the time being of the Company;
- (aa) **Office Bearer** means a person holding any of the offices specified in **clause 8.2(g)**;
- (bb) **Officer** has the same meaning as given to that term in section 9 of the Corporations Act;
- (cc) **Register** means the register of Members to be kept pursuant to the Corporations Act;
- (dd) **Registration** means registration of the Company as a company by the Australian Securities and Investments Commission;
- (ee) **Regulations** means the Regulations of the Company as at the date of Registration as set out in **Appendix 3** of this document and as amended from time to time after that date pursuant to the provisions of **clause 8.1(e)**;
- (ff) **Representative** means a person authorised in accordance with section 250D of the Corporations Act to act as a representative of a body corporate which is a Member and in the absence of a person authorised in accordance with section 250D of the Corporations Act to act as a representative of a body corporate which is a Member, shall mean a director of a body corporate which is a Member present at any meeting of the Company provided that where they are two (2) or more directors of any body corporate which is a Member are present at any meeting of the Company the director nominated by agreement between those two (2) directors may vote provided that in the absence of their agreement neither may vote;
- (gg) **Secretary** means the person appointed as the secretary of the Company and includes any assistant or acting secretary;

- (hh) **Special Resolution** has the meaning given to it by the Corporations Act;
- (ii) **special general meeting** means a general meeting of the Company other than an annual general meeting; and
- (jj) **Voting Members** are Members who:
 - (i) are entitled to vote pursuant to **clause 7**; and
 - (ii) have paid any entrance fees and any annual subscriptions which are payable within the time limits provided for in the statement referred to in **clause 7.7(d)**, namely, at the latest, within thirty (30) days of the Voting Member being notified of the Voting Member's failure to pay any monies which are due, by the Company.

4.2 Interpretation

- (a) In this Constitution, unless there is something in the subject or context which is inconsistent:
 - (i) the singular includes the plural and vice versa;
 - (ii) each gender includes the other two (2) genders;
 - (iii) the word person means a natural person and any partnership, association, body or entity whether incorporated or not;
 - (iv) the words writing and written include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
 - (v) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
 - (vi) a reference to any clause or schedule is to a clause or schedule of this Constitution;
 - (vii) a reference to any statute, regulation, proclamation, rule, code or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, regulation, proclamation, rule, code or ordinance replacing it;
 - (viii) an expression used in a particular Part or Division of an Act or Regulation that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division;
 - (ix) headings do not form part of or affect the construction or interpretation of this Constitution;

- (x) a reference to a function includes a reference to a power, authority and duty; and
 - (xi) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- (b) The Constitution clauses shall be construed and implemented subject to the provisions of:
- (i) the Corporations Act;
 - (ii) any instrument under the Corporations Act;
 - (iii) the IR Act; and
 - (iv) any instrument under the IR Act; and
- any reference to the Act or the IR Act or any other Act of Parliament shall be deemed to include the respective Acts, as amended from time to time, and where those respective Acts or instruments (or any of them) are repealed, shall be deemed to include any Act or instruments passed in substitution for, or to replace, an Act or instrument or to otherwise deal with the operation, requirements of, and provisions of, this Constitution.

4.3 The Appendices

The Appendices to this document (and documents referred to in the Appendices) do not form part of the Constitution. They are attached, or referred to, for reference purposes. As such, subject to the provisions of this Constitution, they may be cancelled, amended or replaced by a resolution of the Board.

5 Objects

5.1 Objects

- (a) The Objects of the Company are to develop the industry of producing, buying, selling, exporting, importing or dealing in any way with orchard, farm or garden produce in Australia (**Industry**). The Company will achieve these Objects by:
- (i) acting as a representative body regarding the Industry and any other industries affecting it;
 - (ii) undertaking research; developing, collecting and analysing data; and distributing statistical or other information concerning the Industry;
 - (iii) increasing the productivity, profitability and worldwide competitiveness of the Industry, including by providing competitive services, resources and programs to the Industry;

- (iv) acting as an industrial organisation for employers in the Industry under the *Industrial Relations Act 1996* (NSW), including:
 - (A) bringing any disputes or claims relating to industrial matters in the Industry to any body or tribunal constituted for the purpose of dealing with industrial matters; and
 - (B) negotiating the establishment and/or variation of industrial awards and agreements,

in order to maintain positive relationships within the Industry and to promote the development of the Industry as a whole;
 - (v) encouraging co-operation with bodies concerned in the Industry in an endeavour to promote satisfactory relationships, supporting Sydney Markets Credit Services Co-operative Limited, encouraging members of the Company to join that co-operative and participate in its activities and co-operating with Sydney Markets Credit Services Co-operative Limited, or such other entity as the Board may determine appropriate, to protect and enhance the interests of the Company's Members.
 - (vi) educating the Industry, including through technical development and training, holding lectures and granting scholarships, in order to improve the overall skills and resources of the Industry; and
 - (vii) anything ancillary to the objects contained in **clauses 5.1(a)(i) to 5.1(a)(vi)**.
- (b) The Company can only exercise the powers in section 124(1) of the Corporations Act:
- (i) to carry out the Objects of the Company; and
 - (ii) to do all things incidental or convenient in relation to the exercise of power under **clause 5.1(b)(i)**.

5.2 Income and Property

- (a) The income and property of the Company will only be applied towards the promotion of the Objects of the Company.
- (b) No income or property of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company. However nothing in this Constitution will prevent payments in good faith under **clause 5.3** and to a Member:
 - (i) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;

- (ii) of interest at a rate not exceeding the bank overdraft rate, from time to time, of the Company's bank; or
- (iii) of reasonable and proper rent for premises leased by any Member to the Company.

5.3 Remuneration of Directors

- (a) No payment shall be made to any Director (except any executive Director in their capacity as an employee of the Company) other than the payment:
 - (i) subject to **clause 5.3(b)**, of such remuneration, and on such conditions as the Board sees fit;
 - (ii) of out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; and
 - (iii) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service.
- (b) The aggregate of the payments made to all Directors (not including any amount paid to any executive Director in their capacity as an employee of the Company) under **clause 5.3(a)(i)** in any Financial Year must be approved by the Members in a general meeting before any such amounts are paid.

6 Membership

6.1 Classes of Membership

There shall be three (3) classes of membership:

- (a) Full Members;
- (b) Associate Members; and
- (c) Life Members.

6.2 Transitional Provisions

- (a) The members of the Company at the time of Registration ("**Relevant Time**") will be those persons who were members of the Incorporated Association at the Relevant Time.
- (b) Each person who was a Member of the Incorporated Association at the Relevant Time but who was not:

- (i) an Associate Member; or
- (ii) Life Member,

shall be a Full Member of the Company.

- (c) Each person who was an associate member of the Incorporated Association at the Relevant Time shall be an Associate Member of the Company.
- (d) Each person who was a life member of the Incorporated Association at the Relevant Time shall be a Life Member of the Company.

6.3 Application for Membership

- (a) A person is only entitled to apply to become a member in respect of a class of Membership described in **clause 6.1(i)** or **clause 6.1(ii)** if the person satisfies the criteria for the relevant class of Membership in accordance with **clause 7** and the applicant:
 - (i) agrees to assume the liability to pay the Member's Guarantee Amount;
 - (ii) agrees to support the Objects of the Company and agrees to comply with the terms of this Constitution and any code of conduct which the Board may produce from time to time;
 - (iii) in the Board's opinion, where the person is a natural person, is a person of good character or, in the case of a person who is not a natural person, is, in the Board's opinion unlikely to bring the Company into any form of disrepute;
 - (iv) lodges an application form in accordance with **clause 7.4**; and
 - (v) pays such amounts as are payable by the applicant in respect of the class of membership pertaining to the applicant's application in accordance with **clause 7.7**.
- (b) Life Membership is conferred under the provisions of **clause 7.1(c)**.

6.4 Benefits

Each Voting Member will be entitled to vote at all general meetings of the Company.

7 Classes of Membership

7.1 Qualifications and Rights for each Class

- (a) **Full Members:**
 - (i) To be admitted as Full Members persons shall be:

- (A) any natural persons, partnerships, companies or other incorporated bodies:
 - (1) who employ persons;
 - (2) who are in the opinion of the Board are who remain bona fide agents, merchants, exporters or distributors for or of farm, orchard or garden produce carrying on business in New South Wales; and
 - (3) who satisfy the Board that they are capable of observing this Constitution; or
 - (B) any natural persons who are partners, directors, executive officers or shareholders of any of the persons or entities described in **sub-clause (A)**;
- (ii) Full Members must pay such fees, subscriptions and any other amounts as are payable by Full Members under this Constitution and which are determined in accordance with this Constitution, from time to time, by a resolution of the Board as payable by Full Members.
 - (iii) Full Members shall be entitled to vote.
- (b) **Associate Members:**
- (i) To be admitted as Associate Members persons shall be any natural persons, partnerships, companies or other incorporated bodies who satisfy the Board that they are capable of observing this Constitution.
 - (ii) Associate Members shall have all the rights, privileges and obligations of Members except that an Associate Member:
 - (A) is not eligible for election to the Board or as an office bearer of the Company;
 - (B) has no entitlement to vote; and
 - (C) has no right to attend a Board meeting except by the invitation of the Board.
 - (iii) Associate Members must pay such fees, subscriptions and any other amounts as are payable by Associate Members under this Constitution and which as are determined in accordance with this Constitution, from time to time, by a resolution of the Board as payable by Associate Members.

(c) **Life Members**

- (i) A natural person who is a Member who has rendered outstanding service to the fresh produce industry, and who is elected as a Life Member by a resolution carried by a seventy five percent (75%) majority of those present and voting at a general meeting, following the submission to such meeting of an appropriate recommendation from the Board as to the person being considered for election as a Life Member, shall be a Life Member of the Company.
- (ii) The Board when determining a candidate's suitability for recommendation for election as a Life Member, shall take into account the candidate's:
 - (A) promotion and support of the initiatives of the Company;
 - (B) interest in the good of the total fruit and vegetable industry;
 - (C) strong and loyal commitment to the central market system;
 - (D) regular attendance and contribution at conferences and other activities organised by the Company;
 - (E) liaison with government in order to advance the fruit and vegetable industry;
 - (F) business and professional ethics;
 - (G) encouragement to improve the status and standing of the fruit and vegetable industry; and
 - (H) proven business success.
- (iii) A person elected as a Life Member of the Company may remain as a Full Member. A Life Member:
 - (A) who remains a Full Member shall have all of the rights and privileges of a Full Member and is bound by all relevant sections of this Constitution; and
 - (B) who ceases to be a Full Member shall have the rights of a Life Member but no other rights.
- (iv) There shall not be more than six (6) Life Members at any one time.
- (v) For the avoidance of doubt a person may be a Full Member and a Life Member at the same time.
- (vi) A Life Member must pay such fees, subscriptions and any other amounts as are payable by Life Members under this Constitution and when

determined, in accordance with this Constitution, from time to time, by a resolution of the Board.

