

Dated 25 November 2016

Horticulture Innovation Australia Limited

ACN 602 100 149

Constitution

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1 Preliminary

1.1 Name of the Company

The name of the Company is Horticulture Innovation Australia Limited.

1.2 Nature of the Company

The Company is a public company limited by guarantee.

1.3 Liability of Members and guarantee on winding up

- (a) The liability of Members is limited.
- (b) Each Member undertakes to contribute to the assets of the Company, in the event the Company is wound up:
 - (i) while they are a Member; or
 - (ii) within 12 months after they cease to be a Member,an amount of \$2.00 for payment of the debts and liabilities of the Company, including the costs of winding up.

1.4 Replaceable Rules do not apply

The replaceable rules in the Corporations Act do not apply to the Company.

1.5 Definitions

In this Constitution unless the context requires otherwise:

Act means the *Horticulture Marketing and Research and Development Services Act 2000* (Cth), as amended from time to time, and includes any regulations or instruments made under that Act.

ABN means an Australian Business Number on the Australian Business Register.

ACN means an Australian Company Number.

AGM means an annual general meeting of the Company.

Agri-Political Activity means engaging in or financing any form of external or internal political campaigning, but does not include an activity required or authorised under the Law or another law or any of the following matters:

- (a) the Company, or an officer of the Company, recommending a candidate for election or appointment to the Board;
- (b) the Company, or an officer of the Company, making statements or providing information to Levy Payers, Producer Contribution payers or the Australian Horticulture Industry in the proper performance of the Company's functions and the proper furtherance of its Objects;

- (c) use by another person, for Agri-Political Activities, of a report or other publication prepared or financed by the Company;
- (d) the use by an officer of the Company, or an employee of the Company, of his or her own funds to conduct a campaign for election to the Board or of any entity engaging in Agri-Political Activity;
- (e) the Company publicising the benefits of its investment and other activities; or
- (f) any other activity permitted by the Deed of Agreement.

Annual Receipts means the total amount of Levies and Producer Contributions paid by or on behalf of a Voting Member in the relevant Financial Year, as declared by the Voting Member in accordance with Article 6.9.

Annual Return means the information submission made by a Member in accordance with Article 6.9.

Appointed Director means a Director appointed by the Board, as set out in Article 11.1.

Australian Horticulture Industry means the Horticultural Industries collectively.

Average Receipts means:

- (a) for the Financial Year ending 30 June 2015, the Annual Receipts for that period;
- (b) for the Financial Year ending 30 June 2016, the average Annual Receipts for that period and the previous Financial Year; and
- (c) for the Financial Year ended 30 June 2017, and each subsequent Financial Year, the average Annual Receipts for that period and the two previous Financial Years.

Board means the board of Directors of the Company.

Board Skills Matrix means a skills matrix approved by the Board in consultation with the Department.

Business Day means, in respect of a place where a thing must be done or in which a notice may be received, a day on which banks are open for business in that place other than a Saturday or Sunday.

CEO has the meaning given in Article 14.1.

Collective Industry Fund means a collective investment fund established by the Company for participation by all producers of specified horticultural products, or a class or subclass of horticultural products, upon which a levy or charge is not imposed. The Board must determine whether any fund qualifies as a **Collective Industry Fund**.

Commonwealth means the Commonwealth of Australia and its external territories.

Commonwealth Contributions means all amounts, other than Levies, which are:

- (a) paid or payable by the Commonwealth to the Company under section 16(2) of the Act; or

- (b) otherwise contributed by the Commonwealth to the Company's investment programmes or other activities from time to time.

Company means Horticulture Innovation Australia Limited ACN 602 100 149.

Constitution means this constitution, as may be varied from time to time.

Corporations Act means the *Corporations Act 2001* (Cth) and includes the *Corporations Regulations 2001* (Cth).

Deed of Agreement means the Deed of Agreement, also known as the Statutory Funding Agreement, between the Company and the Commonwealth entered into pursuant to section 12 of the Act and pursuant to which the Commonwealth agrees to provide funding to the Company.

Department means the Commonwealth of Australia as represented by the Department of Agriculture, or any other Commonwealth agency which from time to time is responsible for the effective collection, disbursement and administration of Levies and the determination and payment of Commonwealth Contributions.

Director means a person who is, for the time being, a member of the Board.

Director Nomination Committee or **DNC** has the meaning given in Article 11.2.

Effective Date means the first date on which a declaration by the Minister under section 9(1) or 9(2) of the Act that the Company is the Industry Services Body or the Industry Export Control Body takes effect.

Elected Director means a person elected by Voting Members as a Director.

Financial Year means a period of 12 months commencing on 1 July in any year and ending on 30 June in the following year

HAL Nominee has the meaning given in Article 11.1(c)(i).

Horticultural Industry means any industry carried on in Australia in connection with:

- (a) producing horticultural products by growing, harvesting or processing horticultural products;
- (b) marketing and any other handling, storing, transporting, processing or supplying of horticultural products; or
- (c) exporting Australian horticultural products to other countries,

in each case being horticultural products:

- (d) upon which a Levy is imposed; or
- (e) in respect of which a Collective Industry Fund is established.

Industry Participant means an entity (including a sole trader, unincorporated association, body corporate, partnership or trust) that is carrying on an enterprise within a Horticultural Industry under a registered ABN, including for example:

- (a) growing and harvesting;
- (b) processing;
- (c) packing;
- (d) transporting;
- (e) marketing;
- (f) wholesaling;
- (g) retailing;
- (h) exporting; or
- (i) supply of inputs for horticulture production.

Industry Representative Body means a body that is:

- (a) a designated eligible industry body in respect of horticultural products, or a class or subclass of horticultural products, under Schedule 15 to the *Primary Industries (Excise) Levies Act 1999* and associated regulations;
- (b) a designated eligible industry body in respect of horticultural products, or a class or subclass of horticultural products, under Schedule 10 to the *Primary Industries (Customs) Charges Act 1999* and associated regulations;
- (c) a body that carries out Agri-Political Activities on behalf of all or some Industry Participants; or
- (d) a body that collects funds from horticultural producers and remits them to the Company for allocation to a Collective Industry Fund.

Industry Services Body has the meaning given in section 4 of the Act.

