As endorsed at a CGA Special General Meeting held on 17 February 2025.

CONSTITUTION

Cherry Growers Australia Limited

ABN 77 797 945 686

Ref: SMJ:310131

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1. Definitions and Interpretation

1.1 Definitions

In this Constitution, unless the context otherwise requires:

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

ACNC Legislation means the ACNC Act and the *Australian Charities and Not-for-profits Commission Regulation* 2013 (Cth);

Annual Return means the information submission made by a Production Member in accordance with clause 8.3;

ASIC means the Australian Securities and Investments Commission;

Board means the board of Directors of the Company;

Book includes a register, any other information, financial report or record and any document, however compiled, recorded or stored, including electronically;

Business Day means a day which is not a Saturday, Sunday, bank holiday or public holiday:

(a) for the purpose of sending or receiving a notice - in the city where the notice is intended to be received; and

(b) for all other purposes - in Melbourne, Australia.

Chair means the chairperson of a general meeting of Members or the chairperson of a meeting of the Board (as the context requires);

Cherry Grower means an entity (including a sole trader, unincorporated association, body corporate, partnership or trustee of a trust) that is carrying on an enterprise growing cherries under a registered Australian Business Number;

Cherry Growing Industry means any industry carried on in Australia in connection with:

(a) growing, harvesting or processing cherries;

(b) packing, storing, transporting, processing, marketing, wholesaling or retailing cherries;

(c) exporting Australian cherries overseas; and/or

(d) the provision of services to Cherry Growers and State Associations;

Commencement Date means the date of incorporation of the Company under the Corporations Act;

Company means Cherry Growers Australia Limited ABN 77 797 945 686;

Confidential Information:

(a) means information (whether or not in material form) given to or gained by a Director before, during or after that person's term of Directorship that relates to:

(i) the Company; or

(ii) beneficiaries of services or funding provided by, or suppliers of services to or on behalf of, the Company; or

(iii) any funding, sponsorship or like arrangements in respect of the Company; and

(b) includes, but is not limited to:

(i) information relating to the business affairs, accounts, marketing plans, prospects, suppliers, research, management, financing, business strategies, inventions, designs or processes;

(ii) computer data bases and computer software; and

(iii) surveys, supplier lists, specifications, drawings, records, reports and statements;

Constitution means this Constitution as amended from time to time;

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

Department means the Commonwealth of Australia as represented by the Department of Agriculture, Fisheries and Forestry or any other Government Agency which is responsible for the collection of Levies from time to time;

Director means a person occupying the position of a director of the Company;

Duty includes, in any particular case where the Board considers it appropriate, a duty arising by reason of the appointment, nomination or secondment in any capacity of an Officer by the Company or, where applicable, a subsidiary of the Company to any other entity;

Electorate means the following individual or groups of States:

(a) Tasmania;

(b) Victoria;

(c) South Australia, Western Australian and Northern Territory;

(d) New South Wales, ACT and Queensland, or

any other single State or combination of States as determined by the Board from time to time;

Financial Year means the period specified in clause 25.3;

Government Agency means any government or any governmental, semi-governmental or administrative department, entity, agency, authority, commission, corporation or body (including those constituted or formed under any statute);

Initial Directors means each person appointed as a director at the Commencement Date;

Insolvency Event means:

(a) in relation to a corporate Member, when the Member:

(i) has an administrator, receiver, manager, receiver and manager, liquidator or provisional liquidator, external controller or similar official appointed in relation to it;

(ii) is wound up or is dissolved or an application or order is made for its winding up or dissolution otherwise than for the purpose of a solvent amalgamation or reconstruction;

(iii) is, or states that it is, unable to pay its debts when they fall due or is deemed unable to pay its debts under any applicable legislation (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute);

(iv) enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors generally or any class of its creditors or proceedings are commenced to sanction any such arrangement, composition, compromise or assignment;

(v) ceases, or threatens to cease, to carry on business;

(vi) takes any steps to obtain protection or is granted protection from its creditors under the laws of any applicable jurisdiction; or

(b) in relation to a Member that is an individual, when the Member:

(i) is unable to pay their debts when due or an application is made to declare that person is bankrupt;

(ii) commits an act of bankruptcy or compounds with their creditors;

(iii) brings their estate within the operation of any law relating to bankrupts;

(iv) enters into a composition or deed of arrangement with their creditors;

(v) takes the benefit of any statute that may be available for bankrupt or insolvent debtors; or

(c) any analogous event occurs in relation to a Member in any jurisdiction;

Instantaneous Communication Device includes telephone, email, videoconference or any other audio, visual or data service or device which permits instantaneous communication between Directors or Members;

Levy means the statutory levy payable by a Cherry Grower to the Department pursuant to:

(a) Schedule 10 to the *Primary Industries (Customs) Charges Act 1999* (Cth);

(b) Schedule 15 to the *Primary Industries (Excise) Levies Act 1999* (Cth);

(c) the *Primary Industry Levies and Charges Collection Act 1991* (Cth);

(d) any modification or re-enactment of or any provisions substituted for such legislation or provisions, or

any substantially similar levy or payment to be made by a Cherry Grower to the Federal government in connection with its cherry production;

Liability means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending an action for a liability incurred as an Officer;

Levy Member means a person that is, or is admitted as, a member of the Company in the Levy Membership category under clause 4.2(b)(iii);

Member means a person that is, or is admitted as, a member of the Company under clause 4.3;

Member Agreement means any agreement between the Company and a Member setting out the roles, responsibilities and obligations of each party;

Member-elected Director has the meaning given in clause 11.1(b)(i);

Object means the object for which the Company is established set out in clause 3;

Office means the registered office from time to time of the Company;

Officer means a Director or Secretary or a director or secretary of a subsidiary of the Company and includes a person who formerly held any such position;

Present in connection with a meeting of Members, means present in person, by Instantaneous Communication Device or by proxy (but not by attorney) at the meeting;

Production Member means a person that is, or is admitted as, a member of the Company in the Production Membership category under clause 4.2(b)(i);

Register means the register of Members to be kept pursuant to the Corporations Act;

Registered Charity means an entity that is registered under the ACNC Act as the type of entity referred to in Item 1 of column 2 of the table in subsection 25-5(5) of the ACNC Act;

Regulation means a regulation made by the Board in accordance with clause 16.1;

Relevant Extent means:

(a) to the extent the Company is not precluded by law from doing so;

(b) to the extent and for the amount that the Officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and

(c) where the Liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of Duties in relation to another corporation, to the extent and for the amount that the Officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation;

Return Date has the meaning given in clause 8.3(a);

Secretary means a person who performs all or any of the Duties of a secretary of the Company or any person appointed to act temporarily as such; and

Special Resolution has the meaning given to that term in the Corporations Act;

State means each State and Territory in Australia and for avoidance of doubt, includes the Australian Capital Territory and the Northern Territory;

State Association Member means a person that is, or is admitted as, a member of the Company in the State Association Membership category under clause 4.2(b)(ii);

Voting Member means each Member who is in a category of Membership which affords that person a right to vote at meetings of Members, and, as at the Commencement Date, means, in the case of:

(a) the election and nomination of Member-elected Directors, each Production Member and State Association Member; and

(b) any other matter which is required to be exercised or done by the Company in general meeting whether pursuant to this Constitution, the ACNC Legislation (at any time when the Company is a Registered Charity) or the Corporations Act, each Production Member, State Association Member and Levy Member; and

Voting Period means the 12-month period commencing on 1 May and ending on 30 April in each calendar year.

1.2 Construction

In this Constitution unless the context otherwise requires:

(a) words in the singular include the plural and vice versa;

(b) any gender includes any other gender;

(c) if a word or phrase is defined, its other grammatical forms have corresponding meanings;

(d) a reference to:

(i) a person includes a natural person 18 years or over, a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;

(ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;

(iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation:

(iv) a right includes a benefit, remedy, discretion or power;

(v) time is to local time in Victoria;

(vi) "$" or "dollars" is a reference to the currency of the Commonwealth of Australia;

(vii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission;

(e) if the date on or by which any act must be done under this Constitution is not a Business Day, the act must be done on or by the next Business Day; and

(f) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

2. Name

The name of the Company is: “Cherry Growers Australia Limited” or such other name as the Members may approve in accordance with this Constitution and the Corporations Act.

3. Object of the Company

The Company’s object is to act in the interests of Australian Cherry Growers as a whole and improve the productivity, farm gate profitability and global competitiveness of the Cherry Growing Industry including, without limitation, by:

(a) engaging in activities that enhance the methods of production, handling, storage, transport and marketing of Australian cherries and encourage more efficient production of high quality fruit suitable for national and international markets;

(b) representing, promoting, protecting and furthering the interests of the Cherry Growing Industry in relation to the export of cherries from Australia and the sale, distribution and consumption of Australian cherries overseas;

(c) formulating strategies and policies to facilitate and assist the production, exporting and marketing of cherries in Australia and overseas;

(d) facilitating and carrying out marketing activities in respect of Australian cherries nationally and internationally which are aimed at increasing the demand for and consumption of cherries by consumers;

(e) undertaking, co-ordinating and funding cherry production research and development activities and providing information and services related to such activities and their outcomes;

(f) consulting, collaborating and co-operating with Cherry Growers and improving communication, education and technology transfer to Cherry Growers by co-operating with State Associations, regional bodies and other relevant organisations;

(g) collecting information and statistics relating to the Cherry Growing Industry and preparing, analysing and distributing information and statistics relating to the Cherry Growing Industry for the benefit of the industry; and

(h) collaborating with Federal and State government agencies in relation to crisis and issues management, regulatory activities and any other activities which may be necessary or convenient for the improvement of the productivity or the market performance of the Cherry Growing Industry, and

for avoidance of doubt, the Company may not act to benefit any individual Member.

4. Members

4.1 Initial and subsequent Members

The Members of the Company are:

(a) the members at the Commencement Date; and

(b) any other person whom the Directors admit as a member in accordance with clause 4.3.

4.2 Categories of Membership

(a) As at the Commencement Date, Membership of the Company will comprise four classes.