- (vii) Where a Life Member is not a Full Member, the Life Member shall not be entitled to vote as a Life Member.

7.2 Register of Members

- (a) A register of Members shall be established and maintained at the Office of the Company. The register shall satisfy the requirements of the Corporations Act and shall comprise three (3) parts, "Part One", "Part Two" and "Part Three".
- (b) Part One shall include the name and address of each Full Member and the Authorised Representative of that Full Member and that person's address.
- (c) Part Two shall include the name and address of each Associate Member and each Authorised Representative of the Associate Member and that person's address.
- (d) Part Three shall include the name and address of each Life Member.
- (e) The register of Members shall be available for inspection, free of charge, by any Member at any reasonable time during the hours that the office is open for business.

7.3 Authorised Representatives

- (a) Members being partnerships, companies or other incorporated bodies shall, by notice in writing to the Company, appoint a person, being a partner, director, executive officer or Shareholder of the relevant partnership, company or other incorporated body, to represent such Member in all matters incidental to the business of the Company requiring the exercise of any vote under this Constitution. Such appointment may, from time to time, by notification in writing, be revoked and the appointment of any similarly qualified person may be substituted as the Authorised Representative of the Member.
- (b) A person is to be considered a Member of the Company for the purposes of election as an Elected Director and for appointment as an Alternate Director) if the person is a partner, director, executive officer or shareholder of a partnership, company or other incorporated body which is a Full Member of the Company and is a person who has been appointed by such a partnership, company or other incorporated body to represent it pursuant to **clause 7.3(a)**.

7.4 Applications For Membership in respect of Full and Associate Members

This **clause 7.4** applies only to Full Members and Associate Members.

- (a) An application for membership of the Company may only be made by a person who satisfies the criteria for the class of membership in respect of which the application is made.
- (b) An application:
- (i) for membership of the Company as a Full Member:
 - (A) shall be made by a candidate for Full Membership in writing in the form set out in **Appendix 1** of this document. The relevant form of application may be provided by the Company in such other form as the Board may from time to time determine; and
 - (B) shall be lodged with the Secretary; and
 - (ii) an application for membership of the Company as an Associate Member:
 - (A) may only be made by a candidate for Associate Membership who is invited to make such an application by the Board, and must be made in writing in the form set out in **Appendix 4** of this document. The relevant form of application may be provided by the Company in such other form as the Board may from time to time determine; and
 - (B) shall be lodged with the Company Secretary.
- (c) At the time the Company provides the relevant form of application the Company shall inform each applicant for membership, in writing, of:
- (i) the financial obligations arising out of the category of membership in respect of which the applicant's application is to be made; and
 - (ii) the procedure, and the manner, in which a member may resign from the Company.
- (d) As soon as practicable after receiving:
- (i) an application for Full Membership the Secretary shall forward notice of the application to Members, take such steps as may be prescribed from time to time by the Board in respect of applications for Full Membership and refer the application to the Board of the Company which shall determine whether to approve or to reject the application; and
 - (ii) an application for Associate Membership, the Secretary shall forward notice of the application to Members, take such steps as may be prescribed from time to time by the Board in respect of applications for Associate and refer the application to the Board of the Company which shall determine whether to approve or to reject the application.

- (e) The Board may, for the purpose of determining any application for membership, adopt any procedures and protocols the Board considers appropriate including a requirement that any applicant [or any person who is a partner, director, executive officer or shareholder of an applicant] attend an interview with the Board or any one (1) or more members of the Board nominated by the Board for that purpose].
- (f) The Board:
 - (i) has no obligation to issue any invitation for Associate Membership;
 - (ii) may reject any application for Membership; and
 - (iii) has no obligation to assign, or disclose, any reason or basis, for any determination in respect of the matters in (a) and (b).
- (g) Where the Board determines to approve an application for Membership, the Secretary shall, as soon as practicable after that determination, notify the applicant in writing of that approval and request the applicant to pay such amounts to the Company as are payable by reason of the approval of the applicant for membership.
- (h) The Secretary:
 - (i) shall, following the approval of the application for Membership and on payment by an applicant of the entrance fee referred to in **clause 7.7**, enter the applicant's name in the appropriate part of the register of Members and, upon the name being so entered, the applicant becomes a Full Member of the Company or Associate Member of the Company, as the case may be; and
 - (ii) shall enter the name of any person elected as a Life Member in the appropriate part of the register of Members and, upon the name being so entered, that person shall be a Life Member of the Company.
- (i) Without limitation, the Board may reject any application for Full Membership of the Company if the applicant for Full Membership:
 - (i) is not an employer who is eligible to become a member of the Company;
or
 - (ii) is a body corporate whose constituent documents make provisions inconsistent with the objects of the Company.
- (j) A Full Member is not entitled to remain a Full Member of the Company if the Full Member ceases to qualify to be eligible to apply to be a Full Member of the Company pursuant to this Constitution.

- (k) An Associate Member is not entitled to remain an Associate Member of the Company if the Associate Member ceases to qualify to be eligible to be an Associate Member of the Company pursuant to this Constitution.

7.5 Cessation of Membership

- (a) Any Member may resign from Membership by delivering a notice of resignation in writing addressed to the Secretary at the registered office of the Company.
- (b) A member ceases to be a Member of the Company if the person:
 - (i) dies;
 - (ii) resigns as a Member of the Company;
 - (iii) is the subject of a resolution under **clause 7.9**;
 - (iv) fails to pay any amount due by the Member to the Company, within ninety one (91) days of the date on which the amount due becomes payable and does not, within fourteen (14) days of any written demand by the Company for the payment of the relevant amount [made after the expiration of the period of ninety one (91) days] satisfy the demand, and, on that basis, the Board resolves to remove the Member from the register of Members; or
 - (v) ceases to be eligible to be a Member of the Company pursuant to this Constitution and the Board resolves to remove the Member from the register of Members pursuant to any provision of this Constitution.
- (c) Where a Member of the Company ceases to be a Member of the Company the Secretary shall make an appropriate entry in the register of Members recording the date on which the Member ceased to be a member.
- (d) Any monies payable by a Member to the Company on any account whatsoever as at the date on which the Member ceases to be a Member may be sued for and recovered in the name of the Company in a court of competent jurisdiction as a debt due by the Member to the Company.

7.6 Membership Entitlements not Transferable

- (a) A right, privilege or obligation which a Member has by reason of being a Member of the Company:
 - (i) is not capable of being transferred or transmitted to another person; and
 - (ii) terminates upon cessation of the Member's Membership of the Company.
- (b) Within 14 days after:

- (i) the business, or part of the business, of a Member of the Company is assigned or transferred to a person who is not a member of the Company; or
- (ii) a person succeeds to the business, or part of the business, of a Member of the Company,

the Member must notify the Company of the assignment, transfer or succession.

7.7 Fees Subscriptions, Etc.

- (a) Where a person applies to become a Member of the Company it is a condition of the grant of Membership that the person must, pay to the Company an entrance fee as determined by the Board not exceeding \$5,000.00. At the first meeting of the Board after the date of Registration the Board shall determine the entrance fee which will apply, for the Membership Year commencing 1 July 2020.

Subject to the provisions of the foregoing paragraph the first meeting of the Board after each AGM, the Board shall determine the entrance fee for the Membership Year which first commences after that meeting of the Board which will apply for the relevant Membership Year. Each entrance fee so determined by the Board after the Registration Date and after each AGM is payable by every person admitted to Membership in the relevant Membership Year until a further entrance fee is determined by the Board in accordance with this Constitution. The Board may determine different entrance fees for applications for Full Membership and applications for Associate Membership but in each instance all applicants for Full Membership in any Membership Year must pay the same entrance fee and all applicants for Associate Membership in any Membership Year must pay the same entrance fee. Despite the foregoing, the Board may resolve to impose the entrance fees for any Membership Year in respect of any applicant for membership who applies for membership after 30 September in any Membership Year on a pro rata basis (that is by the proportion the period of any membership to be granted to any person bears to the period of the Membership Year).

- (b) In addition to any amount payable under **clause 7.7(a)**, a Member of the Company shall pay to the Company an annual membership fee in respect of any Membership Year as determined by the Board from time to time. The Board may, in its discretion, categorise Members in categories determined by criteria determined by the Board and may impose different annual membership fees in respect of each category of Members. For the avoidance of doubt the Board is empowered to impose a common (but not different) annual membership fee on all Members of any category, but shall not have the right to impose different membership fees on

Members within any category, and may impose different membership fees in respect of each category of Members.

- (c) The Board may, by resolution, in any year increase the annual membership fees for any Membership Year by such amount as the Board, in its discretion, determines is appropriate in the circumstances.
- (d) The Company must issue a statement to each Member notifying the Member of the amount of the annual membership fees payable by the Member to whom the statement is issued and the amount stated will be a debt due and payable by the Member to the Company by the date specified in the statement as the date by which the amount in the statement is payable.
- (e) Where any annual membership fees are increased, the Membership of a member who resigns from Membership in accordance with **clause 7.5**, not later than the earlier of:
 - (i) thirty (30) days after the date of the statement referred to in **clause 7.7(d)**; and
 - (ii) the date of the commencement of the Membership Year to which the increase applies,shall be deemed to cease on the day preceding the first day of Membership Year to which the increased annual membership fees apply.
- (f) A general meeting may by special resolution, upon the recommendation by the Board approve of the raising of a levy on the Members for a particular purpose and that special resolution shall authorise the Board to cause the Company to raise a levy in accordance with that Special Resolution.
- (g) Annual membership fees shall be levied for each Membership Year by no later than the later of ninety one (91) days before the commencement of the Membership Year to which the fees apply.
- (h) Such fees must be paid in a lump sum before the commencement of the relevant Membership Year, or if the Board so resolves, annual Membership fees may be paid by weekly, monthly or quarterly instalments in each Membership Year. The Board may in its discretion:
 - (i) determine to allow a discount where annual membership fees are paid before the commencement of the relevant Membership Year to which the membership fees are payable; and

- (ii) impose interest on membership fees which are not paid within thirty one (31) days of the commencement of the Membership Year in respect of which the membership fees are payable.
- (i) The Board may, by resolution, reduce Membership fees payable by any Member suffering from financial hardship on the condition that the Member or a representative of the Member attends a meeting of the Board and makes application for a reduction of the Membership fees for the current or forthcoming Membership Year.