Industry Export Control Body has the meaning given in section 4 of the Act.

Initial Directors has the meaning given in Article 11.1(c).

Investor means a person who contributes money to the Company's investment funds by way of a co-investment contract between the Company and the person or their agent (rather than by way of Levies or Producer Contributions).

Joint Members has the meaning given in Article 6.11.

Law means the Corporations Act and any other legislation or regulations relating to the incorporation, conduct or management of companies which is applicable to the Company.

Levies means Marketing Levies, R&D Levies or both, and whether collected as excise levies, customs charges or penalties, as applicable and **Levy** has a corresponding meaning.

Levy Payer means the person who is primarily liable for payment of a levy or charge on horticultural products under:

- (a) Schedule 15 to the *Primary Industries (Excise) Levies Act 1999* and regulations;

- (b) section 4 of the *Primary Industries Levies and Charges Collection Act 1991* and regulations;
or
- (c) Schedule 10 to the *Primary Industries (Customs) Charges Act 1999* and regulations
and, for clarity, does not include an intermediary which collects Levies and remits them on behalf of a producer.

Levy Receipts means receipts received by a Levy Payer evidencing the payment of Levies by or on behalf of that Levy Payer.

Marketing Levies has the same meaning as 'marketing amounts' in section 4 of the Act.

Member means a person or entity whose name is entered on the Register and who has not ceased to be a Member.

Minister means the Australian Government Minister responsible for the administration of the Act.

Minister's Nominee has the meaning given in Article 11.1(c).

Objects means the objects of the Company which are specified in Article 2.1.

Producer Contribution means the amount paid each year to a Collective Industry Fund by or on behalf of a Producer Contribution Payer who or which is a participant in that fund.

Producer Contribution Payer means a horticultural producer who or which contributes money, directly or indirectly, to a Collective Industry Fund in accordance with its terms of participation. For clarity, this does not include an agent or intermediary who or which collects Producer Contributions and remits them to the Company on behalf of horticultural producers.

Producer Contribution Receipts means receipts received by a Producer Contribution Payer evidencing the payment of Producer Contributions.

R&D Levies has the same meaning as 'research and development amounts' in section 4 of the Act.

Register means the register of Members and voting rights kept by the Company in accordance with the Law.

Related Body Corporate has the meaning given in the Corporations Act.

Return Date means a date set by the Board in accordance with Article 6.9.

Transition Date means the date of the first AGM of the Company, or such other date as is determined by the Board in consultation with the Minister.

Transition Period means the period from the Effective Date to the Transition Date.

Voting Member has the meaning given in Article 6.8(a).

Voting Period means the 12-month period from 1 October to 30 September immediately following the end of each Financial Year.

1.6 Interpretation

In this Constitution, unless the context requires otherwise:

- (a) a word or phrase which is given a meaning by the Corporations Act has the same meaning in this Constitution;
- (b) words in the singular include the plural and vice versa;
- (c) a reference to the Act, the Corporations Act or any other statute or regulation is a reference to the Act, the Corporations Act, statute or regulation as modified or substituted; and
- (d) the headings may be used to assist in understanding, but not to change, the meaning of this Constitution.

2 Objects

2.1 Objects of the Company

The Objects of the Company are:

- (a) if declared under subsection 9(1) of the Act, to act as the Industry Services Body;
- (b) if declared under subsection 9(2) of the Act, to act as the Industry Export Control Body until 1 November 2015;
- (c) to provide leadership to, and to promote the development of, the Australian Horticulture Industry;
- (d) to increase the productivity, farm gate profitability and global competitiveness of the Horticultural Industries by:
 - (i) the strategic allocation and investment of Levies, Commonwealth Contributions, Producer Contributions and monies received from Investors in research, development, extension and marketing funds, programmes and services;
 - (ii) providing information, services and products related to research, development, extension and marketing activities or outcomes; and
- (e) to support capacity building by maintaining a diverse range of research, development, extension and marketing services providers;
- (f) to promote and further the interests of the Horticultural Industries overseas, including in relation to:
 - (i) the export of Australian horticultural products to;
 - (ii) the sale and distribution of Australian horticultural products in; and
 - (iii) the consumption of Australian horticultural products in, countries other than Australia;

- (g) to be accountable to Levy Payers, Producer Contribution Payers, Investors and the Australian Government for the Company's use of, as applicable, Levies, Producer Contributions and payments from Investors;
- (h) to engage in any other activities for the benefit of Members, Levy Payers, Producer Contribution Payers, the Horticultural Industries, co-investors and the Australian community generally which are not inconsistent with the requirements of the Act and the Deed of Agreement; and
- (i) to do all such things as are incidental, convenient or conducive to the attainment of all or any of the above Objects.

2.2 Independence of Objects

- (a) Each Object for which the Company is established is independent from each other Object.
- (b) The Objects are not limited or restricted (except where otherwise expressed) by reference to or inference from any other provision of this Constitution.

2.3 Objects do not limit the powers of the Company

Nothing in Article 2.1 limits the powers of the Company.

3 Limitations on activities of the Company

3.1 Engaging in Agri-Political Activities

So long as the Company is the Industry Services Body, it must not knowingly engage in or finance any Agri-Political Activity.

3.2 Dealings with Industry Representative Bodies

The Company:

- (a) must not make grants or otherwise provide financial assistance to an Industry Representative Body;
- (b) may procure goods and services from an Industry Representative Body in the ordinary course of business on an open, transparent, and, when appropriate, competitive basis in accordance with the Company's policies from time to time.

4 Modifying the Constitution

This Constitution may only be varied or repealed:

- (a) following prior consultation with the Minister; and

- (b) subject to the Law, by a special resolution passed by at least 75% of votes cast by Voting Members entitled to vote on the resolution.

5 Limitation on dividends, distributions and other payments

5.1 Limitations on paying dividends or making distributions or other payments

- (a) The income and property of the Company must be applied solely towards the promotion of the Objects.
- (b) No part of the income and property of the Company may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise, to Members - or to any person claiming through them except as permitted under Article 5.2.