(b) The four classes of Members are:

(i) **Production Members**, being a Cherry Grower that meets the criteria for admission to membership in this class and is accepted for membership as a production member in accordance with clause 4.3;

(ii) **State Association Members**, being the organisation recognised by the Board as being the representative body for Cherry Growers in the State in which it is located, that is accepted for membership as a State Association Member in accordance with clause 4.3. For avoidance of doubt, only one organisation may represent each State;

(iii) **Levy Members**, being a Cherry Grower that has paid or is liable to pay a Levy that is accepted for membership as a levy member in accordance with clause 4.3 (but for avoidance of doubt, does not include any intermediary which collects any Levy and remits the Levy on behalf of a Cherry Grower); and

(iv) **Affiliate Members**, being an organisation or individual who has an interest in the Cherry Growing Industry, that is accepted for membership as an affiliate member in accordance with clause 4.3.

(c) Where classes of Members have been established, the Directors may, by resolution and subject to any requirement in the Corporations Act, reclassify or convert Members from one class to another.

4.3 Admission as a Member

Any person that:

(a) forwards to the Secretary a written application for Membership (in the form determined by the Board from time to time);

(b) is a body corporate, in the case of an applicant for State Association Membership;

(c) agrees to be bound by the Constitution (including paying the guarantee under clause 33 if required);

(d) provides evidence demonstrating that they comply with the criteria for Production, State Association, Levy or Affiliate Membership (as the case may be) set out in Regulations; and

(e) in the case of applicants for Production, State Association, Levy and Affiliate Membership, pays the then applicable annual subscription fee (if any),

may be admitted as a Member in the relevant class of Members by resolution of the Board in accordance with this Constitution.

4.4 Consideration of Membership Applications

(a) On the Board accepting an application for Membership, the Secretary will send confirmation of acceptance as a Member (including the date of commencement of Membership) to the applicant.

(b) If an application for Membership is rejected, the Secretary must, as soon as practicable, notify the applicant that the application has been rejected and must refund any subscription fees paid by the applicant in accordance with clause 4.3.

(c) Neither the Board nor the Company will be required to give any reason for the rejection of the application for membership.

4.5 Commencement of Membership

For the avoidance of doubt, an applicant's Membership commences on the making of a resolution of the Board to that effect.

4.6 Fees

(a) The annual subscription fee payable and the period for which such fee entitles Membership and any Membership application fee, will be determined by the Board from time to time.

(b) The annual subscription fee in respect of each Financial Year will be payable on or before 31 March in that Financial Year or on such other day as the Board determines.

(c) The Board may on the application by or on behalf of a Member or on its own initiative grant any concession with regards to the annual subscription fees as it thinks fit, including the full or partial waiver of all or any of such fees, and any such concession may apply to an individual Member or applicant, or to any class of Members or applicants specified by the Board from time to time.

(d) A Member that ceases to be a Member before any fee becomes due and payable will not be liable for that fee.

(e) Subject to clause 4.6(c), resignation or other termination of a person's Membership of the Company will not relieve the person of responsibility for any financial obligations under this Constitution, including fees and other amounts due and payable by the Member to the Company, accruing up to the effective date of termination.

4.7 Membership not transferable

Membership is personal to the Member and is not transferable.

4.8 Default in payment of Membership fees

(a) If a Member that is:

(i) a Production Member, State Association Member, Levy Member or Affiliate Member fails to pay any Membership fee within two (2) months of the due date for such payment; or

(ii) a Production Member fails to:

(A) pay any fee due and payable under a Member Agreement within two (2) months of the due date for such payment; or

(B) submit an Annual Return by the Return Date in accordance with clause 8.3

the Company may, while any such fee remains unpaid or Annual Return remains outstanding, give notice (**Default Notice**) to that Member requiring payment of the unpaid amount or submission of the Annual Return (as the case may be).

(b) The Default Notice given by the Company must:

(i) name a further day (not earlier than fourteen (14) days from the date of the notice) by which the payment required by the Default Notice is to be made or the Annual Return submitted (as the case may be); and

(ii) state that if payment is not made in full or the Annual Return is not submitted by that time, the Membership of that person may be forfeited.

(c) If a Member does not comply with any Default Notice in respect of :

(i) overdue Membership fees within the period specified, the Board may declare the person's Membership forfeited and the person ceases to be a Member of the Company from the date of such declaration;

(ii) a fee payable under a Member Agreement within the period specified, the Member Agreement will automatically terminate and that Member will cease to be entitled to the Members' benefits provided in the relevant Member Agreement and this Constitution; or

(iii) submission of an Annual Return within the period specified, the Board may declare the person's Membership cancelled and the person ceases to be a Member of the Company from the date of such declaration.

4.9 Cessation of Membership

A person ceases to be a Member if the person:

(a) resigns their Membership by giving three (3) months' written notice to the Secretary or such lesser notice period as may be accepted by the Board;

(b) has their Membership forfeited in accordance with clause 4.8;

(c) is subject to an Insolvency Event;

(d) dies;

(e) becomes a person liable, or a person whose assets are liable, to any control or administration under any law relating to physical or mental health;

(f) is convicted of an indictable offence which is determined by the Board to be inconsistent with the welfare, interests or character of the Company or the Object; or

(g) is expelled from membership in accordance with clauses 4.10 and 4.11.

A Member who resigns, is expelled from the Company or whose Membership otherwise ceases in accordance with this clause 4, does not have any claim on the Company, its funds or property.

4.10 Expulsion from Membership

Subject to clause 4.11, if in the opinion of the Board:

(a) a Member's conduct is detrimental or prejudicial to the welfare, interests or character of the Company or the Object;

(b) a Member knowingly makes or gives any false, misleading or deceptive statement or representation verbally or in writing to the Company; or

(c) a Member fails to comply with this Constitution or any Regulations;

the Board may resolve to expel such person from Membership of the Company.

4.11 Censure Procedure

(a) A resolution of the Board passed at a Board meeting pursuant to clause 4.10 (**Censure Resolution**), will be of no force or effect unless prior to passing the Censure Resolution:

(i) the Board has given not less than ten (10) Business Days prior notice in writing to the Member referred to in the proposed Censure Resolution (**Censure Notice**);

(ii) a Censure Notice must include:

(A) the date and time of the Board meeting at which the Censure Resolution will be considered;

(B) a description of the proposed Censure Resolution;

(C) a statement containing reasonable particulars of the person's conduct to be considered by the Board; and

(D) a statement that the Member has a right to put their case to the Board by giving the Secretary a written statement for circulation to the Directors and appearing at the Board meeting at which the proposed Censure Resolution is to be considered to speak for a reasonable time.

(b) Either prior to or at the meeting of the Board, the person may request the Chair to elaborate on any of the particulars set out in the Censure Notice. The Board must use all reasonable endeavours to comply with such a request.

(c) A Member who appears at a Board meeting to address the allegations referred to in a Censure Notice will be entitled to speak for a reasonable time, such time to be determined by the Chair.

(d) A statement given under clause 4.11(a)(ii)(D) must be circulated to the Board before the meeting or, if there is insufficient time, read out at the meeting before the Censure Resolution is considered, unless the statement is more than one thousand (1,000) words or is considered defamatory by the Chair.

(e) A Censure Resolution will only be passed if it receives the support of at least three-quarters of the Directors eligible to vote and voting on resolution.

(f) The Secretary must give the Member written notice of the passing of a Censure Resolution as soon as reasonably practicable after the Board meeting to consider the Censure Resolution is held.

4.12 Audit of Member Information

(a) The Company may, by notice given to a Member, require the Member to provide written evidence in respect of:

(i) the Member's eligibility for Membership;

(ii) if the Member is a Production Member, the completeness and accuracy of information provided by the Production Member in any Annual Return; or

(iii) the completeness and accuracy of any other information requested by the Company and provided by the Member, and

the Member must comply with such notice within 28 days of the date on which notice is given by the Company.

(b) The Company may require that information referred to in clause 4.12(a) is supported by a statutory declaration made by the Member or an officer of the member or by a certificate given by an independent person approved by the Company and, if requested a Member must provide the requested statutory declaration or certificate.

5. Register of Members

(a) The Secretary must keep the Register at the Office and must enter in the Register:

(i) the full names and addresses of Members;

(ii) any alternative address nominated by a Member for the service of notices;

(iii) the date on which each Member becomes and ceases to be a Member; and

(iv) the number of votes allocated to each Production Member for each Voting Period.

(b) Each Member must notify the Company in writing of any change in that Member's name, address or email address, within one (1) month after the change.

6. General Meetings

6.1 Holding of general meetings

(a) General meetings are to be held at the times and places resolved by the Board.

(b) The Company may hold a general meeting using any Instantaneous Communication Device that gives Members as a whole a reasonable opportunity to participate, including hearing the proceedings and being heard.

6.2 Convening of general meetings

The Directors may at any time convene a general meeting of the Company.

6.3 Requisition Process and Response

(a) The Directors must, on receiving a written requisition made by at least ten (10) percent of the Voting Members, convene a general meeting of the Company.

(b) Voting Members may inspect and copy the Register by appointment with the Secretary but only for the purpose contemplated in clause 6.3(a). The Register must not be used for any other purpose.

(c) The written request for a general meeting by Voting Members:

(i) must state the resolution/s to be proposed at the meeting;

(ii) must be signed by all Voting Members requesting the meeting;

(iii) must be given to the Company at the Office; and

(iv) may consist of several documents in similar form, each signed by one or more of the Voting Members making the requisition.

(d) The Board must, as soon as practicable and no later than 21 days after receipt of a requisition from Voting Members to hold a meeting in accordance with subclauses 6.3(a) and 6.3(c), use all reasonable endeavours to call the meeting. The meeting must be held not later than two (2) calendar months after the request is given to the Company.

6.4 Board failure to call Requisitioned Meeting

(a) Voting Members with more than 50% of the votes of the Voting Members who requisitioned the general meeting under clause 6.3 may call and arrange to hold the general meeting if the Directors do not do so within 21 days after the request is given to the Company.

(b) The general meeting must be called in the same way, so far as is possible, in which general meetings of the Company are usually called. The meeting must be held not later than three (3) calendar months after the requisition is given to the Company under clause 6.3.

(c) To call the general meeting, the Voting Members requesting the meeting may ask the Company for a copy of the Register. Despite section 173(3)(b) of the Corporations Act, the Company must give the Voting Members requesting the meeting a copy of the Register without charge.

(d) The Company must pay the reasonable expenses incurred by the Voting Members convening and holding the meeting as a result of the Directors failing to call and arrange to hold the meeting in accordance with clauses 6.3(a) and 6.3(d).