7.8 Members' Liabilities

The liability of a member of the Company to contribute towards the payment of the debts and liabilities of the Company or the cost, charges and expenses of the winding up of the Company is limited to the amount, if any, unpaid by the member in respect of Membership of the Company as required by **clause 7.7** along with the amount set out in **clause 2(c)**.

7.9 Disciplining of Members

- (a) Where the Board is of the opinion that a Member of the Company:
 - (i) has persistently refused or neglected to comply with a provision or provisions of this Constitution; or
 - (ii) has persistently and wilfully acted in a manner prejudicial to the interests of the Company; or
 - (iii) in the case of Full Members and Associate Members, is not entitled to remain a Member of the Company under **clause 7.4(j)** or under **7.4(k)** (as the case may be),

the Board may, by resolution:

 - (A) expel the Member from the Company; or
 - (B) suspend the Membership of the Member for a specified period.
- (b) A resolution of the Board under **clause 7.9(a)** is of no effect unless the Board, at a meeting held not earlier than 14 days, and not later than 28 days, after service on the Member of a notice under **clause 7.9(c)**, confirms the resolution in accordance with this clause.
- (c) Where the Board passes a resolution under **clause 7.9(a)**, the Secretary shall, as soon as practicable (and in any event within seven (7) days of the date the resolution is passed), cause a notice in writing to be served on the Member:
 - (i) setting out the resolution of the Board and the grounds on which it is based;

- (ii) stating that the Member or an Authorised Representative of the Member may address the Board at a meeting to be held not earlier than 14 days, and not later than 28 days, after service of the notice;
- (iii) stating the date, place and time of that meeting; and
- (iv) informing the Member that the Member or an Authorised Representative of the Member may do either or both of the following:
 - (A) attend and speak at that meeting; and
 - (B) submit to the Board at or prior to the date of that meeting written representations relating to the resolution.
- (d) At a meeting of the Board held as referred to in **clause 7.9(c)**, the Board shall:
 - (i) give to the Member or an Authorised Representative of the Member an opportunity to make oral representations;
 - (ii) give due consideration to any written representations submitted to the Board by the Member at or prior to the meeting; and
 - (iii) by resolution determine whether to confirm or to revoke the resolution.
- (e) Where the Board confirms a resolution under **clause 7.9(d)(iii)** (such a resolution is a “**Confirmation Resolution**”), the Secretary shall, within seven (7) days after that Confirmation Resolution, by notice in writing inform the Member of the fact and of the Member’s right of appeal under **clause 7.10**.
- (f) A Confirmation Resolution confirmed by the Board under **clause 7.9(d)(iii)** does not take effect:
 - (i) until the expiration of the period within which the Member is entitled to appeal against the Confirmation Resolution where the Member does not exercise the right of appeal within that period; or
 - (ii) where within that period the Member exercises the right of appeal, unless and until the Company confirms the Confirmation Resolution pursuant to **clause 7.10**.

7.10 Right of Appeal of Disciplined Member

- (a) A Member may appeal to the Company against a Confirmation Resolution within fourteen (14) days after notice of the Confirmation Resolution is served on the Member, by lodging with the Secretary a notice to that effect.
- (b) Upon receipt of a notice from a Member under **clause 7.10(a)**, the Secretary shall notify the Board which shall convene a general meeting of the Company to be held within 35 days after the date on which the Secretary received the notice.

- (c) At a general meeting of the Company convened under **clause 7.10(b)**:
- (i) no business other than the question of the appeal shall be transacted;
 - (ii) the Board and the Member (or an Authorised Representative of the Member) shall be given the opportunity to state their respective cases orally or in writing, or both; and
 - (iii) the Members present shall vote by secret ballot on the question of whether the Confirmation Resolution should be confirmed or revoked.
- (d) If at the general meeting the Company passes a Special Resolution in favour of the confirmation of the Confirmation Resolution, the Confirmation Resolution is confirmed and shall have effect.

8 The Board

8.1 Powers etc of the Board

- (a) The control, management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not by the Corporations Act or by this Constitution required to be exercised in any other manner.
- (b) The Company may, by an ordinary resolution in general meeting, direct that the Board do or perform certain specified acts or things or refrain from doing or performing certain specified acts or things and the Board, so far as it is lawful, and practical, and so far as to do so will not render the Board or any respective Member of the Board liable for any breach of their respective duties and obligations as directors, shall comply with such resolution.
- (c) Subject to **clause 8.1(b)**, the Board may exercise all such functions as may be exercised by the Company other than those functions that are required by the Constitution or the Corporations Law to be exercised by a general meeting of Members of the Company.
- (d) The Board has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the Company.
- (e) Consistent with the requirements of this Constitution, the Board may amend the Regulations and may formulate regulations relating to the conduct and affairs of the Company which when so adopted by the Company in general meeting shall be binding upon all Members and/or Authorised Representatives to whom such regulations may apply. Nothing in the Regulations made under this clause and any Code of Ethics made under the Regulations shall impose any obligation upon any

person to do anything which may be unlawful and any provision of the Regulations and the Code of Ethics inconsistent with any relevant law shall be deemed to be amended or deleted to the extent necessary to comply with that law. For avoidance of doubt the Regulations do not form part of this Constitution. They are annexed for reference purposes only.

- (f) The Board may act through its servants or agents whom it may appoint upon such terms and conditions as it sees fit. Such servants or agents shall be subject to the direction and control of the Board in all matters.
- (g) The Board shall, in compliance with the Corporations Act, appoint a person to fill the office of Secretary as and when required.

8.2 Constitution and Membership of the Board

- (a) Despite any other provision of this Constitution, the Board to hold office from Registration (the “**Initial Board**”) shall be the persons who consented in writing to being directors of the Company upon Registration and who were named in the “Application for registration...” of the Company filed with the Australian Securities and Investment Commission (each an “**Initial Director**”). The Initial Board shall hold office until the conclusion of the first AGM held after the date of Registration.
- (b) As and from the conclusion of the first AGM held after Registration the Board shall consist of eleven (11) Elected Directors.
- (c) Directors shall be elected by secret postal ballot to be conducted in a manner that does not contravene section 201E of the Corporations Act.
- (d) Where Elected Directors are to retire, in accordance with this Constitution at the conclusion of the AGM in any year, elections by means of a secret postal ballot shall be conducted prior to that AGM in sufficient time so as to enable:
 - (i) the results of the ballot to be exhibited in the Office at least five (5) days before the AGM; and
 - (ii) the persons who are elected as Directors of the Board to be informed of their election by the Secretary at least five (5) days before the AGM.

The results of any such ballot shall be announced at the AGM.

- (e) Subject to **clause 8.2(a)**, only Full Members who are natural persons (or the Authorised Representatives of Full Members) shall be eligible to be Elected Directors and to fill any casual vacancy and for appointment as an Alternate Director of an Elected Director.
- (f) A person appointed as a Director to fill a casual vacancy shall, notwithstanding any other provision of this Constitution, not be eligible for election as an Office Bearer

of the Company but shall be eligible to vote in respect of the election of the Office Bearers.

- (g) The office bearers of the Company shall be elected annually from the Elected Directors at a meeting of the Board to be convened immediately after each AGM of the Company. The office bearers of the Company shall be:
 - (i) the Chairman;
 - (ii) the Deputy Chairman.
- (h) The office bearers in **sub-clause (g)** shall be elected by secret ballot in accordance with the procedure contained in **clause 8.3**.
- (i) Each Elected Director subject to this Constitution, shall hold office until the conclusion of the third (3rd) annual general meeting held after the date of the Director's election, but shall be eligible for re-election subject to **sub-clause (j)**.
- (j) Once a Director has served a maximum period of nine (9) consecutive years from the date of incorporation of the Company, the Director is ineligible for re-election or reappointment to the Board until after a period of at least two (2) years has expired since the expiry of the Director's previous term on the Board;
- (k) Four (4) of the Elected Directors shall retire at the conclusion of each AGM but shall be eligible for re-election subject to **sub-clause (j)**. Unless the Elected Directors otherwise agree, the four (4) so retiring shall be determined in the following order (until the four (4) are determined):
 - (i) the Directors appointed to fill casual vacancies pursuant to **clause 8.5** and if there are more than four (4), by drawing lots among the Directors referred to in this sub-clause;
 - (ii) the longest serving Directors of the Directors who were elected more than two (2) years before the relevant AGM and if it is necessary to make a determination as between the Directors referred to in this sub-clause, by drawing lots among the Directors referred to in this sub-clause; and
 - (iii) additional Directors (if necessary) determined by drawing lots among the remaining Directors.
- (l) For the purpose of **clause 8.2(l)**:
 - (i) a reference to a "Director's election" ("**Subject Director**") shall also mean the Subject Director's election to the Committee of the Incorporated Association prior to Registration;
 - (ii) any calculation of time by reference to an AGM shall include any annual general meeting of the Incorporated Association;

- (iii) a reference to **clause 8.5** shall also mean a reference to the rule of the Incorporated Association under which casual vacancies were filled and a reference in **clause 8.2(f)** to Directors appointed to fill casual vacancies shall also be deemed to refer to the appointments of persons to fill casual vacancies under the rules of the Incorporated Association; and
- (iv) in **sub-clause (i)** the reference to Directors who were elected more than two (2) years previously shall be deemed to include Directors who were elected under the rules of the Incorporated Association as members of the Committee of the Incorporated Association more than two (2) years before the relevant AGM.