5.2 Exceptions to limitation on payments

Article 5.1 will not prevent the payment in good faith of:

- (a) remuneration to any officer or employee of the Company, a Member or other person for services rendered to the Company (including payment of Directors' fees in accordance with Articles 11.9 and 11.10);
- (b) a reasonable amount for:
 - (i) goods or services supplied by a Member to the Company in the ordinary course of business; or
 - (ii) reimbursement of expenses reasonably and properly incurred by a Member on the Company's behalf in accordance with the policies of the Company;
- (c) interest on money lent by a Member to the Company at a reasonable and proper rate of interest; or
- (d) reasonable and proper rent for premises leased by a Member to the Company.

5.3 Terms of supplying services or information to Members

Nothing in this Article 5 prevents the Company from providing services, products or information to Members, Levy Payers, Producer Contribution Payers or Investors on terms which are different from the terms on which services, products or information are provided to persons who are not Members, Levy Payers, Producer Contribution Payers or Investors.

5.4 Winding up

- (a) If upon the winding up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the remainder must not be paid to or distributed among the Members but must be given or transferred to some other institution or institutions having objects similar to the Objects of the Company and which must prohibit

the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of this Article.

- (b) The institution or institutions referred to in Article 5.4(a) must be determined by the Members at or before the time of dissolution or, if they fail to do so, by application to a court of competent jurisdiction for determination.

6 Membership of the Company

6.1 Initial Member during the Transition Period

The initial Member of the Company is Tanoa Pty Limited (**Tanoa**).

6.2 Applications during the Transition Period

Prior to the Transition Date:

- (a) the Company may facilitate and receive applications for membership;
- (b) the Board may approve applications for membership with effect on and from the Transition Date; and
- (c) no person, other than Tanoa, may be admitted as a Member prior to the Transition Date.

6.3 Eligibility for membership

Membership is open to all Industry Participants, excluding:

- (a) Industry Representative Bodies;
- (b) entities that are suppliers of goods or services to the Company, when the Company is the dominant source of revenue for such suppliers, or Related Bodies Corporate of such entities; or
- (c) any other category or class of Industry Participant excluded by the Board from time to time.

6.4 How to become a Member

- (a) An eligible Industry Participant may become a Member if:
 - (i) they have made an application for membership to the Company; and
 - (ii) the Company has determined that they meet the criteria to become a Member.
- (b) An application for membership must:
 - (i) be in the form and contain the information prescribed by the Company from time to time;

- (ii) state the name and contact details of the applicant's nominated representative (or, if nomination is by reference to a position held, the identity and contact details for that position);
 - (iii) be accompanied by such application fee as the Board may determine as applicable from time to time (provided that no application fee will be payable by Levy Payers for so long as the Company is declared as the Industry Services Body); and
 - (iv) be submitted in the required manner.
- (c) An applicant becomes a Member once their name is entered on the Register.

6.5 Transition to industry ownership of the Company on the Transition Date

On the Transition Date:

- (a) Tanoa shall be removed from the Register and cease to be a Member; and
- (b) the approved applicants for membership shall be entered on the Register and become the Members.

6.6 Membership not transferable

A Member's rights, privileges and benefits of membership are personal to the Member, and membership of the Company is not transferable.

6.7 Rights of Members

Each Member is entitled:

- (a) to receive notices of general meetings and all other documents sent to Members in respect of general meetings;
- (b) to attend and speak at general meetings;
- (c) in the case of Voting Members, to vote at general meetings on any matter;
- (d) to receive the Company's annual report provided that, subject to the Law, the form of the annual report, and the time the annual report is sent to the Members, will be determined by the Board from time to time; and
- (e) to such other rights as are conferred on Members by the Law.

6.8 Voting rights of Voting Members

- (a) Members that are:
 - (i) Levy Payers;

- (ii) Producer Contribution Payers; or
 - (iii) both Levy Payers and Producer Contribution Payers,
- (in each case, **Voting Members**) are entitled to voting rights. No other Members are entitled to voting rights.
- (b) Subject to Article 6.8(c), the voting rights of each Voting Member shall be determined by the Board for each Voting Period:
 - (i) by reference to the Voting Member's Annual Receipts and Average Receipts; and
 - (ii) in accordance with Articles 6.8(d) and 6.8(e).
 - (c) If the Board determines that it is not able to accurately, effectively and efficiently determine the voting rights by use of Annual Receipts and Average Receipts as required by Article 6.8(b) in respect of any horticultural product, or class or subclass of horticultural product, or any particular group of Levy Payers or Producer Contribution Payers, it must determine the voting rights of the affected Voting Members by use of any other fair, equitable and transparent method as determined by the Board but using the same approach to allocation of votes as set out in Articles 6.8(d) and 6.8(e). The Board's determinations under this Article 6.8(c) will be conclusive.
 - (d) Voting rights for each Voting Period will be allocated to each Voting Member as follows:
 - (i) if they have Annual Receipts under \$200 – no votes; and
 - (ii) if they have Annual Receipts of \$200 or more:
 - (A) one vote; plus
 - (B) one additional vote for every \$10,000 in Average Receipts, subject to the following limits:
 1. in respect of Levies – 100 votes (based on \$1,000,000 or more in Average Receipts in respect of Levies);
 2. in respect of Producer Contributions – 75 votes (based on \$750,000 or more in Average Receipts in respect of Producer Contributions); and
 3. in respect of Levies and Producer Contributions – 100 votes (based on \$1,000,000 or more in Average Receipts in total, provided that a maximum of \$750,000 may be taken into account in respect of Producer Contributions).
 - (e) For the avoidance of doubt, for any Voting Period:
 - (i) if a Voting Member has less than \$200 of Annual Receipts in the previous Financial Year, it has no votes in that Voting Period, irrespective of Average Receipts;

- (ii) the maximum number of votes that may be allocated to a Voting Member who or which pays Levies is 101 votes; and
- (iii) the maximum number of votes that may be allocated to a Voting Member who or which does not pay Levies is 76 votes.