6.5 Postponement and Cancellation of Meetings

(a) The Board may by notice not later than seventy-two (72) hours prior to the time of the meeting, change the venue for, postpone or cancel a general meeting, unless the meeting is called and arranged to be held by the Voting Members or the Court under the Corporations Act. Any meeting postponed in accordance with this clause will be taken to have been duly convened under the first notice.

(b) If a general meeting is requisitioned by Voting Members in accordance with clause 6.3, the Directors may not cancel it without the consent of the requisitioning Voting Members.

6.6 Notice of meetings

(a) At least twenty-one (21) days' prior notice must be given of a meeting of Members.

(b) The notice must specify the place, date and time of the meeting and in the case of special business, the general nature of that business.

(c) A notice convening a general meeting must be given to each Member, each Director and the auditor for the time being of the Company. Except as required by the Corporations Act, no other person is entitled to receive notices of general meetings.

(d) A notice convening a general meeting may be given either personally, by post, courier, email or any other form of wireless communication.

(e) A notice of meeting sent by post is taken to be delivered on the Business Day after it is posted.

(f) A notice of meeting sent by electronic means is taken to be received on the Business Day that it is sent.

6.7 Omission to give notice

(a) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice does not invalidate the proceedings or any resolution passed at the meeting.

(b) A person's attendance at a general meeting waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person objects to the holding of the meeting at the beginning of the meeting.

6.8 Ordinary and Special business

(a) Other than items of business requiring a Special Resolution under the provisions of the Corporations Act or this Constitution, all other items of business to be conducted at a meeting of Members will be dealt with as ordinary business and will be passed on the vote in favour of at least fifty percent (50%) of the votes cast by Voting Members Present and entitled to vote on the resolution.

(b) Business conducted at an Annual General Meeting for:

(i) the confirmation of the minutes of the preceding meeting:

(ii) the receipt and consideration of the annual financial report and the reports of the Directors and the auditor;

(iii) the appointment of the auditor of the Company;

(iv) the election of Member-elected Directors; and

(v) the transaction of any business which under the Corporations Act or this Constitution is required to be transacted,

will be dealt with as ordinary business.

6.9 Resolutions to amend Constitution

(a) A resolution to amend this Constitution or this clause 6.9 must be passed as a Special Resolution and will be decided in the affirmative where seventy-five percent (75%) of the votes cast by Voting Members Present at the meeting and entitled to vote on the resolution are cast in favour of the resolution.

(b) If the Company is a Registered Charity, the Voting Members must not pass a Special Resolution to amend this Constitution if such amendment has the effect that the Company ceases to qualify to be a Registered Charity.

7. Proceedings at General Meetings

7.1 Quorum

(a) No business is to be transacted at any general meeting unless a quorum is present at the time the meeting proceeds to business.

(b) Ten (10) Voting Members Present constitutes a quorum for the transaction of the business of a general meeting.

(c) If a person is attending a general meeting both as a Voting Member and as a proxy, the person may only be counted once for the purposes of this clause.

7.2 Lack of Quorum

If within thirty (30) minutes after the time appointed for the general meeting a quorum is not present:

(a) in the case of a meeting convened on the request of the Voting Members, the meeting must be dissolved; and

(b) in any other case, the meeting will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Directors determine. If at the adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the meeting, the meeting will be dissolved and in the case of the dissolution of an Annual General Meeting, the present Board will continue in office and will have the power to fill any vacancies and appoint an auditor for the ensuing year.

7.3 Chair

(a) The Chair of the Board must preside over every meeting of Members.

(b) If there is no Chair or if the Chair is not present within fifteen (15) minutes after the time appointed for the meeting or is unable, unwilling or refuses to chair the meeting, the Deputy Chair (if any) must chair the meeting.

(c) If there is no Deputy Chair, or if the Deputy Chair is not present within fifteen (15) minutes after the time appointed for the meeting or is unable, unwilling or refuses to chair the meeting, the Voting Members Present and entitled to vote at the meeting must choose another Director to chair the meeting.

(d) If no Director is so chosen or if none of the Directors present are willing to chair the meeting, the Voting Members Present must choose one of their own number to chair the meeting.

7.4 Adjournment

The Chair of a general meeting may, with the consent of the meeting (and must if directed by the meeting), adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

7.5 Notice of adjourned meeting

It is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned general meeting, unless the meeting is adjourned for fourteen (14) days or more, in which case, new notice of the adjourned meeting must be given in accordance with clause 6.6.

7.6 Decision on resolutions

(a) Subject to clause 7.6(d), a resolution put to the vote at a general meeting of the Company, is to be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) required by the Chair (other than a resolution for the election of the Chair of a meeting or a resolution for the adjournment of a meeting) or by not less than ten (10) percent of the Voting Members Present and having the right to vote at the meeting.

(b) Before a vote is taken, the Chair must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

(c) In the event of an equality of votes on a show of hands or on a poll, the Chair will have a casting vote in addition to any vote to which the Chair may be entitled as a Voting Member or as the representative or proxy of a Voting Member.

(d) A question arising at a general meeting of the Company relating to the order of business, the entitlement of any person to attend or vote at the meeting, any procedure or the conduct of the meeting must be referred to the Chair of the meeting, whose decision is final.

(e) Any resolution that could be considered and voted on at a general meeting (other than the election of a Chair or the adjournment of the meeting), may be submitted to Voting Members and voted on by an electronic or postal ballot, to be conducted at such time and in such manner as the Directors determine (subject to any applicable Regulations) and a reference in this Constitution related to voting at a general meeting is to be interpreted as including voting in an electronic or postal ballot.

(f) A resolution passed by an electronic or postal ballot is regarded as passed at the time the result of the electronic or postal ballot is declared, unless the wording of the resolution itself states otherwise.

7.7 Minutes as evidence of result

Unless a poll is duly demanded in accordance with clause 7.6(a), a declaration by the Chair that a resolution has, on the show of hands, been carried or lost, and an entry to that effect in the Book containing the minutes of the proceedings of the Company signed by the Chair, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

7.8 Taking of a poll

(a) If a poll is duly demanded it must be taken before the close of the meeting in the manner and at the time and place, as the Chair of the meeting may direct. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded, provided that a poll on the election of a Chair of a meeting or on any question of adjournment must be taken at the meeting and without adjournment.

(b) The demand for a poll does not prevent the meeting continuing for the transaction of any business other than the question on which a poll has been demanded.

(c) A poll may be demanded before a vote is taken, before the voting results on a show of hands are declared or immediately after the voting results on a show of hands are declared.

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

(e) In the case of a dispute as to the admission or rejection of a vote on a show of hands or on a poll, the Chair must determine the dispute and the determination made in good faith will be final and conclusive.

7.9 Rights of Officers and Advisers to attend General Meetings

(a) The Secretary is entitled to attend and to speak at any general meeting.

(b) The Company's auditor (or auditor's representative) is entitled to attend and speak at any general meeting, on any part of the business of the meeting that concerns the auditor in their capacity as auditor. The auditor's right to attend and speak at any meeting is not affected by the auditor retiring at the meeting or a resolution being passed removing the auditor from office.

(c) Any other person requested by the Board to attend any general meeting is entitled to be present and, at the request of the Chair, to speak at that general meeting.

7.10 Circulating Resolutions

(a) Nothing in this Constitution limits the Company's power to pass a resolution as a circulating resolution.

(b) Circulating resolutions may not be used:

(i) for a resolution to appoint or remove a Director or an auditor;

(ii) for passing a Special Resolution; or

(iii) where the Corporations Act or this Constitution requires a meeting to be held.

(c) The Company may circulate a resolution by email to Voting Members and Voting Members may agree by sending a reply email to that effect, provided it reasonably appears to the recipient that the email has been sent by the Voting Member personally or on the Voting Member's instructions.

8. Representation and voting of Members

8.1 Representation

Members will have the right to attend and speak at meetings of Members, provided they have paid all fees due and payable at the date of the notice of meeting on or before the date on which the meeting is held.

8.2 Entitlement to vote

(a) Subject to this Constitution and any rights or restrictions attached to any class of Membership, at a general meeting:

(i) on a show of hands, every Voting Member Present has one (1) vote; and

(ii) on a poll or in respect of any voting method approved by the Board in accordance with clause 8.2(b), each:

(A) Production Member Present with:

(1) less than 10 hectares under crop and producing cherries has two (2) votes;

(2) 10 or more but less than 20 hectares under crop and producing cherries has three (3) votes;

(3) 20 or more but less than 40 hectares under crop and producing cherries has four (4) votes;

(4) 40 or more but less than 80 hectares under crop and producing cherries has five (5) votes; and

(5) more than 80 hectares under crop and producing cherries has six (6) votes,

such votes to be determined by the Board for each Voting Period in accordance with the Production Member's Annual Return submitted by the Production Member in accordance with clause 8.3;

(B) State Association Member Present has four (4) votes; and

(C) Levy Member Present has one (1) vote.

(b) On a poll, only Voting Members Present may vote unless the Board has approved other means (including electronic) for the casting and recording of votes by Voting Members on any resolution to be put to a general meeting.

(c) If the Board determines that it is not able to accurately, effectively and efficiently determine the voting rights on the basis of each Production Member's Annual Return in accordance with clause 8.2(a)(ii)(A), it must determine the voting rights of each Production Member by use of any other fair, equitable and transparent method as determined by the Board, using a similar approach to the allocation of votes as set out in clause 8.2(a)(ii)(A).

(d) The Board's determination of a Production Member's voting rights under clause 8.2(a)(ii)(A) or 8.2(c) will be conclusive.

(e) An objection to the qualification of a person to vote at a general meeting:

(i) must be raised before or at the meeting at which the vote objected to is given or tendered; and

(ii) must be referred to the Chair, whose decision is final.

8.3 Annual Returns for Production Members

(a) For the purposes of determining the voting entitlement of Production Members:

(i) the Board must set a date by which each Production Member must submit an Annual Return for each Financial Year (**Return Date**);

(ii) the Return Date must not be earlier than 31 March immediately following the end of the relevant Financial Year;

(iii) each Production Member must submit an Annual Return, which may include a statutory declaration, in the form prescribed by the Board in Regulations:

(iv) the Company may:

(A) request information regarding the payment of Levies from the Department or from such other persons as it considers appropriate; and

(B) require the review of Annual Returns as a consequence of information received regarding payments or receipts which is not consistent with the information contained in any Annual Return; and

(v) the Board may refuse to allocate any votes for the applicable Voting Period to a Production Member that, by the Return Date for the relevant Financial Year:

(A) fails to submit an Annual Return; or

(B) submits an incomplete or inaccurate Annual Return.