8.3 Elections of Directors and Office Bearers

- (a) The persons to be Elected Directors (apart from the Initial Directors) shall be directly elected and each Member of the Company who has a right to vote under this Constitution may vote and shall have one (1) vote in any such election.
- (b) For the purpose of the conduct of elections to elect the Elected Directors the Board shall, for each election, appoint a returning officer. A person shall not be eligible for appointment as a returning officer if the person is a member of the Board.
- (c) A person shall not be eligible for election at any election in respect of which the person is the returning officer. A person shall not be eligible for election at any election where the person is related to, or is an employee of, or employed by, the returning officer for the relevant election. For the purpose of this sub-clause, a person ("P1") shall be deemed to be employed by, or an employee of, a person ("P2") where P1 is employed by a partnership or body corporate of which P2 is a partner, shareholder, director or employee. The Board must also appoint two (2) scrutineers to assist the returning officer. Only persons who meet the qualifications for appointment as a returning officer may be appointed as scrutineers. In **sub-clause (3)**, a reference to "returning officer" shall be deemed to also mean a reference to "scrutineer". A returning officer may seek assistance from the employees of the Company and use the facilities of the Company in carrying out the returning officer's duties except for the duties imposed under sub-**clauses (f) and (k)** of this **clause 8.3**.
- (d) The returning officer shall invite nominations and specify the date for the closing of nominations as determined by the Board. The invitation for nominations may be transmitted by email to Members who have provided an email address to the Company.
- (e) Nominations of candidates for election as Directors shall be made in writing, signed by two (2) Members of the Company and accompanied by the written consent of

the candidate (which may be endorsed on the form of nomination). Nominations may be submitted to the Company by means of facsimile transmission or by email.

- (f) If the returning officer finds a nomination of the person to be defective, the returning officer shall, before rejecting the nomination, advise that person of the defect and, where practicable, give the person the opportunity of remedying the defect within not less than seven (7) days after the person is notified, but in any event, the amended nomination must be received by the returning officer before the time and date fixed for the closing of nominations.
- (g) In the conduct of any election of Directors the persons elected shall be determined as follows:
- (i) the maximum number of Directors to be elected pursuant to the relevant ballot shall be the "**Requisite Number**";
 - (ii) if the number of nominations is equal to or less than the Requisite Number, the persons nominated ("**nominees**") shall be deemed to be elected and the returning officer shall declare those nominees elected;
 - (iii) if the number of nominations exceed the Requisite Number a secret postal ballot shall be conducted;
 - (iv) in that secret postal ballot the number of persons equal to the Requisite Number who gain the highest number of votes cast shall be persons duly elected. Where, as a result of any one (1) or more candidates for election receiving the same number of votes such that more persons than the Requisite Number are selected by the ballot process a committee comprising of those of the current office bearers (who are not the subject of the relevant election) shall determine who of the persons who received the same number of votes equal to the lowest number of votes cast shall not be elected.
- (h) The returning officer shall prepare the ballot papers. Ballot papers must state the number of persons entitled to be elected at the relevant election. The names of the candidates for election must be listed on each ballot paper in the order determined by a method, determined by the returning officer and the scrutineers, by which the order is determined by chance and each candidate has a similar chance. Ballot papers shall be printed showing the names of the candidates and a ballot paper, after having being initialled by the returning officer, shall be forwarded by post to each Member entitled to vote, together with two (2) envelopes, one (1) addressed to the returning officer and the other marked "**Ballot Paper**". The envelope addressed to the returning officer ("**First Envelope**") shall bear a distinctive number corresponding to the number allocated by the returning officer to the name

of each Member entitled to vote in the records of the Company. On receipt of the ballot paper each Member, to validly exercise the right to vote, must cross out all names except those for whom the member desires to vote and shall then enclose the ballot paper in the envelope marked "Ballot Paper" which must be sealed and placed in the First Envelope and forwarded to the returning officer by post or delivered by hand to the address stated on the First Envelope, to reach such returning officer at or before such time as may be stated upon the ballot paper as the time for the closing of the ballot. To satisfy the Corporations Act no ballot paper may require the Members entitled to vote to vote for more than one (1) candidate.

- (i) The returning officer shall open each of the First Envelopes received and open each envelope marked "Ballot Paper" in the presence of the scrutineers. The returning officer and the scrutineers shall together determine the validity or invalidity of any ballot paper and any vote and shall determine who is elected.
- (j) The returning officer shall declare who of the candidates were elected and such declaration shall be exhibited in the Office of the Company at least five (5) days before the AGM until submitted at the AGM of the Company. The persons who are elected as Members of the Board shall be informed of their election by the Secretary at least five (5) days before the AGM.
- (k) In addition to the powers contained or implied in this **clause 8.3**, the returning officer shall take such action and give such directions as are reasonably necessary to ensure that no irregularities occur in or in connection with any election or to remedy any procedural defects and no person shall refuse or fail to comply with any such direction or obstruct or hinder the returning officer or any other person in the conduct of the election or the taking of any such action or compliance with any such direction.
- (l) The procedure for the election of the office bearers of the Company shall be as follows:
 - (i) The returning officer in respect of the election of the Board held immediately before the relevant annual general meeting shall convene a meeting of the Elected Directors immediately following the conclusion of the annual general meeting (the "**election meeting**"). A quorum for that meeting shall be that whole number in excess of fifty percent (50%) of the number of the Elected Directors. The only business to be conducted and the election meeting shall be the election of office bearers.
 - (ii) At the election meeting the returning officer shall:

- (A) call for nominations for each of the respective positions of office bearer; and
 - (B) at an appropriate time declare the close of nominations.
- (iii) Subject to this Constitution each Elected Director (including any member nominating), may be nominated as an office bearer.
- (iv) Nothing shall prevent an Elected Director nominating himself or herself as an office bearer.
- (v) Nominations at the election meeting may be made orally or in writing and shall be accepted provided the nominee consents to the nomination (in writing or orally) at the meeting prior to the close of nominations.
- (vi) The elections of the respective office bearers shall be conducted in the following order:
 - (A) the election of the Chairman; and
 - (B) the election of the Deputy Chairman.;
- (vii) In the event:
 - (A) any Elected Director is nominated to more than one (1) office; and
 - (B) in the event of the election of that person to office, that person's nomination for any other office shall be deemed to be withdrawn.
- (viii) If, by the close of nominations in an election:
 - (A) only one (1) person is nominated for election as Chairman, that person shall be deemed to be elected; and
 - (B) only one (1) person is nominated for election as Deputy Chairman, that person shall be deemed to be elected.
- (ix) If, by the close of nominations in an election, the number of persons who have been duly nominated as candidates in the election for any office exceeds the number of persons to be elected to that office, a ballot must be held.
- (x) If a ballot is to be held in an election under this **sub-clause (I)**:
 - (A) The returning officer must, with the assistance of the Secretary, as soon as practicable after the close of nominations, cause to be prepared sufficient ballot papers for each election so that a

ballot paper for each election may be presented to each Elected Director present at the election meeting.

- (B) The returning officer must, as soon as practicable, after the preparation of the ballot papers, furnish to each Elected Director at the election meeting, for each election, a ballot paper initialled or otherwise marked in such manner as the returning officer considers appropriate to verify its authenticity.
- (C) An Elected Director who wishes to vote at any election must, on receipt of a ballot paper:
 - (1) record a vote on the ballot paper;
 - (2) place the completed ballot paper folded so the vote cannot be seen; and
 - (3) return the ballot paper to the returning officer so that it will be received by the returning officer not later than the close of the ballot.
- (xi) The result of a ballot in any election is to be ascertained by the returning officer as soon as practicable after the close of the ballot.

8.4 Chairman

The Chairman of the Company shall be responsible for the following functions in addition to any other requirements arising under this Constitution:

- (a) preside as the chair at all meetings of the Company and the Board at which the Chairman is present;
- (b) sign the minutes of meetings of the Company and the Board in order to confirm them;
- (c) instruct the Secretary to call meetings of the Company and the Board as and when necessary or required in accordance with this Constitution; and
- (d) sign all documents requiring the chair's signature when so authorised.

8.5 Casual Vacancies

- (a) A casual vacancy in the office of a Director occurs if the Director:
 - (i) dies;
 - (ii) ceases to be a Member of the Company;
 - (iii) ceases to be an Authorised Representative;

- (iv) becomes insolvent under administration within the meaning of the Corporations Law or becomes bankrupt;
 - (v) resigns office by notice in writing given to the Secretary;
 - (vi) is removed from office pursuant to the Corporations Act;
 - (vii) becomes prohibited from being a director of, or managing, a company by reason of any order made under the Corporations Act;
 - (viii) 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; or
 - (ix) is absent without the consent of the Board from all meetings of the Board held during a period of six (6) months.
- (b) Where less than eleven (11) Elected Directors are elected at any AGM there will be a deemed casual vacancy in respect of the number of unfilled positions.
- (c) In the event of a casual vacancy occurring as a result of the operation of **clause 8.5(b)**, or as a result of an Elected Director ceasing to be a Director the Board may appoint any person who is eligible to be an Elected Director to fill the vacancy and the persons so appointed shall be deemed to be an Elected Director, until the person's appointment comes to an end by virtue of the operation of **clause 8.5(d)**.
- (d) Any person appointed under **clause 8.5(c)** shall be a member of the Board and shall hold office until the conclusion of the annual general meeting next following the date of the appointment.

8.6 Board Meetings and Quorum

- (a) The Board shall meet at least six (6) times in each period of twelve (12) months at such place and time as the Board may determine.
- (b) Written notice of the meeting shall be given by the Secretary to each Director and, together with an agenda and any supporting documents, shall be dispatched to the Directors not later than (4) days prior to the day appointed for the meeting.
- (c) Additional meetings of the Board may be convened by the Chairman or by any three (3) Directors.
- (d) Where the Chairman determines it is appropriate, oral or written notice of a special meeting of the Board shall be given by the Secretary to each Director at least 48 hours (or such other period as may be unanimously agreed upon by the Directors of the Board) before the time appointed for the holding of the meeting.
- (e) Notice of a meeting given under **sub-clause (d)** shall specify the general nature of the business to be transacted at the meeting and no business other than that

business shall be transacted at the meeting, except business which the Directors present at the meeting unanimously agree to treat as urgent business.

- (f) Any six (6) Elected Directors must be present at a meeting of the Board in order to constitute a quorum for the transaction of the business of a meeting of the Board.
- (g) No business shall be transacted by the Board unless a quorum is present and if within half an hour of the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the same place and at the same hour of the same day in the following week.
- (h) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting shall be dissolved.
- (i) At a meeting of the Board:
 - (i) the Chairman or, in the Chairman's absence, the Deputy Chairman shall preside as chair; or
 - (ii) if the Chairman and the Deputy Chairman are absent or unwilling to act, such one (1) of the remaining members of the Board as may be chosen by the Directors present at the meeting shall preside as chair.

The chair of the meeting shall have both a deliberative and casting vote.