6.9 Annual Return of Voting Members

For the purposes of determining the Annual Receipts and Average Receipts of Voting Members:

- (a) the Board must set a Return Date for each Financial Year;
- (b) the Return Date must not be earlier than 31 August immediately following the end of the relevant Financial Year;
- (c) each Voting Member may submit to the Company an Annual Levy Return in a form prescribed by the Company providing information regarding the Levies and Producer Contributions paid during the Financial Year, and the horticultural products in respect of which the Levies and Producer Contributions were paid;
- (d) the Company may:
 - (i) request information about payment of Levies or Producer Contributions from the Department, or from an Industry Representative Body that collects and remits funds to the Company, or from such other persons as it considers appropriate; and
 - (ii) require the review of Annual Returns as a consequence of information received about payments or receipts which is in conflict with the information contained in an Annual Return;
- (e) a Voting Member which, by the Return Date for the relevant Financial Year:
 - (i) fails to submit an Annual Return, must be; or
 - (ii) submits an incomplete or inaccurate Annual Return, may be,allocated no votes for the applicable Voting Period; and
- (f) a Voting Member may submit an Annual Return for a Financial Year after the relevant Return Date, and such Annual Return must be taken into account for the purposes of determining its Average Receipts and voting rights for the subsequent Financial Year and subsequent Voting Period.

6.10 Register of Members and voting rights

- (a) The company secretary must maintain a Register of Members and voting rights which sets out:
 - (i) the full name and addresses of Members;
 - (ii) the date on which each Member becomes a Member;
 - (iii) the date on which any Member ceases to be a Member;

- (iv) the number of votes allocated to each Voting Member for each Voting Period; and
 - (v) any other information as determined by the company secretary from time to time.
- (b) The Company must not use or disclose to any person information on the voting rights contained in the Register unless the use or disclosure is:
- (i) required by law;
 - (ii) made for the purposes of the conduct of, or voting at, a general meeting; or
 - (iii) with the consent of the owner of the information.

6.11 Joint membership of the Company

- (a) If membership is held by two or more persons together, then they are regarded as **Joint Members** and Articles 6.11(b) to 6.11(f) apply.
- (b) Joint Members are liable individually and jointly for any payments in respect of their membership, including any membership fee that may apply.
- (c) Any voting rights of the Joint Members are held together, not separately.
- (d) Any person who is a Joint Member is entitled to exercise the rights attached to their membership including, if the Joint Member is a Voting Member, the right to vote at a general meeting. However, if more than one of the Joint Members in respect of a membership exercises a right under this Article in relation to the same resolution, event or matter, the Company will accept the exercise of the right by the Joint Member who does so first (to the exclusion of the other Joint Member(s)). If it is not practicable to determine which Joint Member was first to exercise the right, then the Company will accept the exercise of the right by the Joint Member whose name appears first in the Register (to the exclusion of the other Joint Member(s)). That acceptance is final and conclusive.
- (e) Only a Joint Member whose name appears first in the Register is entitled to receive notices from the Company and any notice given to that person is considered to be notice to all the Joint Members.
- (f) Any one of the Joint Members may vote at any meeting of the Company either personally or by duly authorised representative, proxy or attorney, in respect of the membership as if that Joint Member was solely entitled to the membership. If more than one of the Joint Members is present personally or by duly authorised representative, proxy or attorney, only the vote of the Joint Member whose name appears first in the Register counts.

6.12 Audit of information

- (a) The Company may, by notice given to a Member, require the Member to provide to the Company, within 28 days of the date on which the notice is given, evidence in writing of information relevant to establishing:
 - (i) the Member's eligibility for membership;

- (ii) the completeness and accuracy of information provided by the Member in an Annual Return; and
- (iii) the completeness and accuracy of any other information requested by the Company and provided by the Member,

and a Member must comply with such a notice.

- (b) The Company may require that information referred to in Article 6.12(a) be 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 such a statutory declaration or certificate.
- (c) A Member who fails to comply with a notice issued under Article 6.12(a) may be removed from the Member Register and allocated no votes for the applicable Voting Period.

6.13 Annual subscription fee

- (a) Subject to Article 6.13(c), the Board may, in its discretion, determine that Members must pay an annual subscription fee.
- (b) If the Board does determine that an annual subscription fee is payable, it must determine:
 - (i) the amount of the annual subscription fee;
 - (ii) the procedure for notifying Members of the amount of, and for collecting, the annual subscription fee;
 - (iii) the uses to which the annual subscription fees may be put; and
 - (iv) the consequences of any failure to pay annual subscription fees, which may include suspension or termination of membership rights.
- (c) No annual subscription fee will be payable by Levy Payers for so long as the Company is declared as the Industry Services Body.

7 Ceasing to be a Member

7.1 Resignation

A Member may resign from being a Member at any time by giving written notice to the company secretary. The resignation is effective on the later of:

- (a) the date of receipt of the notice by the Company; and
- (b) the date specified in the notice.

7.2 Cancellation

The Board may cancel the membership of any Member and remove the Member's name from the Register if:

- (a) the Member has, in the opinion of the company secretary, ceased to be eligible for membership;
- (b) the Member resigns in accordance with Article 7.1;
- (c) the Member is in breach of this Constitution or any other rules determined by the Board;
- (d) the Member's conduct is, in the opinion of the Board, prejudicial to the interests or reputation of the Company;
- (e) the Member (or, if the Member is not a natural person, their representative) physically or verbally threatens or abuses another Member or an officer, employee, contractor or representative of the Company;
- (f) an ordinary resolution is passed at a general meeting to remove the Member from the membership;
- (g) the Member (being a natural person) dies or becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; or
- (h) the Member becomes bankrupt or insolvent, is wound up or deregistered, or makes any arrangement or compromise with its creditors.

8 General meetings of the Company

8.1 Calling of general meetings of the Company

- (a) The Board may call a general meeting to be convened at the time and place or places (including at two or more venues using technology that gives Members a reasonable opportunity to participate) and in the manner determined by the Board.
- (b) No Member or other person may convene a general meeting, except when entitled under the Law to do so.
- (c) By resolution of the Board, any general meeting may be cancelled or postponed prior to the date on which it is to be held, except when the cancellation or postponement would be contrary to the Law.
- (d) Subject to the Law, the Board may give notice of cancellation or postponement as it thinks fit, but any failure to give notice of cancellation or postponement does not invalidate the cancellation or postponement or any resolution subsequently passed at a postponed meeting.