(b) The Company will use all reasonable endeavours to procure that any information submitted by a Production Member in their Annual Return will not be disclosed to any person other than the Chief Executive Officer, Chief Operating Officer or Secretary of the Company, or any professional advisor engaged by the Company who has obligations to keep such information confidential.

9. Proxies

9.1 Appointment of proxy

(a) A Voting Member may appoint one of the following persons:

(i) the State Association Member in the State in which the Voting Member has its principal place of business or resides;

(ii) the Chair; or

(iii) any other person who may, but need not be, a Voting Member,

as their proxy, and that proxy is entitled to vote on a show of hands or on a poll.

(b) A proxy may be appointed for all general meetings, for a specified number of general meetings or for a particular general meeting.

9.2 Instrument of proxy

(a) An instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument so provides:

(i) the proxy is not entitled to vote on the proposed resolution except as directed in the instrument; and

(ii) the Chair may, by taking whatever steps they think fit, ensure that effect is given to those directions, including by pre-filling out relevant voting papers and regarding such votes as cast.

(b) A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.

(c) An instrument appointing a proxy need not be in any particular form provided it is in writing, legally valid and either:

(i) signed by the appointor or the appointor's attorney; or

(ii) authenticated in such manner as the Directors may determine.

9.3 Proxy to be deposited at the Office

(a) A proxy may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy and the authority under which the instrument is signed or a certified copy of the authority, are received in the places or electronic addresses at least:

(i) forty-eight (48) hours; or

(ii) such lesser period specified for this purpose in the notice calling the meeting,

prior to the meeting, and for this purpose the lesser period may be any time before the time set for holding the meeting or adjourned meeting.

(b) An instrument appointing a proxy is received when it is received at any of the following:

(i) the Office:

(ii) a place or electronic address specified for the purpose in the notice of meeting.

(c) The Directors may waive all or any of the requirements of clauses 9.2 and 9.3 and in particular may, on the production of such other evidence as the Directors require to prove the validity of the appointment of a proxy, accept:

(i) an oral appointment of a proxy;

(ii) an appointment of a proxy which is not signed or executed in the manner required by clause 9.2(c); and

(iii) the deposit, tabling or production of a copy (including a copy sent by facsimile) of an instrument appointing a proxy or of the power of attorney or other authority under which the instrument is signed.

(d) A vote given in accordance with the terms of an instrument appointing a proxy is valid despite the revocation of the instrument or of the authority under which the instrument was executed, if no notice in writing of the revocation has been received by the Company by the time and at one of the places at which the instrument appointing the proxy is required to be received under clause 9.3(b).

(e) The appointment of a proxy is not revoked by the appointor attending and taking part in the general meeting but, if the appointor votes on any resolution, the proxy is not entitled to vote, and must not vote, as the appointor's proxy on the resolution.

9.4 Form of proxy

The Board must from time to time determine the form of the instrument of proxy, which will be valid, if it is signed by the Voting Member making the appointment.

9.5 Proxy's Authority

(a) Unless otherwise provided in the instrument, an instrument appointing a proxy will be taken to:

(i) confer authority to agree to a meeting being convened by shorter notice than is required by this Constitution;

(ii) confer authority to speak to any proposed resolution on which the proxy may vote;

(iii) appoint the Chair as the proxy unless the Voting Member clearly specifies another person as proxy and that person attends the general meeting:

(iv) demand, or join in demanding, a poll;

(v) even though the instrument may refer to specific resolutions and may direct the proxy how to vote on those resolutions, confer authority to:

(A) vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions are not put or any similar motion;

(B) vote on any procedural motion, including any motion to elect the Chair, to (only in the case of a Chair elected under clause 7.3(d)) vacate the chair or to adjourn the meeting; and

(C) to act generally at the meeting; and

(vi) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, confer authority to attend and vote at the re-scheduled or adjourned meeting or at the new venue.

(b) A proxy's authority to speak and vote for a Voting Member at a meeting is suspended while the Voting Member is present at the meeting, unless the Voting Member directs otherwise.

9.6 Identification of proxy

The Chair of a meeting may require a person acting as a proxy to establish to the satisfaction of the Chair that they are the person nominated as proxy in the form of proxy lodged under this Constitution. If the person does not comply with such request and provide any information reasonably requested by the Chair to establish their identity, they may be denied access to the meeting.

10. Corporate Representatives

10.1 Power to appoint

(a) A Member that is a body corporate (**Corporate Member**) may appoint:

(i) a member of its board or other governing body;

(ii) its chief executive, general manager, executive director or chief financial officer; or

(iii) any other duly authorised person,

to exercise all or any of the powers the Member may exercise at meetings of the Company's members and relating to resolutions to be passed without meetings.

(b) A Corporate Member may appoint more than one corporate representative however, only one representative may exercise the Corporate Member's powers at any one time, including in the case of a Voting Member, the right to vote at any general meeting.

10.2 State Association Member Delegates

(a) A State Association Member may appoint up to three (3) representatives from the persons referred to in clauses 10.1(a)(i) to 10.1(a)(i) as its delegates to attend general meetings of the Company and subject to clauses 10.2(b) and 10.2(c), this clause 10 will apply to the appointment of such delegates.

(b) Written notice of appointment of the sole delegate who is to exercise the State Association Member's voting rights at a general meeting (**Voting Delegate**) must be provided by the State Association Member to the Secretary no later than 48 hours before the time of the meeting.

(c) In the absence of any further notice of appointment or revocation of an earlier appointment of a Voting Delegate, a State Association Member's notice appointing a Voting Delegate under clause 10.2(b) will be deemed a standing appointment for future general meetings and in respect of circulating resolutions under clause 7.10.

10.3 Form and scope of appointment

(a) The instrument appointing a corporate representative under clause 10.1 must be in writing under the name of the Corporate Member and must be signed by an authorised representative of the Corporate Member.

(b) If the instrument is intended to be relied on by the Corporate Member for the purposes of a general meeting of the Company, the instrument appointing the corporate representative must be given to the Secretary not less than one (1) week before the date fixed for that meeting.

(c) The appointment may set out restrictions on the corporate representative's powers.

(d) Unless otherwise specified in the appointment, the corporate representative may exercise all the powers that the Corporate Member is entitled to exercise at a Members' meeting including, in the case of a Voting Member, voting on a resolution.

(e) If the appointment is to be by reference to the position held, the instrument appointing the corporate representative must specify the position.

10.4 Duration of appointment

(a) The appointment of a corporate representative may be a standing appointment.

(b) An appointment of a corporate representative may be revoked by the appointing Corporate Member at any time by notice in writing to the Company.

11. Directors

11.1 Number and Composition

The Board will consist of not less than four (4) persons and not more than nine (9) and will comprise:

(a) during the period from the Commencement Date to the date of the first Annual General Meeting after the Commencement Date, the Initial Directors; and

(b) on and from the first Annual General Meeting after the Commencement Date up to:

(i) six (6) persons elected by Voting Members (**Member-elected Directors**); and

(ii) three (3) persons appointed by the Board (**Board-appointed Directors**).

11.2 Directors

The Directors of the Company are:

(a) the Initial Directors; and

(b) each other person appointed or elected as a Director in accordance with this clause 11 or clause 12.

11.3 Change to the Number of Directors

The Members may by resolution increase or reduce the number of Directors specified in clause 11.1 and may determine the number of Directors to retire by rotation in accordance with clause 13.1.

11.4 Casual Vacancies

(a) Subject to clause 11.3, if any vacancy of Directors occurs, that vacancy may be filled by a person appointed by the Board.

(b) The person filling the vacancy holds office only until the next Annual General Meeting and is then eligible for election by the Members for up to four (4) further terms of up to two (2) years.

(c) The appointment of a person to fill a casual vacancy will not be taken into account in determining the Directors whose tenure is to expire by rotation at that meeting under clause 12.

11.5 Board-appointed Directors

(a) Subject to the cap on Board-appointed Directors in clause 11.1 and to clause 11.3, the Board may at any time appoint any person as a Board-appointed Director.

(b) A person appointed as a Board-appointed Director must have such skills or relevant experience as are agreed by a majority of Directors to be beneficial to the Company in achieving the Object and/or to facilitate the optimum operation of the Board and the Company.

(c) The tenure of all Board-appointed Directors expires at the next Board meeting to occur after every Annual General Meeting of the Company.

(d) On the expiry of the tenure of any Board-appointed Director, the Board may re-appoint them as a Board-appointed Director in accordance with this clause.

(e) A Board-appointed Director whose tenure expires is eligible for re-appointment as a Board-appointed Director, without needing to give any prior notice of their intention to submit themselves for re-appointment provided that a Director may not serve for more than eight (8) consecutive years in office.

12. Election and Appointment of Directors

12.1 Director Nominations

(a) The Directors must, at least forty-five (45) days prior to each Annual General Meeting call for nominations for election as Member-elected Directors from Voting Members.

(b) Such notice may be given by the Directors to the Voting Members on the Company's website or using any other method the Directors think fit and need not be given to Voting Members individually.

(c) Subject to clause 12.1(d), each Voting Member may nominate one candidate to be elected as a Member-elected Director.

(d) Each candidate for election as a Member-elected Director nominated by a Voting Member in accordance with clause 12.1(c) must have expertise or relevant experience in one or more of the following categories:

(i) a person with at least five (5) years' experience in cherry production or processing in Australia, cherry distribution (whether within or outside Australia) or cherry exports;

(ii) a person meeting one or more of skills or relevant experience requirements agreed by a majority of Directors at the time to be required for a person to be nominated for appointment as a Director of the Company; or

(iii) a person satisfying any criteria for Member-elected Directors specified in Regulations.

(e) All nominations of candidates for election as Member-elected Directors must be received in writing at least twenty-eight (28) clear days before the relevant Annual General Meeting (**Nominations Closing Date**).

(f) The nominations must be duly signed by the nominating Voting Member and:

(i) include confirmation from the candidate as to the Electorate in which they ordinarily reside;

(ii) attach a certified copy of the candidate's birth certificate, passport, current driver photo licence or other proof of the candidate's current residential address reasonably acceptable to the Board;

(iii) attach a consent to act as a Director signed by the candidate;

(iv) include particulars of the candidate, provided such particulars must not exceed one thousand (1,000) words; and

(v) any other information required by the Board.