- (j) Where a Director is disqualified from voting on a matter pursuant to **clause 21.1** the Director will be deemed to be present at the relevant meeting for the purpose of calculating a quorum but for no other purpose.
- (k) Subject to **clause 8.6(l)**, a Board meeting may be convened or held using any technology consented to by a majority of Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (l) The particular technology used to convene or hold a Board meeting, pursuant to **clause 8.6(k)**, must be available and accessible to all Directors who wish to attend the Board meeting.
- (m) A Director who participates in a meeting of Directors convened and conducted in the manner set out in **clause 8.6(k)** shall be deemed to be present at the meeting.

8.7 Power of Board to Assign Exercise of Limited Functions to a Committee

- (a) The Board may establish one (1) or more committees and may, in writing, assign to one (1) or more committees (consisting of such member or Members of the Board as the Board thinks fit) the power to exercise such of the functions of the Board as are specified in the instrument, other than:

- (i) this power of assignment; and
 - (ii) a function which is a duty imposed on the Board by this Constitution or any law.
- (b) A function, the exercise of which has been assigned to a committee under this clause, may, while the assignment remains unrevoked, be exercised from time to time by the committee in accordance with the terms of the assignment.
- (c) An assignment under this clause may be made subject to such conditions or limitations as to the exercise of any function the subject thereof, or as to time or circumstances, as may be specified in the instrument of assignment.
- (d) Notwithstanding any assignment under this clause, the Board may continue to exercise any function so assigned.
- (e) Any act or thing done or suffered by a committee acting in accordance with this clause has the same force and effect as it would have if it had been done or suffered by the Board.
- (f) The Board may, in writing, revoke wholly or in part any assignment under this clause.
- (g) A committee may meet and adjourn as it thinks proper.
- (h) A quorum for a meeting of a committee shall be made up of that number of persons equal to the nearest whole number which is greater than half of the Members of the relevant committee.
- (i) The Board may, from time to time, establish reference committees (consisting of such persons as the Board thinks fit) to make recommendations to the Board in respect of any matters referred to the reference committee by the Board for consideration. The powers of any reference committee shall be limited to making recommendations to the Board and no resolution of a reference committee shall be binding on the Board or the Company.
- (j) It shall not be necessary for the members of a reference committee to include any member or members of the Board.

8.8 Voting and Decisions of Board and Committees

- (a) Questions arising at a meeting of the Board or of any committee appointed by the Board shall be determined by a majority of the votes of the members of the Board or committee present at the meeting.
- (b) Each member present at a meeting of the Board or of any committee appointed by the Board (including the person presiding at the meeting) is entitled to one (1) vote

but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.

- (c) Subject to **clause 8.6(f)**, the Board may act notwithstanding any vacancy on the Board.
- (d) Any act or thing done or suffered, or purporting to have been done or suffered, by the Board or by a committee appointed by the Board, is valid and effectual notwithstanding any defect that may afterwards be discovered in the appointment or qualification of any member of the Board or committee.
- (e) Subject to **sub-clause (f)**, a resolution in writing signed by at least that number of the Members of the Board, or any committee, as the case may be, necessary to constitute a quorum of the Board, or any committee, as the case may be, shall be as valid and effectual as if it had been passed at a meeting of the Board or a committee duly called and constituted and held on the day and at the time at which the document was last signed by the last of that number of the Members of the Board, or any committee, as the case may be, necessary to constitute a quorum of the Board, or any committee, as the case may be, signed the Resolution ("**Effective Date**").
- (f) For the avoidance of doubt any such resolution of the Board must be signed by not less than six (6) Elected Directors.
- (g) A resolution under **sub-clause (e)**, unless it is signed by all members of the Board or committee, as the case may be, shall only have effect if a copy of the proposed resolution was given to each member of the Board or committee, as the case may be, at least three (3) days prior to the Effective Date.
- (h) Any member of any committee appointed by the Board may participate in a meeting of the such committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and participation in this manner shall be deemed to constitute presence in person at such meeting (including for the purpose of constituting a quorum).
- (i) A copy of the proposed resolution under **sub-clause (f)** may be given to the relevant persons by email.
- (j) A facsimile transmission which is received by the Company and which purports to have been signed by a Director shall for the purposes of this **clause 8.8** be taken to be in writing and signed by that Director at the time of the receipt of the facsimile transmission by the Company in legible form.

- (k) An email transmission which is received by the Company and which purports to have been sent by a Director shall for the purposes of this **clause 8.8** be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Company.
- (l) A vote made by a Director using an online voting platform operated or commissioned by the Company shall for the purposes of this **clause 8.8** be taken to be in writing and signed by that Director at the time the vote was received by the online voting platform.

8.9 Minutes

- (a) The Board must cause minutes to be kept in such a manner as is required by the Corporations Act for the purposes of recording:
 - (i) the names of the Directors present at each meeting of the Board and of Directors present at each meeting of any Committee;
 - (ii) all orders, resolutions and proceedings of general meetings and of meetings of the Board and of Committees; and
 - (iii) such matters as are required by the Corporations Act to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of his or her interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.
- (b) Such minutes shall be signed, pursuant to a resolution of the Board, by the Chair of the meeting, or the Chair of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

8.10 Validation of Acts of Directors

All acts done:

- (a) at any meeting of the Board; or
- (b) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

8.11 Removal of Director from Office

In accordance with Section 203D of the Corporations Act, the Company in general meeting may by resolution remove any Director from office before the expiration of the Director's term of office.

8.12 Board May Act Despite Vacancy

The Board may act despite any vacancy in its body, but if the number of Elected Directors falls below the minimum fixed in accordance with **clause 8.6(f)** to constitute a quorum, the Board may act:

- (a) for the purpose of:
 - (i) appointing the number of Directors to satisfy the minimum requirement fixed in accordance with **clause 8.6(f)** to constitute a quorum; or
 - (ii) convening a general meeting; or
- (b) in emergencies,

but for no other purpose. Any persons so appointed must be eligible to be an Elected Director. Where the Board acts to appoint any person to fill a vacancy occurring as a result of an Elected Director ceasing to be a director, the person so appointed shall be deemed to be an Elected Director until the conclusion of the annual general meeting next following the date of the appointment.

9 Alternate Directors

9.1 Power to Appoint

A Director (**Appointor**) may appoint any person approved by a resolution of the other Directors to act as an Alternate Director in place of the Appointor whenever the Appointor is unable to act personally by reason of illness, absence or any other cause and may do so generally or for a meeting or for any other purpose or for a specified period.

9.2 Rights and Powers of Alternate Director

- (a) An Alternate Director is entitled to notice of meetings of the Directors and, if the Appointor is not present at such a meeting, is entitled to attend and vote in his or her stead.
- (b) An Alternate Director may exercise any powers that the Appointor may exercise and the exercise of any power by the Alternate Director is deemed to be the exercise of the power by the Appointor.
- (c) An Alternate Director of an Elected Director who participates in a Board meeting shall be counted for the purpose of forming a quorum under **clause 8.6(f)**.

9.3 Suspension or Revocation of Appointment

- (a) An Appointor may revoke or suspend the appointment of an Alternate Director appointed by him or her.
- (b) The Board may revoke or suspend the appointment of an Alternate Director by resolution after giving the Appointor reasonable notice of its intention to do so.

9.4 Form of Appointment, Suspension or Revocation

- (a) Every appointment, revocation or suspension under **clause 9.2** or **clause 9.3**, as the case may be, must be made by notice in writing signed by the Director or the Board making it, as appropriate.
- (b) The notice may be given by any method of communication as determined by the Board.

9.5 Termination of Appointment

The appointment of an Alternate Director automatically terminates:

- (a) if the Appointor ceases to hold office as Director;
- (b) on the happening in respect of the Alternate Director of any event which causes a Director to vacate the office of Director;
- (c) if by writing left at the Office, the Alternate Director resigns from the appointment;
or
- (d) if the appointment is revoked pursuant to **clause 9.3**.

10 General Meetings

10.1 AGMs

- (a) Subject to **clause 10.1(b)**, the Company shall convene an AGM:
 - (i) at least once each calendar year; and
 - (ii) within five (5) months of the end of each Financial Year.
- (b) The first AGM of the Company shall be held on or before 30 November 2020.
- (c) Subject to the Corporations Act, the AGM of the Company shall be convened on such date and at such place and time as the Board thinks fit.
- (d) At the AGM all matters required under the Corporations Act must be dealt with (including the report of the Directors under section 300B of the Corporations Act) and, without limitation, in addition to any other business which may be transacted at the meeting, the business of an AGM shall include:

- (i) to confirm the minutes of the last preceding AGM and of any general meeting held since that meeting;
- (ii) to receive from the Board reports upon the activities of the Company during the last preceding Financial Year;
- (iii) to receive and consider all other reports and financial accounts as are required to be submitted to Members pursuant to the provisions of the Corporations Act; and
- (iv) to appoint an auditor.

10.2 Convening of General Meetings

- (a) Any three (3) Directors may, whenever those Directors think fit, convene a general meeting of the Company.
- (b) Members shall be entitled to require a general meeting to be convened in accordance with the provisions of the Corporations Act and to convene a meeting in accordance with the provisions of the Corporations Act.
- (c) A general meeting of the Company may be convened at two (2) or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting.

11 Notice of General Meeting

- (a) Subject to consent to shorter notice being given in accordance with the Corporations Act, at least twenty-one (21) days' notice of any general meeting must be given specifying:
 - (i) the place, day and hour of the meeting;
 - (ii) the general nature of any business to be transacted at the meeting;
 - (iii) if a Special Resolution is to be proposed, the details of, and intention to propose, it;
 - (iv) if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this; and
 - (v) any other information required by the Corporations Act.
- (b) The accidental omission to give notice of any general meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.
- (c) Subject to **clause 11(b)**, notice of every general meeting must be given in any manner authorised by this Constitution to:

- (i) every Member;
- (ii) every Director; and
- (iii) the auditor for the time being of the Company (if any).