8.2 Notice of general meeting

- (a) Subject to the provisions of the Law relating to shorter notice, at least 28 days' notice of a general meeting must be given in the manner outlined by Article 8.2(c) to each person who is at the date of the notice:
 - (i) a Member;
 - (ii) a Director; or
 - (iii) the auditor of the Company.
- (b) The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice, does not invalidate any resolution passed at that meeting.
- (c) A notice of general meeting must:
 - (i) specify the day, time and place of the meeting;
 - (ii) state the general nature of the meeting's business; and
 - (iii) specify the terms of any special resolution.

9 Proceedings of meetings of the Company

9.1 Business of general meetings of the Company

- (a) The business of an AGM is:
 - (i) to receive and consider the accounts and reports required by the Law to be laid before each AGM;
 - (ii) for the Voting Members to elect Directors in accordance with Article 11.5;
 - (iii) when relevant, to appoint an auditor and fix the auditor's remuneration; and
 - (iv) to transact any other business which, under this Constitution, is required to be transacted at the AGM.

All other business transacted at an AGM and all business transacted at other general meetings is special.

- (b) No person may move at any meeting either any resolution or any amendment of any resolution except:
 - (i) with the approval of the Board;
 - (ii) with the permission of the chair; or
 - (iii) as otherwise permitted under the Law or this Constitution.

9.2 Quorum

- (a) The quorum for a general meeting is:
 - (i) 25 Voting Members; or
 - (ii) 10 Voting Members representing not less than 10% of the total number of votes eligible to be cast on the questions to be submitted to the meeting,
who are present either in person or by proxy.
- (b) No business may be transacted at any meeting, except the election of a chair (if necessary) and the adjournment of the meeting, unless a quorum is present at the commencement of the meeting.
- (c) If there is not a quorum at a general meeting within 30 minutes after the time specified in the notice of the meeting:
 - (i) the chair, acting under Article 9.6, may adjourn the meeting to a date, time and place determined by him or her; or
 - (ii) otherwise the meeting is dissolved.
- (d) If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.
- (e) For the purposes of an adjourned meeting, the quorum shall be constituted by 10 Voting Members present, either in person or by proxy.

9.3 Chair

- (a) The chair of the Board is entitled to chair every general meeting.
- (b) If at any general meeting:
 - (i) the chair is not present at the specified time for holding the meeting; or
 - (ii) the chair is present but is unwilling to act as chair of the meeting,
the deputy chair is entitled to chair the meeting.
- (c) If at any general meeting:
 - (i) there is no chair or deputy chair;
 - (ii) the chair and deputy chair are not present at the specified time for holding the meeting; or
 - (iii) the chair and the deputy chair are present but neither is willing to chair the meeting,
either:
 - (iv) the Directors present may choose a Director to chair the meeting; or

- (v) if no Director is present or if none of the Directors present is willing to chair the meeting, a Member chosen by the Members present may chair the meeting.

9.4 Acting chair

- (a) If during any general meeting the chair acting under Article 9.3 is unwilling to chair any part of the proceedings, the chair may withdraw during the relevant part of the proceedings and may nominate any person who immediately before the general meeting was a Director or who has been nominated for election as a Director at the meeting to be acting chair of the meeting during the relevant part of the proceedings.
- (b) On the conclusion of the relevant part of the proceedings, the acting chair is to withdraw and the chair is to resume as chair of the meeting.

9.5 General conduct of general meetings of the Company

- (a) The general conduct of each general meeting and the procedures to be adopted at the meeting are as determined by the chair during or prior to the meeting.
- (b) The chair or a person acting with the chair's authority may require any person who wishes to attend the meeting to comply with searches, restrictions or other security arrangements the chair or a person acting with the chair's authority considers appropriate.
- (c) The chair or a person acting with the chair's authority may refuse entry to any person who:
 - (i) does not comply with the security arrangements referred to in Article 9.5(b);
 - (ii) possesses a recording or broadcasting device without the consent of the chair or a person acting with the chair's authority; or
 - (iii) possesses an article which the chair or a person acting with the chair's authority considers to be dangerous, offensive or liable to cause disruption.
- (d) At any time the chair considers it necessary or desirable for the proper and orderly conduct of the meeting, the chair may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Voting Members present.
- (e) The chair may require the adoption of any procedures which are in the chair's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting, whether on a show of hands or on a poll.
- (f) Any determination by the chair in relation to matters of procedure (including any procedural motions moved at, or put to, any meeting), or any other matter arising directly or indirectly from the business, is final (including any procedural motions moved at or put to, any meeting).
- (g) Any challenge to a right to vote (whether on a show of hands or on a poll) may only be made at the meeting and may be determined by the chair whose decision is final.

9.6 Adjournment

- (a) During the course of the meeting the chair may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting.
- (b) If the chair exercises a right of adjournment of a meeting under Article 9.6(a), the chair has the sole discretion to decide whether to seek the approval of the Voting Members present to the adjournment and, unless the chair exercises that discretion, no vote may be taken by the Voting Members present in respect of the adjournment.
- (c) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

9.7 Voting

- (a) The chair may determine that any question to be submitted to a general meeting be determined by a poll without first submitting the question to the meeting for a vote by show of hands.
- (b) Unless the chair makes the determination referred to in Article 9.7(a), each question submitted to a general meeting is to be decided by a show of hands by Voting Members.
- (c) In the case of an equal number of votes for and against a resolution, the resolution is rejected.
- (d) Unless a poll is demanded, a declaration by the chair following a vote on a show of hands that a resolution has been passed or rejected is conclusive, without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (e) A poll may be demanded by a Voting Member in accordance with the Law (and not otherwise) or by the chair.
- (f) No poll may be demanded on the election of a chair of a meeting or, unless the chair otherwise determines, the adjournment of a meeting.
- (g) A demand for a poll may be withdrawn.

9.8 Taking a poll

- (a) If a poll is demanded as provided in Article 9.7, it is to be taken in the manner and at the time and place as the chair directs, and the result of the poll is the meeting's resolution of the motion on which the poll was demanded. In the case of any dispute as to the admission or rejection of a vote, the chair's determination in relation to the dispute is final.
- (b) A demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

9.9 Special meetings

All the provisions of this Constitution as to general meetings apply to any special meeting of any class of Members, which may be held under the operation of this Constitution or the Law.