12.2 Director Candidate List

(a) The Secretary must compile a list of candidates (**Director Candidate List**) from all duly completed nominations received by the Secretary before the Nominations Closing Date.

(b) The Board:

(i) must use reasonable endeavours to select and nominate a candidate in respect of an Electorate, if no candidates residing in that Electorate have been nominated for election; and

(ii) may nominate such additional candidates for inclusion in the Director Candidate List for one or more of the Electorates as it thinks fit.

(c) The Secretary must provide the Director Candidate List to all Voting Members not less than fifteen (15) days prior to the Annual General Meeting at which an election is to take place.

(d) No person except a Member-elected Director whose tenure has expired, a person nominated in accordance with clause 12.1 or a person recommended by the Board for election in accordance with clause 12.2(b) is eligible to be included in the Director Candidate List.

12.3 Election of Directors by Members

(a) The election of Member-elected Directors will take place by way of resolution of Voting Members Present and having the right to vote at the Annual General Meeting or by ballot, in the event that more candidates have been nominated than vacancies exist on the Board, as determined by the Board.

(b) In the event that a ballot is required, the following candidates will be elected as Member-elected Directors:

(i) each candidate with the most votes in each Electorate; and

(ii) the two (2) candidates with the most votes who have not already been elected as Member-elected Directors under clause 12.3(b)(i), regardless of the Electorate in which they reside.

(c) Any ballot to elect Member-elected Directors in accordance with clause 12.3(a) will be supervised by the Secretary or such other person as may be appointed by the Board to act as returning officer.

(d) In the case of an equality of votes for two (2) or more candidates, a further ballot will be taken to determine the successful candidate.

13. Director Retirement and Removal

13.1 Director retirement by rotation

(a) At the second Annual General Meeting after the Commencement Date and thereafter annually, and subject to clauses 13.1(b)(i) to 13.1(f), the tenure of at least one-third of the Member-elected Directors holding office prior to each Annual General Meeting (or, if their number is not a multiple of three (3), then the whole number nearest to and less than one-third of the Member-elected Directors appointed) less the number of Member-elected Directors who have retired or been removed since the last Annual General Meeting, will automatically expire.

(b) For the purpose of clause 13.1(a), those Member-elected Directors whose tenure will automatically expire will be determined by selecting:

(i) first, from those Directors who have held the office of Director of the Company for three (3) or more years and who are required to retire as a Director under clause 13.1(d); and

(ii) second, and subject to clause 13.1(b)(i), from those Directors who have been in office for the longest continuous period of time, and where two (2) or more Directors have held office for an equal continuous period of time, then the selection between them will be determined by lot administered by the Secretary.

(c) No Member-elected Director will have their tenure automatically expire due to the operation of clause 13.1(a) more than once in every three (3) year period.

(d) Subject to the operation of this clause 13, each Member-elected Director is elected for a term of three (3) years expiring at the commencement of the third Annual General Meeting held after the Director was last appointed.

(e) Subject to clause 13.1(f), a Member-elected Director whose tenure expires is eligible for re-election without needing to give any prior notice of their intention to submit themselves for re-election, provided that a Member-elected Director may not serve for more than nine (9) consecutive years in office, after which that person will not be eligible to be nominated for or appointed as a director until a further period of twelve (12) months has elapsed from the date that person ceases to hold office.

(f) A Director who is the Chair and would otherwise be required to compulsorily retire under clause 11.4(b) or clause 13.1(a) may seek nomination for an extension of their tenure as Chair (and Director):

(i) until a term of not more than three (3) years is completed, in the case of retirement pursuant to clause 11.4(b); and

(ii) in any other case, for a further term of three (3) years, provided however that a Chair may serve up to, but not more than, six (6) consecutive years in office from the first date on which they were appointed Chair in accordance with clause 14.1(a), and

in either case, such extension of office must be approved by a resolution of Directors voting in secret ballot at a Board meeting to be held immediately prior to the relevant Annual General Meeting.

(g) A retiring Member-elected Director will be entitled to act as a Director throughout the meeting at which they retire.

13.2 Director Resignation

A Director may resign from office by giving notice in writing to the Secretary of the Director's intention to do so and such resignation takes effect on the expiration of the notice or its earlier acceptance by the Board.

13.3 Removal of Directors

(a) Subject to clause 13.3(b), the Company in general meeting may, by resolution, remove any Director from office.

(b) No resolution for the removal of a Director from office is to be put to a general meeting, unless notice signed by a Voting Member duly qualified to vote at that meeting and signifying the intention of that Voting Member to propose that resolution is received by the Company not less than twenty-eight (28) clear days before the date appointed for holding the meeting.

(c) The Director who is the subject of the notice referred to in clause 13.3(b) may give the Company a written statement for circulation to Members and may request and must be granted permission to speak to the motion at the meeting.

(d) A statement given under clause 13.3(c) must be circulated to the Board before it is despatched to Members or, if there is insufficient time for the statement to be despatched to Members, read out at the meeting before the resolution is considered by the Members Present, unless the statement is more than one thousand (1,000) words or is considered defamatory by the Chair.

13.4 Disqualification of Directors

(a) In addition to the circumstances in which the office of Director becomes vacant by virtue of the Corporations Act or elsewhere in this Constitution, the office of a Director becomes vacant if:

(i) the Director dies or becomes of unsound mind or a person whose personal estate is dealt with in any way under the law relating to mental health;

(ii) the Director becomes bankrupt or an insolvent under administration or makes any composition or arrangement with, or enters into an assignment for the benefit of, their creditors or any class of them;

(iii) the Director is removed from office pursuant to this Constitution or the Corporations Act;

(iv) the Company is a Registered Charity and the Director becomes ineligible to be a Director under the ACNC Legislation;

(v) the Director resigns by notice in writing to the Secretary;

(vi) the Director is convicted of an indictable offence which is determined by a majority of the Board to be inconsistent with the welfare, interests or character of the Company or the Object;

(vii) the Director is absent from two (2) consecutive meetings of the Board without leave of absence from the Chair; or

(viii) the period for which the Director is appointed expires.

(b) No proceedings of the Board, or any resolution passed at any meeting, will be invalidated by reason of any Director taking part or concurring in such meeting or resolution being then disqualified until an entry is made in the minutes of the Board of the Director's office having been so vacated.

13.5 Director remuneration

(a) Clause 31 does not prevent the Company from remunerating each Director for their service as a Director as the Board decides, provided that the aggregate amount of the remuneration paid to Directors does not exceed $105,000 in any Financial Year, or such other amount as may be fixed by the Company in general meeting for that purpose.

(b) A Director's remuneration must be a fixed sum and may be a combination of:

(i) a fixed fee for each attendance at a Board meeting; and

(ii) a share of the amount fixed under clause 13.5(a), divided among the Directors as the Board decides.

(c) A Director's remuneration must not include a commission on, or percentage of, operating revenue of the Company.

(d) A share of a fixed amount accrues from day to day.

(e) The limitation on aggregate remuneration paid to or for the benefit of Directors under clause 13.5(a) does not apply to:

(i) any amount paid or payable under rule 13.5(g) or 13.5(h);

(ii) any amount paid or payable under or in respect of any indemnification or insurance provided or procured in accordance with clause 29; or

(iii) the remuneration to which a Director may be entitled as an employee of the Company or a related body corporate or in a capacity other than as a Director of the Company.

(f) A Director may, by notice in writing to the Company, advise the Board that they do not wish to be remunerated for their service as a Director in accordance with clauses 13.5(a) to 13.5(e), which notice may apply in respect of a particular Financial Year or for an indefinite period.

(g) The Company must also pay out of pocket expenses (including travel and accommodation) incurred by a Director in performing Duties to the Company or otherwise on Company business.

(h) If a Director performs extra or special services for the Company, the Company may pay to the Director any special remuneration the Board decides, in addition to the Director's usual remuneration.

(i) The Company may pay a benefit for past services to a former Director, or the estate of a Director who dies in office, as the Directors decide, provided that such amount does not exceed the amount permitted by this Constitution or the Corporations Act.

14. Office Bearers

14.1 Office Bearers

(a) At the Commencement Date, the Office Bearers of the Company will consist of the Chair, Deputy Chair and Honorary Treasurer.

(b) For avoidance of doubt, a Director, may hold more than one office on the Board, provided that a Director may not act as Chair and Deputy Chair simultaneously.

14.2 Appointment of Office Bearers

(a) At the first meeting of the Board following each Annual General Meeting, the Board must appoint Directors for each Office Bearer position.

(b) If the position of any Office Bearer becomes vacant, the Board must elect a new Office Bearer to fill that vacancy from among the Directors.

14.3 Termination of Office Bearers

(a) Each appointment under clause 14.2 will expire at the commencement of the first Board meeting following next occurring Annual General Meeting.

(b) Office Bearers will be eligible for re-election and in the case of:

(i) the Chair, may serve up to six (6) continuous years in office; and

(ii) any other Office Bearer, may serve an unlimited number of times.

(c) The Board must determine the powers and Duties of each Office Bearer and may terminate a Director's appointment as an Office Bearer at any time.

14.4 Chair to preside at Annual General Meeting

Despite clause 11.5 and subject to clause 7.3, the person holding the office of Chair of the Board immediately before the commencement of an Annual General Meeting will preside as Chair of that Annual General Meeting.

15. Management of the Company

(a) Subject to the Corporations Act, the ACNC Legislation (at any time when the Company is a Registered Charity) and any other provision of this Constitution, the business and affairs of the Company will be managed by the Board which may exercise all the powers and do everything that the Company may exercise or do and which is not required to be exercised or done by the Company in general meeting.

(b) The Board may by resolution:

(i) appoint or employ a person to be an Officer, agent or attorney of the Company with powers, authorities, discretions and Duties, including those vested in or exercisable by the Board for such period and subject to such conditions as the Board thinks fit;

(ii) authorise an Officer to delegate powers and Duties vested in that Officer; and

(iii) subject to any provision of this Constitution, the Corporations Act or (if the Company is a Registered Charity) the ACNC Legislation to the contrary, dismiss or remove any agent, Officer or attorney, with or without cause.

(c) The Board must decide on the responsible financial management of the Company including the manner in electronic transfers, negotiable instruments or cheques must be authorised, signed or otherwise approved.