12 Cancellation or Postponement of General Meeting

- (a) Subject to the provisions of the Corporations Act and this Constitution the Board may cancel a general meeting of the Company:
 - (i) convened other than by a Member or Members pursuant to **clause 10.2(b)**; or
 - (ii) which has been convened upon receipt by the Company of a written notice withdrawing the requisition signed by that Member or those Members.
- (b) The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.
- (c) Where any general meeting is cancelled or postponed or the venue for a general meeting is changed:
 - (i) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
 - (ii) any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

13 Quorum

13.1 Quorum

- (a) No business may be transacted at any general meeting unless there is a quorum of Members Present at all times during the meeting.
- (b) Ten (10) Members Present shall constitute a quorum for all general meetings.
- (c) If within thirty (30) minutes after the time appointed for holding a general meeting a quorum is not present:

- (i) the meeting, if convened upon the requisition of Members, shall be dissolved; and
- (ii) in any other case:
 - (A) it will stand adjourned to such other day time and place as the Board may by notice to the Members appoint; and
 - (B) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.

14 Proceedings at General Meetings

14.1 Chair

- (a) The Chair of the Board shall preside as the Chair at each general meeting.
- (b) Where a general meeting is held and:
 - (i) there is no Chair; or
 - (ii) the Chair is not present within thirty (30) minutes after the time appointed for the holding of the meeting or, if present, is unwilling to act as Chairperson of the meeting,

then the following person will be Chairperson in lieu of the Chair in the order of availability set out below:
 - (iii) Deputy-Chairman;
 - (iv) Secretary;
 - (v) another Director chosen by the Directors present at the meeting; and
 - (vi) a Voting Member (or Representative of a Voting Member) chosen by a majority of the Members Present.
- (c) The rulings of the Chair of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

14.2 Adjournments where Quorum Present

- (a) The Chair of a general meeting at which a quorum is present:
 - (i) may adjourn a meeting with the consent of the meeting; and
 - (ii) must adjourn the meeting if the meeting so directs,

to a time and place as determined.

- (b) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (d) It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for thirty (30) days or more, in which case notice of the adjourned meeting must be given as in the case of an original meeting.

14.3 Determination of Questions

- (a) At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
 - (i) the Chair of the meeting; or
 - (ii) at least five (5) Members Present.
- (b) Before a vote on a resolution is taken, the Chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) A declaration by the Chair of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company which has been signed by the Chairperson of the meeting or the next succeeding meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

14.4 Polls

- (a) A poll may be demanded:
 - (i) before a vote on a resolution 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) If a poll is demanded it must be taken in such manner and at such time and place as the Chair of the meeting directs subject to **clause 14.4(e)**.
- (c) The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

- (e) A poll demanded on the election of a Chair or any question of adjournment of the meeting must be taken immediately.
- (f) The demand for a poll may be withdrawn.

14.5 Voting Rights

A Voting Member has:

- (a) one (1) vote, on a show of hands; and
- (b) one (1) vote on a poll.

14.6 Disqualification

No person other than:

- (a) a Voting Member;
- (b) an Authorised Representative;
- (c) a Representative of a Voting Member; or
- (d) a proxy or attorney of a:
 - (i) Voting Member; or
 - (ii) Representative of a Voting Member,shall be entitled to a vote at a general meeting.

14.7 Objection to Qualification to Vote

Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the Chair whose decision shall be final and conclusive and a vote allowed by the Chair shall be valid for all purposes.

14.8 Casting Vote

In the case of an equality of votes, whether on a show of hands or on a poll, the Chair of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote in addition to a deliberative vote.

14.9 Right of Non-Members to Attend General Meeting

- (a) The Chair of a general meeting may invite any person who is not a Member to attend or address a meeting.
- (b) Any auditor and any Director of the Company shall be entitled to attend or address a general meeting.

15 Proxies

15.1 Right to Appoint Proxies

- (a) A Voting Member or an Authorised Representative or a Representative of a Voting Member who is entitled to attend and vote at a general meeting of the Company may appoint a Voting Member as the person's proxy to, or may by the person's attorney, attend and vote for the Voting Member, Authorised Representative or the Representative at the meeting.
- (b) If a Voting Member, Authorised Representative or Representative of a Voting Member appoints a proxy or is represented by an attorney, the proxy, or attorney, as the case may be, is entitled to vote on a show of hands and on a poll.

15.2 Appointing a Proxy

The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing or, if the appointor is a body corporate, signed by the body corporate in accordance with Section 127 of the Corporations Act or by the body corporate's representative or the attorney of the body corporate.

15.3 Instrument of Proxy

- (a) The instrument of proxy is valid if it is in the form set out in **Appendix 2** and it contains the following information and any additional information required by the Corporations Act:
 - (i) the name and address of the appointor of the proxy;
 - (ii) the name of the Company;
 - (iii) the proxy's name or the name of the office of the proxy; and
 - (iv) the meetings at which the instrument of proxy may be used.
- (b) An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- (c) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 15.3(a)**.
- (d) An instrument of proxy may be revoked by the appointor of the proxy at any time by notice in writing to the Company.

15.4 Lodgement of Proxies

- (a) An instrument appointing:

- (i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
- (ii) an attorney to exercise a Voting Member's voting rights at a general meeting or a certified copy of that power of attorney,

must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than forty-eight (48) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote. In default, the instrument of proxy or the power of attorney will not be treated as valid.

- (b) For the purposes of this **clause 15.4** any document required to be lodged by an appointor received in legible form by facsimile or by email at the place at which the document is required to be delivered by the appointor shall be regarded as received at the time the facsimile or the email is received at that place.

15.5 Rights of Proxies and Attorneys

- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (b) Subject to **clause 15.5(c)**, unless an appointor by the instrument of proxy directs the proxy to vote in a certain manner the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.
- (c) A proxy will not be revoked by the appointor attending and taking part in any general meeting but if the appointor votes on a resolution either on a show of hands or on a poll the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution and any such vote of such proxy shall be invalid.
- (d) The Chair of a general meeting may require any person acting as a proxy or attorney to establish to the satisfaction of the Chair that he or she is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his or her identity he or she may be excluded from voting either upon a show of hands or upon a poll.

16 Indemnity

16.1 Indemnity

To the extent permitted by law, every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities

incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this clause unless:

- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Corporations Act.

16.2 Payment of Indemnity Policy Premium

- (a) To the extent permitted by law, the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:
 - (i) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
 - (ii) a contravention of sections 182 or 183 of the Corporations Act.
- (b) The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- (c) Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his or her actions or omissions then the Company shall not be required to indemnify the Officer under **clause 16.1** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

16.3 Indemnity to Continue

The indemnity granted by the Company contained in **clauses 16.1 and 16.2** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring before the date of the deletion or modification.

17 The Secretary

17.1 Appointment and Tenure of Secretary

There must be at least one (1) Secretary appointed by the Board for a term and on conditions determined by the Board. The Board may remove any Secretary so appointed.

17.2 Maintenance of Records

The Secretary shall discharge all of the duties of the Secretary under the Corporations Act and shall cause to be kept and maintained:

- (a) all books, documents and securities of the Company;
- (b) the register of Members and representatives; and
- (c) all other registers required to be kept and maintained under the Corporations Act.

18 Winding Up

18.1 Surplus

If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed among Members, but will be given or transferred to another institution(s) or corporation(s) with:

- (a) objects which are similar to the Objects;
- (b) a constitution which requires its income and property to be applied in promoting its objects; and
- (c) a constitution which prohibits it from paying or distributing its income and property among its members to an extent at least as great as imposed on the Company by **clause 5.2(b)**.

18.2 Recipient of Surplus

The identity of the corporation(s) or institution(s) referred to in **clause 18.1** is to be determined by a resolution of the Members at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of New South Wales for determination.

19 Funds and Application of Funds

19.1 Derivation of Funds

The funds of the Company shall be derived from its investments, entrance fees and annual subscriptions of members, donations and, subject to any resolution passed by the Company in general meeting, such other sources as the Board determines.

19.2 Depositing of Funds

All money received by the Company shall be deposited as soon as practicable and without deduction to the credit of the Company's bank account.

19.3 Issue of Receipts

The Company shall issue an appropriate receipt when requested.

19.4 Use of Funds

Subject to any resolution passed by the Company in general meeting, the funds of the Company shall be used in pursuance of the Objects and invested in such manner as the Board determines.

19.5 Execution of Cheques and Similar Documents

All cheques, drafts, bills of exchange, promissory notes, electronic transfers and other negotiable instruments shall be signed by any two (2) members of the Board or employees of the Company, being member or employees authorised to do so by the Board.

19.6 Control of Property

The property of the Company shall be controlled by the Board.

20 Notices

20.1 Service of Notices

- (a) A notice may be given by the Company to any Member by:
- (i) serving it on the Member personally;
 - (ii) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Company for the giving of notices;
 - (iii) facsimile to the facsimile number supplied by the Member to the Company for the giving of notices; or
 - (iv) sending it to the email address supplied by the Member to the Company for the giving of notices.
- (b) A notice may be given by the Company to any Director by:
- (i) serving it on the Director personally;
 - (ii) sending it by post to the Director or leaving it at the Director's usual residential or business address;
 - (iii) sending it to the facsimile number supplied by the Director to the Company for the giving of notices; or

- (iv) sending it to the electronic address supplied by the Director to the Company for the giving of notices.
- (c) Where a notice is sent by post within Australia, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the third (3rd) Business Day after the date of posting. Service of a notice to a Member or a Director outside Australia shall be deemed to have been made in the ordinary course of the post.
- (d) Where a notice is sent by facsimile or other electronic means, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the Business Day after it is sent, where the equipment used to send the notice generates evidence of the successful transmission of the notice.
- (e) In the case of:
 - (i) the death, bankruptcy, or unsoundness of mind, of a Member who is a natural person;
 - (ii) a Member who is a natural person whose personal estate is liable to be dealt with in any way under the law relating to mental health; and
 - (iii) a Member being a body corporate, the Member has:
 - (A) a receiver;
 - (B) a receiver and manager;
 - (C) a liquidator;
 - (D) an administrator;
 - (E) an administrator of a deed of company arrangement; or
 - (F) a trustee of other person administering a compromise or arrangement between the Member and someone else,appointed to it,

a notice may be given by the Company to the persons entitled to receive notice following any of the events described in **sub-clauses (i), (ii) and (iii)** by:

- (iv) sending it by post addressed to the person by name or by the title of the representative of the Member appointed as a consequence of the matters described in **sub-clauses (i), (ii) and (iii)** or by any like description at the address, if any, within Australia, supplied for the purpose by the person claiming to be that representative; or

- (v) by giving the notice in any manner in which the same might have been given if the circumstances described in **sub-clauses (i), (ii) and (iii)** had not occurred.
- (f) Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Company to that effect shall be conclusive evidence of service.