10 Votes of Members

10.1 Voting rights of Voting Members

- (a) On a show of hands:
 - (i) subject to Article 10.1(a)(ii), each Voting Member present has one vote; and
 - (ii) when a Voting Member has appointed more than one person as representative, proxy or attorney for the Voting Member, none of the representatives, proxies or attorneys are entitled to vote.
- (b) Subject to Article 10.1(c), on a poll, each Voting Member present has the number of votes determined in accordance with Article 6.8.
- (c) On a poll, only Voting Members present may vote unless, consistent with the Law, 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.

10.2 Appointment of proxies to vote at general meetings of the Company

- (a) Subject to Article 10.2(e), any Voting Member who is entitled to attend and vote at a general meeting may appoint one or more persons as their proxy to attend and vote on that Voting Member's behalf at the meeting.
- (b) The Voting Member may specify:
 - (i) the proportion or number of votes that the proxy may exercise; and
 - (ii) how the proxy must exercise the votes (i.e. either for or against each or any resolution).
- (c) If more than one proxy is appointed and the appointment does not specify how many votes are to be exercised by each proxy, the Voting Member's votes will be apportioned evenly between the proxies, with any fractions being disregarded.
- (d) The proxy of a Voting Member may be an individual or a body corporate.
- (e) A Voting Member must not appoint an Industry Representative Body as a proxy unless the proxy is directed how to vote on each resolution.
- (f) A proxy of a Voting Member need not be a Member.
- (g) The instrument appointing a proxy (and the power of attorney, if any, under which it is signed or proof of the existence and validity of the power of attorney to the satisfaction of the Board) must be given to the company secretary not later than 48 hours (or such lesser

period as the Board may determine) before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument proposes to vote.

- (h) No instrument appointing a proxy is valid after the expiration of 12 months after the date of its execution. An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument or proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.

10.3 Validity of resolutions and revocation of proxies

- (a) The validity of any resolution is not affected by the failure of any proxy or attorney to vote in accordance with instructions (if any) of the appointing Voting Member.
- (b) A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid despite the previous death or mental incapacity of the appointing Voting Member or revocation of the instrument of proxy or power of attorney, provided no notice in writing of the death, mental incapacity or revocation has been received by the company secretary at least 48 hours before the relevant meeting or adjourned meeting.
- (c) A proxy is not revoked by the appointing Voting Member attending and taking part in the meeting, unless the appointing Voting Member votes at the meeting on the resolution for which the proxy is proposed to be used.

10.4 Board may issue forms of proxy

- (a) With any notice of general meeting, the Board may issue forms of proxy for use by the Voting Members.
- (b) Each form may include the names of any of the Directors or of any other persons willing to act as proxies or as persons who are to be proxies if the Voting Member does not specify in the form the name of the person or persons to be appointed as proxies.
- (c) The forms may be worded so that a proxy may be directed to vote either for or against each or any of the resolutions to be proposed.

10.5 Appointment of attorneys of Voting Members

- (a) Any Voting Member may, by properly executed power of attorney, appoint an attorney to act on the Voting Member's behalf at all or certain specified meetings of the Company.
- (b) Before an attorney is entitled to act under a power of attorney, the power of attorney or proof of the power of attorney to the satisfaction of the Board must be delivered for inspection to the company secretary, or any other person or place the Board may determine, together in each case with evidence of the proper execution of the power of attorney as required by the Board.
- (c) An attorney may be authorised to appoint a proxy for the Voting Member granting the power of attorney.

11 Directors

11.1 Board composition and eligibility

- (a) The Board shall comprise independent, non-executive Directors.
- (b) There shall be a minimum of three and a maximum of nine Directors, including the chair.
- (c) In the period up to the first AGM, there shall be nine Directors of which:
 - (i) five Directors are nominated by the board of Horticulture Australia Limited (**HAL Nominees**); and
 - (ii) four Directors are nominated by the Minister (**Minister's Nominees**),
(upon appointment, the **Initial Directors**).
- (d) Following the nomination and appointment of Initial Directors under Article 11.1(c), all candidates for appointment, re-appointment, election or re-election as Directors will be subject to nomination by the Director Nomination Committee established under Article 11.2.
- (e) At the first AGM, expected to be in November 2015:
 - (i) two of the HAL Nominees (not including the chair) must retire, as determined by the chair in consultation with the Board;
 - (ii) two of the Minister's Nominees (not including the chair) must retire, as determined by the chair in consultation with the Board;
 - (iii) up to two Elected Director nominees of the DNC may be elected by the Voting Members; and
 - (iv) up to two Appointed Director nominees of the DNC may be appointed or re-appointed by the Board.
- (f) At the second AGM, expected to be in November 2016:
 - (i) the three remaining HAL Nominees must retire;
 - (ii) the two remaining Minister's Nominees must retire;
 - (iii) up to two Elected Director nominees of the DNC may be elected by the Voting Members; and
 - (iv) up to three Appointed Director nominees of the DNC may be appointed or re-appointed by the Board.
- (g) From the second AGM of the Company, the Board shall comprise:
 - (i) up to four Elected Directors; plus
 - (ii) up to five Appointed Directors,

provided that the number of Appointed Directors is greater than or equal to the number of Elected Directors, except in respect of the period required for the election or appointment of new Directors in the event of any vacancies on the Board occurring.

- (h) The Directors must strive to ensure that the Board as a whole has a proper balance of appropriate skills, qualifications and experience, having regard to the nature of the business and affairs of the Company.
- (i) The following persons are not eligible for nomination or appointment as a Director:
 - (i) a current officer or employee of an Industry Representative Body;
 - (ii) a current officer or employee of:
 - (A) an entity that is not eligible under Articles 6.3(b) or (c) of this Constitution to be a Member of the Company; or
 - (B) a Related Body Corporate of such an entity.
- (j) All Directors must be natural persons.
- (k) Board members must be appointed:
 - (i) by written instrument; and
 - (ii) on a part-time basis.

11.2 Director Nomination Committee

The nomination of candidates for election, re-election, appointment and re-appointment of Directors, other than the Initial Directors, must be undertaken exclusively by a Director Nomination Committee (**DNC**) of three individuals comprising:

- (a) the chair of the Company (subject to Article 11.3(a));
- (b) the Secretary of the Department (or his or her nominee); and
- (c) an independent eminent person selected by the Board and appointed for up to three years, who shall not be eligible for re-appointment.