16. Regulations

16.1 Regulations are made by the Directors

Subject to clause **Error! Reference source not found.**, the Board may from time to time, in its absolute discretion, make, amend, add to, rescind or replace regulations concerning any aspect of the Membership, governance, management, operation or activities of the Company including:

(a) any matter this Constitution envisages may be governed by regulations; and

(b) any other matter relevant to the Company that the Board chooses to regulate.

16.2 Conflict between the Constitution and Regulations

To the extent of any conflict between this Constitution and any Regulation, this Constitution prevails.

16.3 Effectiveness and promulgation of Regulations

Any Regulation made, and any amendment, addition, rescission or replacement:

(a) has effect on and from the date it is made unless otherwise stated in the relevant instrument; and

(b) must be displayed on the website of the Company as soon as practicable after such Regulation or variation is made, provided that failure to bring it to the attention of any person does not render the Regulation or anything done in accordance with the Regulation void, voidable or ineffective.

16.4 Enforceability of Regulations

(a) Any Regulation:

(i) is as valid and enforceable as if it were repeated in this Constitution; and

(ii) can be enforced by legal action.

(b) A failure by a Director, Officer or Member to comply with a Regulation is deemed to be a failure by that Director, Officer or Member to comply with this Constitution.

17. Proceedings of directors

17.1 Procedure generally

(a) Subject to clause 17.1(b), the Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.

(b) The Directors must meet at least four (4) times in each period of twelve (12) months at such place and time as the Board may determine.

(c) Additional meetings of the Board may be convened by a Director at any time by written notice to the Secretary and the Secretary must as soon as practicable after receiving the requisition of a Director, convene a Board meeting.

17.2 Quorum

(a) The quorum for a Board meeting will be the presence of not less than fifty percent (50%) of Directors then holding office and entitled to vote on the relevant resolution plus one.

(b) No business may be conducted unless a quorum is present.

(c) A meeting of the Directors will be adjourned if a quorum is not present within thirty (30) minutes of the time specified for the meeting, to a date and time five (5) Business Days following the time of, and at the same place as, the original meeting to be notified to all Directors.

(d) Any Directors present at any meeting adjourned due to insufficiency of quorum will constitute a quorum for that adjourned meeting.

(e) If the number of Directors in office at any time is not sufficient to constitute a quorum at a Board meeting, the remaining Directors must act as soon as possible to:

(i) increase the Directors to a number sufficient to constitute a quorum required under the Constitution;

(ii) convene a general meeting of the Company for that purpose; or

(iii) appoint additional Directors, and

until such action has been taken the Directors may only act if and to the extent that there is an emergency requiring them to act.

17.3 Notice of Board meetings

(a) Reasonable notice of a Board meeting is to be given to all Directors.

(b) A notice of meeting must:

(i) specify the date, time and place of the meeting;

(ii) indicate the general nature of the business to be conducted; and

(iii) be given at least five (5) Business Days before the date of the meeting.

(c) A Director may waive notice of any meeting of Directors by notifying the Company to that effect in person, by post, by telephone or by other electronic means.

(d) Non-receipt of notice of a Board meeting by, or a failure to give notice of a Board meeting to, a Director does not invalidate any act matter or thing done by or resolution passed at the meeting if:

(i) non-receipt or failure occurred by accident or error;

(ii) before or after the meeting, the Director:

(A) has waived or waives notice of that meeting under clause 17.3(c); or

(B) has notified or notifies the Company of their agreement to that act, matter, thing or resolution personally or by post or by telephone or other electronic means; or

(iii) the Director attended the meeting.

17.4 Chair

The Chair will preside at every Board meeting, or if at any Board meeting the Chair is not present within ten (10) minutes after the appointed time for holding the meeting, or if being present the Chair is unable or unwilling to preside, the Deputy Chair (if any) will preside or if the Deputy Chair is also unable or unwilling to preside at the meeting, then the Directors who are present may choose one of their number to chair the Board meeting.

17.5 Determinations

(a) Subject to this Constitution, questions arising at any Board meeting are to be decided by a majority of votes of Directors present and voting and such decision will for all purposes be taken as a decision of the Board.

(b) Each Director has one vote and a determination by a majority of the Directors will for all purposes be deemed a determination of the Directors.

(c) If there is an equality of votes at a meeting at which a quorum is present, the Chair will have a second or casting vote in addition to their deliberative vote.

17.6 Alternate Directors

A Director may not appoint another person to act as an alternate Director in the place of the appointing Director.

17.7 Delegation to Committees

(a) The Board may delegate any of its powers to one or more committees consisting of one or more Directors or other persons as the Board thinks fit (**Committee**).

(b) Any Committee formed must comply with this Constitution, the ACNC Legislation, the Corporations Act and the Regulations that may be imposed on it by the Board in exercising the Committee's delegated power. A power so exercised will be taken to have been exercised by the Board.

(c) Committees must report periodically to the Board and must conduct their business in accordance with the directions of the Board.

(d) The Chair and any Director nominated in writing by the Board will be ex officio members of each Committee.

17.8 Procedure of Committees

(a) Meetings of Committees consisting of more than one person are governed by the clauses of this Constitution regulating the meetings of the Directors so far as they are applicable and are not superseded by any Regulations made by the Board under this Constitution.

(b) The number of members whose presence at a meeting of a Committee is necessary to constitute a quorum is the number determined by the Board, and if not so determined is two (2).

(c) Minutes of all the proceedings and decisions of every Committee must be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Corporations Act to be made, entered and signed.

17.9 Validation of irregular acts

Any act done by any Board meeting or by a Committee or by any person acting as a Director will be valid even if it is later discovered that:

(a) there was some defect in the appointment or continuance in office of a Director or such other person; or

(b) any of them was disqualified or had vacated office or were not entitled to vote.

17.10 Written resolutions

(a) If a document:

(i) is sent to all those entitled to receive notice of a Board meeting at which a resolution could be put;

(ii) contains a statement that the signatories to it are in favour of that resolution;

(iii) the terms of the resolution are set out or identified in the document; and

(iv) has been signed by not less than fifty percent (50%) of all Directors of the Company entitled to vote on that resolution,

a resolution in those terms is passed on the day on which and at the time at which the document was signed by the last of such Directors and the document is as valid and effectual as if it had been passed at a duly held Board meeting.

(b) For the purposes of clause 17.10(a):

(i) "signed" will include an email from or on behalf of a Director indicating assent to the resolution, provided it reasonably appears to the recipient that the email has been sent by the Director personally or on the Director's instructions;

(ii) two (2) or more separate documents containing statements in identical terms, each of which is signed by one or more Directors will together be taken to constitute one document containing a statement in those terms signed by those Directors at the time at which the last of those documents to be signed was signed by a Director; and

(iii) an email which is received by the Company or an agent of the Company and is sent by a Director will be taken to be signed by that Director not later than the time of receipt of the email by the Company or its agent in legible form.

17.11 Board Meetings by Instantaneous Communication Device

(a) For the purposes of this Constitution and the Corporations Act, each Director consents to the use of an Instantaneous Communication Device for calling or holding a Board meeting.

(b) The contemporaneous linking together by Instantaneous Communication Device of a number of Directors not less than the quorum, whether or not any one or more of the Directors is out of Australia, is deemed to constitute a Board meeting and all the provisions of this Constitution in respect of Board meetings will apply to such meetings held by Instantaneous Communication Device provided the following conditions are met:

(i) all the Directors for the time being entitled to receive notice of the Board meeting to be linked by Instantaneous Communication Device receive notice of such meeting. Notice of any such meeting may be given by the Instantaneous Communication Device or in any other manner permitted by this Constitution;

(ii) at the commencement of the Board meeting each Director taking part in the meeting by Instantaneous Communication Device is able to hear each of the other Directors taking part;

(iii) at the commencement of the Board meeting each Director must acknowledge their presence for the purpose of the Board meeting to all the other Directors taking part; and

(iv) a minute of the proceedings of a meeting by Instantaneous Communication Device is sufficient evidence of those proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chair, and

all proceedings of the Board will be as valid and effective as if conducted at a meeting at which all of the Directors were present.

18. Directors' Duties

(a) The Directors must ensure they are aware of and comply with their Duties as directors under relevant legislation, including if the Company is a Registered Charity, the duties referred to in any standards made under the ACNC Legislation.

(b) If the Company is a Registered Charity, each Director must use all reasonable endeavours to assist the Company to comply with the ACNC Legislation.

19. Confidentiality

19.1 Directors' Confidentiality Obligations

A Director must:

(a) keep confidential all Confidential Information; and

(b) not disclose any Confidential Information to any person, except:

(i) as required by law;

(ii) with the prior written consent of the Company; or

(iii) to the Company's agents, employees or advisers in the proper performance of the Director's responsibilities and Duties under this Constitution and as may be determined from time to time by the Board.

19.2 Use

No Director may use any Confidential Information for the benefit of any person except the Company.

19.3 Confidential Information in the public domain

If any Confidential Information is lawfully within the public domain then to the extent that the Confidential Information is public, and subject to clause 19.4, a Director's obligations under clause 19 will cease in respect of that Confidential Information.

19.4 Uncertainty

If there is uncertainty as to whether:

(a) any information is Confidential information; or

(b) any Confidential Information is lawfully within the public domain,

that information will be deemed to be Confidential Information and not within the public domain, unless the Director is advised by the Board in writing to the contrary.

19.5 Security

A Director must:

(a) maintain proper and secure custody of all Confidential Information; and

(b) use their best endeavours to prevent the use or disclosure of the Confidential Information by third parties.

19.6 Delivery or destruction of Confidential Information

(a) A Director must immediately deliver to the Company all Confidential Information that is physically capable of delivery:

(i) at the end of that person's term as a Director; and

(ii) at any time at the request of a person authorised by the Board.

(b) Instead of delivering Confidential Information, the Board may direct the Director to destroy Confidential Information and certify in writing to the Company that the Confidential Information has been destroyed.

(c) The Board may direct that Confidential Information contained in computer software or data be destroyed by erasing it from the media on which it is stored so that the information cannot be recovered or reconstructed.

19.7 Director must not make copies

(a) A Director must not make any copy or summary of any Confidential Information, except if required to do so in the course of their Duties as a Director.

(b) If a Director is required to make a copy or summary of Confidential Information in the course of the Director's Duties and functions as a Director, the copy or summary belongs to the Company.

19.8 Obligations to continue

A Director must comply with the obligations under clauses 19 to 19.7 at all times during and after that person's term as a Director.