21 Miscellaneous Provisions

21.1 Dealings Between Directors and the Company and Disclosures of Interest

- (a) The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions which apply to such contracts or arrangements.
- (b) Any interest of a Director must be disclosed to the Board by the Director in accordance with the provisions of the Corporations Act, and must be dealt with in accordance with the Corporations Act which shall include having the Secretary record all declarations in the minutes of the relevant meeting.
- (c) Subject to **clause 21.1(b)**, a Director who has an interest in a contract or arrangement made by the Company:
 - (i) may not be present while the matter is being considered at a meeting of the Board;
 - (ii) may not vote on the matter;
 - (iii) will not be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (iv) may not sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (v) may not vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- (d) A Director's failure to make disclosure under this **clause 21** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
- (e) A general notice given to the Board by a Director that the Director is an officer, a member of, or otherwise interested in any specified corporation or body or any

contracts or arrangements with other corporations or bodies in which a Director has an interest, stating the nature and the extent of the Director's interest in the corporation or body or the contracts or arrangements with other corporations or bodies in which a Director has an interest, shall, in relation to any matter involving the Company and that corporation or body after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

21.2 Execution of Documents

- (a) Without limiting the manner in which the Company may execute any document, including as permitted under section 126 and section 127 of the Corporations Act, the Company may execute any agreement, deed or other document by:
 - (i) two (2) Directors signing the same; or
 - (ii) one (1) Director and one (1) Secretary signing the same.
- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

21.3 Accounts and Inspection

The Board shall:

- (a) cause proper financial records to be kept and must, where required by the Corporations Act, distribute copies of the financial reports of the Company and a Directors' report in accordance with the requirements of the Corporations Act; and
- (b) cause the financial records to be audited or reviewed by a properly qualified auditor; and
- (c) from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of Members provided that nothing will entitle the Members to greater rights than conferred under the Corporations Act.

21.4 Voluntary Winding Up

The Company may be wound up voluntarily if the Company so resolves by Special Resolution.

21.5 Registered Office

Subject to any resolution of the Board to the contrary, the registered office of the Association shall be at Suite B24, First Floor, Market Plaza Building, Sydney Markets, 2129 in the State of NSW, or if the office is physically relocated, to the relocated address.

21.6 Audit and Auditor/S

- (a) The respective provisions of this clause are subject to the Corporations Act.
- (b) The Company shall at each annual general meeting appoint or renew the appointment of an appropriately qualified person or firm as auditor/s.
- (c) The auditor/s of the Company shall inspect and audit the accounting records of the Company annually in relation to each financial year and shall within four (4) months after the end of each financial year make a report in relation to such audit to the Company.
- (d) The auditor/s, or person authorised by the auditor/s for the purposes of this clause, and the conduct of the audit shall be:
 - (i) entitled at all reasonable times to full and free access to all records and other documents relating directly or indirectly to the receipt or payment of monies or to the acquisition, receipt, custody or disposal of assets by the Company; and
 - (ii) entitled to seek from any officer or employee of the Company such information and explanation as the auditor or authorised person requires for the purposes of the audit,

and where the auditor authorises such a persons for the purposes of this clause the auditor shall serve on the Company notification of the name and address of the person so authorised.

- (e) The auditor may be removed during the term of appointment of the auditor:
 - (i) if the auditor was appointed by the Board, only by a resolution passed at a meeting of the Board by an absolute majority of the Members of the Board; or
 - (ii) if the auditor was appointed by a general meeting of the Members of Company, only by a resolution passed at a general meeting by a majority of the Members of the Company voting at the meeting.
- (f) The auditor may be removed if, in the opinion of a meeting of the Company passing the resolution or the Board passing the resolution:

- (i) the auditor has performed his services and duties in an unprofessional manner;
 - (ii) the auditor has been guilty of gross misconduct of duties;
 - (iii) the auditor has neglected his duties;
 - (iv) the auditor has charged in excess of reasonable fees for the performance of the auditor's services;
 - (v) the auditor ceases to be a registered company auditor or, where the auditor is a firm, at least one (1) member of the firm ceases to be a registered company auditor; or
 - (vi) the auditor has been the auditor who audited the accounts of the Company for two (2) or more successive years.
- (g) The position of auditor shall become vacant if:
- (i) the auditor dies; or
 - (ii) the auditor becomes insolvent under administration within the meaning of the Corporations Law; or
 - (iii) the auditor 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.

21.7 Donations and Levies

The Company must observe the IR Act with respect to the making of loans, grants or donations.

21.8 Resolution of Internal Disputes

Disputes:

- (a) Members must accept mediation under the provision of these clauses as the first and foremost means of settling any member/member dispute and any member/Company dispute (as herein defined).
- (b) In the event of a dispute between Members of the Company (in their capacity as Members) (a "**member/member dispute**"), any member who is a party to a member/member dispute shall refer it to the Board who shall appoint a mediator for the purpose of the mediator mediating the dispute.
- (c) In the event of a dispute between a member of the Company and the Company (a "**member/Company dispute**"), any member who is a party to a member/Company dispute shall refer it to the Board who shall appoint a mediator for the purpose of the mediator mediating the dispute.

- (d) Any person to be appointed as a mediator by the Board:
 - (i) must have an adequate knowledge and understanding of the operations of the marketing of fresh fruit and vegetables;
 - (ii) must not be a member of the Company; and
 - (iii) may in respect of member/member disputes be an employee of the Company.

- (e) In the event a member/member dispute or member/Company dispute cannot be resolved by mediation under the provisions of this clause, a party to the dispute may take such action as it sees fit in relation to the despite.

APPENDIX 1

NSW CHAMBER OF FRESH PRODUCE LIMITED
(ABN 38 706 046 766)
["COMPANY"]

MEMBERSHIP APPLICATION

[Words and expressions defined in the Constitution of the Company used in this document have the same meaning as in the Constitution and sub-clauses (a) to (e) of Clause 4.2 of the Constitution shall apply to this document]

Please read the following notes before completing this application.

1. **All details** (where applicable) on the following pages of this document should be **completed in full** and the **Declaration signed and witnessed** before this application is submitted. ***(Please type or print clearly)***.
2. The completed and signed application should be submitted to NSW Chamber of Fresh Produce Limited at its office in Suite B24, Market Plaza Building, Sydney Markets NSW 2129. (Telephone: (02) 9764 3244)
3. In accordance with the Constitution of the Company, an application cannot be considered for approval by the Board of the Company until all principals of the Applicant have been interviewed in accordance with any requirement of the Directors in accordance with the Constitution of the Company and existing Members have been given notice of the application.
4. This application for Membership will be received and determined in accordance with the Constitution of the Company

Applicant's Name:
(Business or Trading Name)

ABN:

Business (Street) Address:

..... P/Code

Bus. Telephone: Fax

Email address:

Applicant's Representative:

*** (For Office Use Only) ***

Application received: Date20.... Complete:

Members' Comments Sought: Date20.... Method:

Referees interviewed: Date20....

Interviewed by Names:

Date:20....

Submitted to Board: Date:20....

Decision:

Fees Payable: Application Fee: \$.....

Annual Subscription: \$.....

Sub Total: \$.....

Plus GST \$.....

Total: \$.....

***** Applicant to Complete *****

Trading Name of Business:.....

References: (*) 1. Phone:

2. Phone:

3. Phone:

(*) **Company Members with whom the applicant has had business dealings.**

Background: Has the Applicant, any Partner, Shareholder or Director

1. Ever been convicted of any Criminal Offence? Yes No

2. Any unsatisfied judgements against them? Yes No

3. Ever assigned an estate, or entered into a Scheme of Arrangement with Creditors? Yes No
(This includes unofficial schemes)

4. Ever been declared Bankrupt, or otherwise subject to any arrangements arising out of insolvency or associated with a company which was placed in liquidation or otherwise subject to any arrangements arising out of insolvency Yes No

(NOTE – Where any answer is YES please attach full details)

Other Memberships

Is the Applicant:

- 1. A member of SMCS Yes No
- 2. An SML Shareholder Yes No

Proprietorship

- Is the Applicant:
- A Sole Proprietor? or
 - A Partnership? or
 - An incorporated Company, with Limited Liability or a Co-operative Society? or
 - A Public Company?

Complete **one only** of the following sections

Section 1 – Sole Proprietor

Full Name:

Private Address:

.....P/Code.....

Private Telephone:

Section 2 – Partnership

Supply full names, private addresses and telephone numbers of all partners
(if more than four, attach list)

.....

.....

.....

.....

**Section 3 – Incorporated Body (Company
Co-operative Society or Public Company)**

Registered Company Name:

ABN:

Address of Registered Office:

.....P/Code.....

Directors

Full Name: Private Phone:.....

Full Name: Private Phone:.....

Full Name: Private Phone:.....

Full Name: Private Phone:.....

Company Secretary:.....

Name of Auditor or Public Accountant:.....

Address:.....Phone:.....

Capital

Paid Up: \$

Number of each type of Shares issued and Total

Type: (i) (ii)

Number: (i) (ii) Total Number:

Shareholders

Shareholder's Name	Class of Share	Number Held
.....
.....
.....
.....

(If more than 4 shareholders – attach list)

Declaration: The Applicant:

1. Acknowledges it has read the Constitution, Regulations and Code of Ethics (the "Constituent Documents") of NSW Chamber of Fresh Produce Limited (the "**Company**").
2. Hereby applies for admission to Membership of the Company.
3. Declares that the foregoing particulars in support of this application are true and correct.
4. Declares that the applicant is capable of observing the Constituent Documents and undertakes if admitted to Membership to abide by the Constituent Documents now or hereinafter in force and agrees to provide such further information with respect to this application as the Board of the Company may require of the applicant for the purpose of enabling the Board to consider this application.

5. Declares the Applicant will be bound by any amendments of the Constituent Documents effected in accordance with the Corporations Act and/or this Constitution as the case may be.