11.3 Proceedings of the Director Nomination Committee

- (a) The chair must preside as chairperson at meetings of the DNC, except where he or she is a candidate for re-election as a Director, in which case the other Directors must appoint one of the other Directors as member and chairperson of the DNC.
- (b) The provisions of this Constitution applying to meetings and resolutions of Directors apply to meetings and resolutions of the DNC, so far as they can and with such changes as are necessary.

11.4 Nomination of candidates for appointment or election as Directors

- (a) The DNC, in consultation with the Board and the company secretary, may take any action that it thinks appropriate to advertise vacancies and to identify persons suitable for nomination for appointment, re-appointment, election or re-election to the office of Director.
- (b) In determining whether to nominate a candidate for appointment, re-appointment, election or re-election to the office of Director, the DNC must have regard to:
 - (i) the Board Skills Matrix;
 - (ii) the skills, qualifications and experience of the candidate;
 - (iii) the extent to which all the Directors collectively would possess an appropriate mix of the skills, qualifications and experience in the areas specified in the Board Skills Matrix; and
 - (iv) the matters set out in Article 11.1,

and must not nominate a person for appointment or election as a Director unless the DNC is satisfied that the person has substantial experience or expertise, and professional credibility and significant standing, in a field or fields specified in the Board Skills Matrix to address identified gaps in terms of the board's collective skills, qualifications and experience.

- (c) The nomination of a candidate must include a statement containing particulars of the candidate's skills, qualifications and experience in the areas specified in the Board Skills Matrix and generally, and any other information that is, in the DNC's opinion, likely to assist:
 - (i) in the case of Elected Directors, the Voting Members to decide whether to elect or re-elect the person to the office of Director; and
 - (ii) in the case of Appointed Directors, the Board to decide whether to appoint or re-appoint the person to the office of Director.
- (d) The Board Skills Matrix must reflect any requirements regarding a skills based board in the Deed of Agreement and must be kept under review by the Director Nomination Committee.

11.5 Elected Directors

- (a) Subject to Article 11.6(a), the Elected Directors must be persons nominated by the DNC for election or re-election by Voting Members at the AGM at which a vacancy arises.
- (b) The DNC must nominate at least one candidate for each vacancy.
- (c) A person is eligible for election or re-election to the office of Director at an AGM only if:
 - (i) there is a vacancy to be filled;
 - (ii) the person is nominated by the DNC or, in the circumstances specified in Article 11.6(a), the Board;
 - (iii) the person consents to the nomination; and

- (iv) the nomination and consent are received by the company secretary not less than 35 days before the AGM.
- (d) At an AGM at which the number of candidates for Elected Director positions is equal to or less than the number of vacancies, all candidates who receive a majority of votes cast by the Voting Members at the meeting will become Elected Directors. In the event that not all vacancies are filled, a new election will be held at the next AGM to fill the remaining vacancies.
- (e) At an AGM at which the number of candidates for Elected Director positions is greater than the number of vacancies, the election must be by ballot of the Voting Members.
- (f) The Board may publish rules and procedures concerning the voting system. The decision of the Board as to the rules or procedures applicable is final and conclusive.

11.6 Casual vacancies

- (a) The Board must promptly, but in any case within six months, following a vacancy in an Elected or Appointed Director position, appoint a person as an Appointed Director to fill the vacancy. The continuing Directors may act despite any vacancy in the Board, but subject to Article 12.8(b).
- (b) Any Director appointed under this Article may hold office only until the next AGM and, subject to nomination by the DNC, is eligible for re-appointment or election at that meeting.

11.7 Rotation of Directors

- (a) Subject to Article 11.7(d):
 - (i) each Appointed Director (excluding the Initial Directors) holds office for three years or until the third AGM following the date of their last appointment, whichever is longer; and
 - (ii) each Elected Director holds office for three years or until the third AGM following the date of their last election, whichever is longer.
- (b) At each AGM of the Company commencing from the fourth AGM of the Company, one-third of the Directors (excluding any Director referred to in Article 11.6 and rounded down, if necessary, to the nearest whole number) must retire from office as Directors.
- (c) The Directors who must retire at an AGM in accordance with Article 11.7(b) are those who have been longest in office since their last election but, as between Directors who were last elected or appointed as Directors on the same day, those who retire must be determined by agreement among themselves or, in the absence of agreement, by ballot.
- (d) In the event an Appointed Director or an Elected Director is not required by reason of Article 11.7(b) and (c) to retire at the third anniversary of that Director's election or appointment (or the third AGM following the date of their last election or appointment), that Director may continue to hold office for a further one year period or until the next occurring AGM, whichever is sooner.

- (e) Directors are eligible for re-appointment or re-election, subject to a maximum of three consecutive terms.

11.8 Termination of office of Director

- (a) The office of a Director is terminated:
 - (i) on the Director being absent from meetings of the Board during a period of three consecutive calendar months without leave of absence from the Board if the Board has not, within 14 days of having been served by the company secretary with a notice giving particulars of the absence, resolved that leave of absence be granted to the Director;
 - (ii) on the Director resigning office by notice in writing to the Company;
 - (iii) on the Director being removed from office under or pursuant to the Law; or
 - (iv) on the Director being prohibited from being a Director by reason of the operation of the Law.
- (b) A Director whose office is terminated under Article 11.8(a) is not to be taken into account in determining the number of Directors who are to retire by rotation at any general meeting.

11.9 Remuneration of Directors

Subject to the Law, each Director is to be paid or provided remuneration for services, determined by the Board, at the time and in the manner determined by the Board. The expression 'remuneration' in this Article does not include any amount which may be paid by the Company under any of Articles 11.10, 11.11, 11.12 and 11.14.

11.10 Remuneration of Directors for extra services

Any Director who devotes special attention to the business of the Company or who otherwise performs services which in the opinion of the Board are outside the scope of the ordinary duties of a Director, may be paid extra remuneration as determined by the Board.

11.11 Travelling and other expenses

Every Director is, in addition to any other remuneration provided for in this Constitution, entitled to be paid from Company funds all reasonable travel, accommodation and other expenses incurred by the Director in attending meetings of the Company or of the Board or of any committees or while engaged on the business of the Company.