19.9 No limitation

Nothing in this clause 19 will limit any other duty of confidentiality of a Director at law or in equity.

20. Director's interests

20.1 Management and Disqualification

Subject to the Corporations Act and clause 31.

(a) a Director is not disqualified by the Director's office from contracting with the Company in any capacity and may enter into any arrangement, contract or dealing with the Company in any capacity;

(b) no Director or proposed Director is disqualified by that office from becoming or remaining a director of any company in which the Company is in any way interested or which is in any way interested in the Company;

(c) provided that the Corporations Act and this clause have been complied with by a Director, no contract, agreement or arrangement in which the Director is in any way interested, entered into by or on behalf of the Company can be avoided merely because of that Director's interest and the fact that the Director signed the document evidencing the contract, agreement or arrangement will not in any way affect its validity;

(d) a Director must not, and must procure that any company in relation to which they are a director does not, without the Board's prior approval, directly or indirectly supply goods or services to the Company for valuable consideration where such goods or service can be satisfactorily obtained elsewhere; and

(e) no Director who:

(i) enters into a contract, agreement or arrangement in which the Director has an interest; or

(ii) is a director of the other company with which the Company has entered into the contract, agreement or arrangement,

is liable to account to the Company for any profits or remuneration realised by that Director as a result of their being interested or being a director of the other company, if the Director has declared the Director's interest in the matter in accordance with clause 20.2 and not contravened this Constitution or the Corporations Act in relation to the matter.

20.2 Declaration of interest

(a) The nature of a Director's interest in any contract, agreement or arrangement must be declared by that Director at a meeting of the Directors as soon as practicable after the relevant facts have come to their knowledge.

(b) A general notice that a Director is a member of any specified firm or corporation and is to be regarded as interested in all transactions with that firm or corporation is a

sufficient declaration under this clause as regards the Director and the transactions, provided that the extent of that interest is not materially greater at the time of first consideration of the relevant matter by the Board that was stated in the notice.

(c) After giving the general notice it is not necessary for the Director to give any special notice relating to any particular transaction with that firm or corporation.

(d) The Secretary must record in the minutes any declaration made or any general notice given by a Director under this clause.

20.3 Votes by interested Directors

Subject to the Corporations Act, a Director who has a material personal interest in a matter that is being considered at a meeting of Directors must not vote on the matter unless:

(a) the Directors have passed a resolution that the interest does not disqualify the Director from considering or voting on the matter;

(b) the interested Director is entitled to be present and vote as a result of a declaration or order made by ASIC under the Corporations Act; or

(c) the interested Director is otherwise permitted by the Corporations Act to be present and vote, and

the Director may not be present while the vote is taken.

20.4 Director's conflicts of interest

If a Director holds any office or possesses any property such that they might have Duties or interests which directly or indirectly conflict with their Duties or interests as Director, that Director must declare at a meeting of the Directors the fact, nature, character and extent of the conflict.

21. Advisory Boards

21.1 Formation and Constitution

(a) The Company may establish one or more Advisory Boards which, if established, will operate in accordance with this clause 21.

(b) Each Advisory Board will have the following members:

(i) the Chair (or in the Chair's absence, another Director nominated by the Chair); and

(ii) such other persons as the Board may appoint.

21.2 Role

The terms of reference of each Advisory Board will be determined by the Board.

21.3 Reporting and Board response

(a) Each Advisory Board must report regularly to the Board.

(b) The Board will give due consideration to the recommendations of an Advisory Board and provide a written response to each recommendation made by the Advisory

Board, however, the Board will not be bound by any recommendation received from an Advisory Board.

21.4 Chair and Chief Executive Officer Involvement

(a) The Chair will be an ex officio member of each Advisory Board.

(b) The Chief Executive Officer will be entitled to attend meetings of each Advisory Board as an observer but will have no right to vote at such meetings.

21.5 Chair

(a) At the first meeting of each Advisory Board after each Annual General Meeting, the Advisory Board must appoint one (1) of its members to be the Chair of that Advisory Board (**Advisory Board Chair**).

(b) If the position of an Advisory Board Chair becomes vacant, the relevant Advisory Board must elect from its members a new chair to fill that vacancy.

(c) Each appointment, whether pursuant to clause 21.5(a) or 21.5(b), will expire on the commencement of the last meeting of each Advisory Board prior to each Annual General Meeting.

(d) A person appointed as an Advisory Board Chair will be eligible for re-election and may serve an unlimited number of times.

(e) The Advisory Board Chair will preside at every meeting of the relevant Advisory Board, or if no Advisory Board Chair has been elected, or if at any meeting of the Advisory Board, the Advisory Board Chair is not present within thirty (30) minutes after the appointed time for holding the meeting, or if being present, the Advisory Board Chair is unwilling to preside, then the members of the relevant Advisory Board who are present may choose one of their number to chair the meeting.

21.6 Meetings

(a) The Advisory Board Chair will convene meetings of the Advisory Board they chair at such times and they consider fit, provided that the Advisory Board must meet at least once in each complete calendar year occurring after the Commencement Date.

(b) The quorum for a meeting of each Advisory Board will be, where the Board has fixed a number for the quorum, that number of members, and in any other case, three (3) members, one of whom must be the Chair (or in the Chair's absence, another Director nominated by the Chair).

(c) Clauses 17.1, 17.2(b) to 17.2(d), 17.3, 17.5, 17.8 to 17.11 and 19 apply mutatis mutandis to meetings of each Advisory Board.

21.7 Funding and Support

(a) The Board must allocate Company funds to each Advisory Board to enable it to undertake its functions.

(b) The Officers, the Chief Executive Officer and Company staff may be invited by an Advisory Board Chair to attend meetings of the relevant Advisory Board and must provide secretarial support to each Advisory Board.

21.8 Remuneration of Advisory Board Members

Except as provided for in clause 31, no person may receive any remuneration for their services as a member of an Advisory Board.

22. Minutes and Records

22.1 Minute books

The Directors must cause the Company to keep minute Books in which the Secretary ensures the following are recorded within one month after the relevant meeting is held or resolution passed or otherwise in accordance with the Corporations Act:

(a) the names of the persons present at each Board and Committee meeting:

(b) all appointments of Officers;

(c) proceedings and resolutions of meetings of Members, Directors and of any Committee; and

(d) resolutions passed by Members, Directors or any Committee without a meeting.

22.2 Signing of minutes

(a) The minutes of a meeting must be signed within a reasonable time by the Chair of the meeting or by the Chair of the next meeting.

(b) The minutes of the passing of a resolution without a meeting must be signed by a Director within a reasonable time after the resolution is passed.

(c) The signing of minutes by a Chair or a Director may occur electronically in any manner permitted by relevant law, which may include signing a printed copy of the document and sending it electronically to the Company.

(d) Such minutes if purporting to be signed by the Chair of the meeting at which the proceedings were held or by the Chair of the next succeeding meeting, will be receivable as prima facie evidence of the matters stated in such minutes.

(e) Once signed, all minutes must be provided to the Secretary for retention on behalf of the Company as soon as practicable.

22.3 Minutes as evidence

A minute that is recorded and signed under clauses 22.1 and 22.2 is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

23. Chief Executive Officer

23.1 Appointment

(a) The Board may at any time engage a person to perform the office of Chief Executive Officer for any period and on any terms decided by the Board.

(b) The Board may at any time revoke the engagement of the Chief Executive Officer, subject to the provisions of any applicable engagement agreement and all applicable employment laws.

23.2 Remuneration

The Board may at any time decide the remuneration of the Chief Executive Officer, subject to the provisions of any applicable engagement agreement.

23.3 Powers

(a) The Board may confer on the Chief Executive Officer any powers exercisable by the Board, subject to any provisions or restrictions decided by the Board.

(b) Any delegated powers may be concurrent with or exclude the powers of the Board.

(c) The Board may at any time revoke or vary any delegated powers conferred on the Chief Executive Officer.

(d) An act done by a person acting as Chief Executive Officer is not invalidated by reason only of:

(i) a defect in the person's appointment; or

(ii) the person being disqualified to be an executive officer,

if that circumstance was not known by the person when the act was done.

24. Secretary

(a) The Directors must appoint a Secretary in accordance with the Corporations Act at the remuneration and on such terms and conditions as the Directors think fit.

(b) A Secretary must be appointed at the first meeting of the Board after a vacancy in that office occurs.

(c) Any Secretary so appointed may be removed by the Directors.

25. Financial records

25.1 Financial and other records

(a) The Directors must:

(i) cause proper financial and other records to be kept that:

(A) correctly record and explain its transactions and financial position and performance; and

(B) enable true and fair financial statements to be prepared and audited, and

ensure such records are retained by the Company for at least seven (7) years; and

(ii) provide annual financial reporting to Members, as required by the Corporations Act or the ACNC Legislation (if the Company is a Registered Charity).

(b) Directors have the right to access the Company's financial records at any reasonable time.

25.2 Inspection of Books

(a) The Directors must ensure the minute Books for general meetings are open for inspection by Members free of charge.

(b) Subject to clause 25.2(a), the Directors may determine whether and to what extent (if any), and at what time and places and under what conditions, the minute Books, financial records and other documents of the Company or any of them will be open for inspection by Members (other than Directors).

(c) A Member who is not a Director does not have any right to inspect any books, records or documents of the Company except as conferred by statute or authorised by the Board or by the Company in general meeting.

25.3 Financial Year

(a) The financial year of the Company will run from 1 July to 30 June each year.

(b) The Company's Books of account must be audited by a properly qualified auditor (not being a Member) appointed by the Members at the Annual General Meeting.

25.4 Audit

In accordance with the ACNC Legislation, the Company's books of account must be audited by a properly qualified auditor (not being a Member) appointed by the Members by simple resolution at the Annual General Meeting. Audits must be conducted at regular intervals of not more than twelve (12) months.

25.5 Annual Financial Report

The Board must cause a financial report to be prepared for each Financial Year, which includes:

(a) the Directors' report for the year and the auditor's report on the financial report;

(b) a profit and loss statement for the year, a balance sheet as at the end of the year and a statement of cash flows for the year; and

(c) every other document required by law to be attached to such reports.

25.6 Consideration of Accounts at the AGM

The Board must cause to be laid before each Annual General Meeting the financial report, the Directors' report and the auditor's report for the last Financial Year that ended before the Annual General Meeting.