Signed by or on behalf of the Applicant

Print name of person signing

.....
Signature

.....
Print Name

.....
Specify whether Proprietor or Director of applicant

Witnessed by: Name:(Please print)

Signature:

Date:

This application must be supported by four (4) persons (referees) who are respectively directors or partners of current Members of the Company two (2) of whom must be persons who are current Members of the Board of the Company) each of whom must indicate their support by signing this application below:

FIRST REFEREE

SECOND REFEREE

.....
Name of Member of Company supporting application. Signed on behalf of the Member by:

.....
Name of Member of Company supporting application. Signed on behalf of the Member by:

.....
Signature

.....
Signature

.....
Print Name

.....
Print Name

.....
Print Office Held

.....
Print Office Held

THIRD REFEREE

FOURTH REFEREE

.....
Name of Member of Company supporting application. Signed on behalf of the Member by:

.....
Name of Member of Company supporting application. Signed on behalf of the Member by:

.....
Signature

.....
Signature

.....
Print Name

.....
Print Name

.....
Print Office Held

.....
Print Office Held

Forward completed form and any attachments to NSW Chamber of Fresh Produce Limited

APPENDIX 2

**NSW CHAMBER OF FRESH PRODUCE LIMITED (ABN 38 706 046 766)
["COMPANY"]**

**CLAUSE 15 OF THE CONSTITUTION
FORM OF APPOINTMENT OF PROXY**

[Words and expressions defined in the Constitution of the Company used in this document have the same meaning as in the Constitution and sub-clauses (a) to (e) of Clause 4.2 of the Constitution shall apply to this document]

I,..... (full name)

of.....(address)

being a member of the NSW Chamber of Fresh Produce Limited hereby appoint.....(full name of proxy)

of.....
(address)

as my proxy to vote for me on my behalf at the general meeting of the Company (annual general meeting or special general meeting, as the case may be) to be held on theday of..... 20.....and at any adjournment of that meeting.

*My proxy is authorized to vote in favour of/against (delete as appropriate) the resolution (insert details) *To be inserted if desired.

.....
Signature of member appointed proxy

.....
Date

NOTE: A proxy vote may only be given in a manner permitted by Clause 15 of the Constitution.

APPENDIX 3

NSW CHAMBER OF FRESH PRODUCE LIMITED (ABN 38 706 046 766) ["COMPANY"]

REGULATIONS ADOPTED BY THE BOARD

[Words and expressions defined in the Constitution of the Company used in this document have the same meaning as in the Constitution and sub-clauses (a) to (e) of Clause 4.2 of the Constitution shall apply to this document]

The regulations herein contained, which are binding on all Members, are made by the Board as empowered by **clause 8.1(e)** of the Constitution of the Company. These regulations shall be interpreted as if **clause 4.2(a) to (f)** of the Constitution of the Company was incorporated herein.

1. DIRECTIONS OF COMMITTEE

Members shall comply at all times with the directions of the Board made in accordance with the Constitution or these regulations. All directions shall be forwarded by post, facsimile, email or delivered to each Member in the same manner and on the same terms as notices as provided in **clause 20** of the Constitution.

2. MEMBER'S REPRESENTATIVE

A representative of a Member being a limited company or firm shall not be appointed until fourteen days written notice of the name, address and qualifications of such representative shall have first been given to the Board by the Member.

3. REPORTING OF BREACHES OF RULES OR BY-LAWS

It is obligatory for a member being aware of any breach of the Constitution or Regulations to report the facts in writing to the Chief Executive Officer.

4. PUBLIC STATEMENTS

Only the Chairman, and the Chief Executive Officer of the Company, or any other person authorized by the Board, shall be permitted to make statements to the press, radio, television or other publicity medium on matters involving the Company provided that this restriction shall not prevent or restrict any Member of the Company from advertising in any way whatsoever the services provided by the Member.

5. RELATIONS WITH FELLOW MEMBERS

A Member shall not unfairly or improperly express or imply disparagement of a person or practices of any fellow Member, except through the medium of the Board of the Company should the Member consider that reference to the Board is necessary or desirable.

6. DISPUTES

In the event of a Member being involved in a dispute arising out of the conduct of the Member's business with another Member of the Company and where such dispute cannot be promptly and satisfactorily resolved then the Member is required to report the facts in writing to the Chief Executive Officer without delay and the Chief Executive Officer will endeavour to conciliate and arbitrate in the dispute. Should the mediation be

unsuccessful, the matter will be referred to the Board for conciliation and arbitration, but no action shall be taken by the Board or the Chief Executive Officer unless the Member has first been unsuccessful in resolving the dispute and has requested assistance.

7. NON-DISCLOSURE OF CHAMBER COMMUNICATIONS AND PROCEEDINGS

In no case shall deliberations of the Company be disclosed to non-Members nor shall the contents of the Company reports, bulletins, circulars and correspondence be disclosed to non-Members except with the express consent of the Board.

8. ACCOUNTS AND RECORDS

A Member shall keep proper books of account and associated records so that they will disclose the Member's true financial position at all times.

9. EMPLOYEES' CONDUCT

Where representatives are used to canvass growers every care should be exercised in the selection and guidance of such representatives to prevent any discredit falling on the Company or Members of the Company.

10. CONSIGNMENT INTENDED FOR OTHER MEMBERS

If a Member knows that produce delivered to the Member is intended for some other Member the relevant Member will immediately inform the other Member of the incorrect delivery and request the other Member to take delivery of the consignment from the Member's premises. If a Member knowingly sells a consignment of produce which was intended for another Member the relevant Member shall account in full for proceeds to the other Member and shall not retain any selling charge from such proceeds.

Notwithstanding that the sale of such produce has been made by a Member on credit such Member will forthwith account in full for the proceeds to the other Member.

11. CODE OF ETHICS

Members are at all times expected to adhere to the Company's Code of Ethics.

APPENDIX 4

NSW CHAMBER OF FRESH PRODUCE LIMITED
(ABN 38 706 046 766)

ASSOCIATE MEMBERSHIP APPLICATION

[Words and expressions defined in the Constitution of the Company used in this document have the same meaning as in the Constitution and sub-clauses (a) to (e) of Clause 4.2 of the Constitution shall apply to this document]
Please read the following notes before completing this application.

1. **All details** (where applicable) in this document must be completed in full and the **Declaration signed and witnessed** before this application is submitted. **(Please type or print clearly).**
2. The completed and signed application should be submitted to NSW Chamber of Fresh Produce Limited at its office in Suite B24, Market Plaza Building, Sydney Markets NSW 2129. (Telephone: (02) 9764 3244)
3. In accordance with the Constitution of the Company, an application cannot be considered for approval by the Board of the Company until all principals of the Applicant's have been interviewed in accordance with the Constitution of the Company and existing Members have been given notice of the application.
4. This application for Membership will be received and determined in accordance with the Constitution of the Company

Applicant's Name:

.....
(Business or Trading Name)

ABN:

Business (Street)Address:

.....P/Code.....

Bus. Telephone: Fax No

Email address:

Applicant's Representative:

***** (For Office Use Only) *****

Application received: Date.....20 Complete:

Members' Comments Sought: Date.....20 Method:

Referees interviewed: Date: 20....

Interviewed by Executive: Names:

Date: 20....

Submitted to Board: Date: 20....

Decision:

Fees Payable:	Application Fee:	\$.....
	Annual Subscription:	\$.....
	Sub Total:	\$.....
	Plus GST	\$.....
	Total:	\$.....

***** **Applicant to complete** *****

Trading Name of Business:

References: (*) 1. Phone:

2. Phone:

3. Phone:

(*) Company Members with whom the applicant has had business dealings.

Background: Has the Applicant, any Partner, Shareholder or Director

1. Ever been convicted of any Criminal Offence? Yes No
2. Any unsatisfied judgements against them? Yes No
3. Ever assigned an estate, or entered into a Scheme of Arrangement with Creditors? (This includes unofficial schemes) Yes No
4. Ever been declared Bankrupt, or otherwise subject to any arrangement arising out of insolvency or associated with a company which was placed in liquidation or otherwise subject to any arrangements arising out of insolvency Yes No

(NOTE – Where any answer is YES please attach full details)

Other Memberships

Is the Applicant:

1. A member of SMCS Yes No
2. An SML Shareholder Yes No

Proprietorship

- Is the Applicant: A Sole Proprietor? or
 A Partnership? or
 An incorporated Company, with Limited Liability or a Co-operative Society? or
 A Public Company?

Complete **one only** of the following sections

Section 1 – Sole Proprietor

Full Name:
Private Address:
..... P/Code.....
Private Telephone:

Section 2 – Partnership

Supply full names, private addresses and telephone numbers of all partners
(if more than four, attach list)

.....
.....
.....
.....

**Section 3 – Incorporated Body (Company
Co-operative Society or Public Company)**

Registered Company Name.....
ABN:
Address of Registered Office:.....
.....P/Code.....

Directors

Full Name: Private Phone:
Full Name: Private Phone:
Full Name: Private Phone:

Full Name: Private Phone:

Company Secretary:

Name of Auditor or Public Accountant:

Address:Phone:

Capital

Paid Up: \$

Number of each type of Shares issued and Total

Type: (i) (ii)

Number: (i) (ii) Total Number:

Shareholders

Shareholder's Name	Class of Share	Number Held
.....
.....
.....
.....

(If more than 4 shareholders – attach list)

Declaration: The Applicant:

1. Acknowledges it has read the Rules, Regulations and Code of Ethics (the **“Constituent Documents”**) of The NSW Chamber of Fresh Produce Limited (the **“Company”**).
2. Hereby applies for admission to associate Membership of the Company.
3. Declares that the foregoing particulars in support of this application are true and correct.
4. Declares that the Applicant is capable of observing the Constituent Documents and undertakes if admitted to associate Membership to abide by the Constituent Documents now or hereinafter in force and agrees to provide such further information with respect to this application as the Board of the Company may require of the applicant for the purpose of enabling the Board to consider this application.
5. Declares the Applicant will be bound by any amendments of the Constituent Documents effected in accordance with the Corporations Act and/or this Constitution as the case may be.

Signed by or on behalf of the Applicant

Print name of person signing

.....
Signature

.....
Print Name

.....
Specify whether Proprietor or Director of applicant

Witnessed by: Name:(Please print)

Signature:

Date:

FIRST REFEREE

SECOND REFEREE

.....
Name of Member of Company supporting application. Signed on behalf of the Member by:

.....
Name of Member of Company supporting application. Signed on behalf of the Member by:

.....
Signature

.....
Signature

.....
Print Name

.....
Print Name

.....
Print Office Held

.....
Print Office Held

THIRD REFEREE

FOURTH REFEREE

.....
Name of Member of Company supporting application. Signed on behalf of the Member
Member

by:

.....
Signature

.....
Print Name

.....
Print Office Held

.....
Name of Member of Company supporting application. Signed on behalf of the

by:

.....
Signature

.....
Print Name

.....
Print Office Held

Forward completed form and any attachments to NSW Chamber of Fresh Produce Limited.