26. Notices

26.1 Entitlement to Notice

Any Member who has not left at or sent to the Office a place of address or an email address (for registration in the Register) at or to which all notices and documents of the Company may be served or sent will not be entitled to receive any notices.

26.2 Notices to Members

The Company may give notice to a Member by:

(a) serving it on the Member personally;

(b) sending it by post to the Member or leaving it at the Member's address as shown in the Register or the address supplied by the Member to the Company for the giving of notices;

(c) transmitting it to the electronic mail address (if any) supplied by the Member for the giving of notices; or

(d) in any other way permitted under the Corporations Act.

26.3 Deemed service

Subject to clause 6.6, a notice sent by:

(a) post, is taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected at the time at which the letter would be delivered in the ordinary course of post;

(b) electronic mail, is taken to be effected by properly addressing and sending the notice and to have been effected on the day of transmission, if transmitted before 5.00pm on a Business Day, otherwise on the next Business Day; and

(c) electronic mail, is deemed not to be served only if the computer system used to send it reports that delivery failed.

27. Disputes and mediation

27.1 Application

(a) The grievance procedure set out in this clause applies to disputes under this Constitution or otherwise in relation to the Company or its affairs between:

(i) a Member and another Member; or

(ii) a Member and the Company.

(b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within ten (10) Business Days after the dispute came to the attention of all of the parties.

27.2 Mediation

(a) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend the meeting, the parties must, within ten (10) Business Days, hold a meeting in the presence of a mediator.

(b) The mediator must be:

(i) a person chosen by agreement between the parties; or

(ii) in the absence of agreement:

(A) in the case of a dispute between a Member and another Member, a person appointed by the Board; or

(B) in the case of a dispute between a Member and the Company, a person who is a mediator appointed by the Chair of the Resolution Institute or the Chair's designated representative.

(c) A mediator may be a Member but not a party to the dispute.

(d) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.

(e) Unless the parties to the dispute agree otherwise:

(i) the Resolution Institute Mediation Rules will apply to the mediation;

(ii) the mediation will be held in Melbourne, Victoria; and

(iii) the costs of mediation will be borne equally amongst the parties to the dispute.

(f) The mediator, in conducting the mediation must:

(i) give the parties to the mediation every opportunity to be heard;

(ii) allow due consideration by all parties of any written statement by any party; and

(iii) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.

(g) The mediator must not determine the dispute.

(h) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Corporations Act or otherwise at law.

28. Winding up or dissolution

(a) In the event of the Company being dissolved, the amount which remains after such dissolution and the satisfaction of all debts and liabilities (**Surplus**) must not be paid to or distributed amongst Members but must be distributed in accordance with clause 28(b) or, if that is not applicable, clause 28(d).

(b) At or before the winding up or dissolution of the Company, the Members may determine that the Surplus must be given or transferred to one or more institutions or entities provided the institution or entity:

(i) has objects similar to some or all of those of the Company; and

(ii) prohibits the distribution of its income or property amongst its members to an extent at least as great as imposed under this Constitution.

(c) If there is a determination in accordance with clause 28(b), the Surplus must be transferred to the institution or entity after the winding up or dissolution of the Company. If there is more than one institution or entity specified in the determination, the Surplus must be transferred in the proportion specified in the determination or, if there is no such proportion specified, then, in proportions as determined by the Directors.

(d) If there is no determination made in accordance with clause 28(b), the Surplus must be given or transferred to another organisation in Australia, as determined by the Board, which has substantially similar objects to those of the Company and which prohibits the distribution of its income or property amongst its members to an extent at least as great as imposed under this Constitution, in such manner as the Directors determine.

(e) If and so far as effect cannot be given to clause 28(d), the Surplus must be applied in Australia to some charitable object.

29. Indemnity of officers

(a) The Company must indemnify each Officer out of the assets of the Company to the Relevant Extent against any Liability incurred by the Officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the Duties of the Officer, except where the Liability:

(i) is owed to the Company;

(ii) arises out of conduct involving a lack of good faith;

(iii) is for a pecuniary penalty order under section 1317G of the Corporations Act;

(iv) is for a compensation order under section 1317H of the Corporations Act; or

(v) is for legal costs.

(b) To the Relevant Extent, the Company must indemnify each Officer against any Liability for legal costs incurred in defending an action for a Liability incurred as an Officer, except if the costs are incurred:

(i) in defending or resisting proceedings in which the person is found to have a Liability for which they could not be indemnified under clause 29(a);

(ii) in defending or resisting criminal proceedings in which the person is found guilty;

(iii) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or

(iv) in connection with proceedings for relief to the person under the Corporations Act in which the court denies the relief.

Clause 29(b)(iii) does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

(c) The Company may, to the Relevant Extent:

(i) purchase and maintain insurance; or

(ii) pay or agree to pay a premium for insurance,

for any person to whom this clause 29 applies against any Liability incurred by the person as an Officer.

(d) The Company may give an Officer a loan or advance in respect of legal costs for defending an action for a Liability incurred as an Officer, provided that such loan or advance does not contravene the Corporations Act.

(e) Subject to the Corporations Act, where the Board considers it appropriate, the Company may:

(i) execute a documentary indemnity or insurance policy in any form in favour of any Officer;

(ii) make payments or agree to make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an Officer against any Liability incurred by the Officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the Duties of the Officer other than one for legal costs or conduct involving a wilful breach of duty in relation to the Company; and

(iii) bind itself and amend any contract or deed with any Officer to make such payments.

(f) The benefit of each indemnity given in clauses 29(a) and 29(b) continues, even after its terms or the terms of this clause are notified or deleted, in respect of a Liability arising out of acts or omissions occurring prior to the modification or deletion.

30. Powers and Capacity

30.1 Exercise of Powers

(a) Subject to the Corporations Act and clause 31, the Company has the legal capacity of a natural person including the capacity to exercise the powers set out in section 124 of the Corporations Act, which powers may only be used to carry out the Object.

(b) Where this Constitution provides that a person or body may do a particular act or thing and the word 'may' is used, the act or thing may be done at the discretion of the person or body.

(c) Where this Constitution confers a power to make appointments to any office or position other than a Director, the power is, unless the contrary intention appears, to be taken to include a power:

(i) to appoint a person to act in the office or position until a person is appointed to the office or position;

(ii) subject to any contract between the Company and the relevant person and any applicable industrial law, to remove or suspend any person appointed, with or without cause; and

(iii) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.

(d) Where this Constitution confers a power or imposes a duty on the holder of an office then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of that office.

(e) Where this Constitution confers power on a person or body to delegate a function or power:

(i) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;

(ii) the delegation may be either general or limited in any manner provided in the terms of delegation;

(iii) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position;

(iv) the delegation may include the power to delegate;

(v) where the performance or exercise of that function or power is dependent on the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate on the opinion, belief or state of mind of the delegate in relation to that matter; and

(vi) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

30.2 Capacity

(a) Solely for carrying out the Object, the Company may, in any manner permitted by the Corporations Act or (if the Company is a Registered Charity) the ACNC Legislation:

(i) exercise any power;

(ii) take any action; or

(iii) engage in any conduct or procedure,

which under the Corporations Act or the ACNC Legislation a company limited by guarantee may exercise, take or engage in, if authorised by its constitution.

(b) The Company may pursue its Object through operations and activities carried out by itself and/or by its subsidiaries.

31. Non-profit

The income and property of the Company must be applied solely towards the promotion of the Object. In particular, no portion of the income and property of the Company is to be paid or transferred directly or indirectly by way of dividend or distribution of profit to Members. This clause does not prevent the payment in good faith:

(a) of remuneration to any Officers or servants of the Company for any services rendered in a professional or technical capacity, where the amount payable is not more than an amount that would be commercially reasonable for the service;

(b) of reasonable and proper remuneration to any employee of the Company;

(c) for goods supplied by Members in the ordinary and usual course of business at fair and reasonable prices or prices more favourable to the Company;

(d) of interest on money borrowed from any Member at a rate not exceeding from time to time the Company's overdraft rates of interest paid for moneys borrowed from its bankers;

(e) of reasonable and proper rent for premises leased or licensed by any Member to the Company;

(f) of any amount to a person in carrying out the Company's objects; or

(g) of sums permitted to be paid under Chapter 2E of the Corporations Act,

provided that any such payment is approved by the Board.

32. Limited Liability

The Company is a company limited by guarantee and the Liability of the Members is limited to the amount provided in clause 33 of this Constitution.

33. Members' guarantee

Every Member undertakes to contribute an amount not exceeding $20.00 to the property of the Company if the Company is wound up while they are a Member or within one year after ceasing to be a Member, for:

(a) payment of the debts and liabilities of the Company contracted before they ceased to be a Member;

(b) the costs, charges and expenses of winding up the Company; and

(c) for an adjustment of the rights of contributories among themselves.

34. Application of the Corporations Act

34.1 Application of Terms from Corporations Act

Unless the contrary intention appears:

(a) an expression used in this Constitution that deals with a matter dealt with by a provision of the Corporations Act has the same meaning as in that provision of the Corporations Act; and

(b) subject to clause 34.1(a), an expression in a clause of this Constitution that has a defined meaning for the purposes of the Corporations Act has the same meaning when used in this Constitution.

34.2 Actions authorised under Corporations Act or ACNC Legislation

Where the Corporations Act or (if the Company is a Registered Charity) the ACNC Legislation authorises or permits a company to do any matter or thing if so authorised by its constitution, the Company is and will be taken by this clause to be authorised or permitted to do that matter or thing.

34.3 Replaceable rules displaced

(a) The clauses of this Constitution displace each provision of a section or sub-section of the Corporations Act that applies (or would apply but for this clause) to the Company.

(b) The replaceable rules do not apply to the Company.

34.4 Inconsistencies

Subject to clause 34.3, while the Company is a Registered Charity, this Constitution is subject to the Corporations Act and the ACNC Legislation and, where there is any inconsistency between a clause of this Constitution and the Corporations Act and/or the ACNC Legislation, the Corporations Act and/or the ACNC Legislation (in that order of priority) prevails to the extent of the inconsistency.

35. General

35.1 Submission to jurisdiction

Each Member submits to the non-exclusive jurisdiction of the Supreme Court of Victoria and the Courts which may hear appeals from that Court.

35.2 Prohibition and enforceability

(a) Any provision of, or the application of any provision of, this Constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition

(b) Any provision of, or the application of any provision of, this Constitution, which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.