11.12 Retirement benefits and superannuation contributions

Any person (including any officer of the Company) may be paid a benefit (including a prescribed benefit) in connection with the retirement from office (including a prescribed office) of any officer of the Company, in accordance with the Law. The Board is authorised to make arrangements with any officer with respect to, providing for, or effecting payment of, benefits in accordance with this Article.

11.13 Directors' conflicts of interest

- (a) If a Director holds an office or possess a property such that he or she might have duties or interests which directly or indirectly conflict with his or her duties or interests as Director, that Director must declare at a Board meeting the fact, nature, character and extent of that conflict.
- (b) A general notice that a Director holds an office or possesses a property such that he or she might have duties or interests which directly or indirectly conflict with his or her duties or interests as Director is sufficient declaration under this Article in respect of the Director and the office or property, as the case may be.
- (c) After giving the general notice, it is not necessary for the Director to give any special notice relating to any particular transaction which concerns that office or property. The company secretary must record in the minutes any declaration made or any general notice given by a Director under this Article.
- (d) A Director who has made a general declaration of conflict must also declare any material change to the circumstances which have previously been declared.

11.14 Contracts and Arrangements with the Company and Director's interests

- (a) Providing a Director has made appropriate disclosure as required by this Constitution, the Law and under the code of conduct established pursuant to Article 13.3, a Director is not disqualified by the office of Director from contracting or entering into any arrangement with the Company either as supplier, purchaser or otherwise, and no contract or arrangement which is entered into by the Company with a Director, nor any contract or arrangement which is entered into by or on behalf of the Company and in which a Director is in any way interested, may be avoided for that reason. A Director is not liable to account to the Company for any profit realised by any contract or arrangement, by reason only of holding the office of Director or of the fiduciary relationship established by the office.
- (b) Subject to Article 11.14(d), a Director must not be present at a meeting of the Board while a matter in respect of which the Director has an interest is being considered and must not participate in the discussion concerning the matter and must not vote in respect of that matter.
- (c) Despite having an interest in any contract or arrangement, a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing or otherwise.
- (d) If a Director has a material personal interest in respect of a contract or arrangement or other matter which the Law requires to be disclosed, the Director must not be present at the meeting nor participate in the discussion concerning the matter, nor vote in respect of it, unless:
 - (i) the Director has made appropriate disclosures under the Law; and

- (ii) appropriate approval has been given to the Director being present at the meeting, participating in the discussion concerning the matter and voting in respect of it.
- (e) Approval pursuant to Article 11.14(d) must be recorded in a resolution passed by the Directors (without a material personal interest in the matter) that:
 - (i) identifies the relevant Director, the nature and extent of the relevant Director's interest in the matter and its relation to the affairs of the Company; and
 - (ii) states that those other Directors are satisfied that the interest should not disqualify the relevant Director from voting or being present.

11.15 Director must not hold other office in the Company

- (a) A Director must not hold any other office or position in the Company.
- (b) A Director may be or become a director, officer or member of:
 - (i) a related body corporate of the Company or any corporation promoted by the Company, or in which it may be interested, whether its interest is as a vendor or member or otherwise; or
 - (ii) any other corporation or organisation,
 and the Director is not accountable for any benefits received as a Director or member of, or holder of any other office or position in, the corporation or organisation.

11.16 Exercise of voting power in other corporations

Subject to the Law, the Board may exercise the voting power conferred by membership in any corporation held or owned by the Company as the Board thinks fit, including the exercise of the voting power in favour of any resolution:

- (a) appointing the directors of that corporation;
- (b) voting on any other matter with respect to that corporation; or
- (c) providing for the payment of remuneration to the directors of that corporation,

and a Director may vote in favour of the exercise of those voting rights, despite the fact that the Director is, or may be about to be appointed, a director of that other corporation and may be interested in the exercise of those voting rights.

12 Proceedings of the Board

12.1 Procedures relating to Board meetings

- (a) The Board may meet together, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) Until otherwise determined by the Board, a majority of Directors eligible to vote will form a quorum.

- (c) Notices of meeting of the Board may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by all the Directors.

12.2 Board meetings by telephone or other means of communication

- (a) The Board may meet either in person or by telephone, audio-visual link or by using any other technology consented to by all the Directors. A consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting.
- (b) A meeting conducted by telephone, audio-visual link or other means of communication is considered held at the place agreed by the Directors attending the meeting if at least one of the Directors present at the meeting was at that place for the duration of the meeting.

12.3 Votes at Board meetings

- (a) Each Director has one vote at a Board meeting.
- (b) Questions arising at any meetings of the Board are decided by a majority of votes and, in the case of an equality of votes, the chair of the meeting has a second or casting vote (except when only two Directors are eligible to vote in which case the chair will not have a second or casting vote).
- (c) A Director with a material personal interest in a matter that is being considered at a meeting of the Board may be counted in a quorum and may vote on the matter, subject to the Law and this Constitution.

12.4 Chair and deputy chair

- (a) The Board may elect a chair and a deputy chair of its meetings and determine the period for which each is to hold office.
- (b) If no chair or deputy chair is elected or if at any meeting the chair and the deputy chair are not present at the time specified for holding the meeting, the Directors present may choose one of their number to be chair of the meeting.

12.5 Powers of meetings of the Board

A meeting of the Board at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

12.6 Committees of the Board

- (a) The Board may delegate any of its functions or powers to a committee or committees consisting of any one or more Directors and any other independent person or persons as they think fit, provided that the majority of each committee's members are Directors.
- (b) A committee to which any functions or powers have been delegated must perform the functions and exercise the powers in accordance with any directions from the Board.

- (c) In establishing a committee, the Board must determine the membership, functions and responsibilities of the committee, and give direction as to the reports the committee is to make to the Board. The Board may give other directions to a committee from time to time.
- (d) The provisions of this Constitution applying to meetings and resolutions of Directors apply to meetings and resolutions of a committee, so far as they can and with such changes as necessary.

12.7 Other delegation of powers by the Board

- (a) The Board may delegate any of its powers to any person, as the Board sees fit. This includes delegating any of the Board's powers to the CEO pursuant to Article 14.2 and to committees pursuant to Article 12.6. Delegation of powers does not remove the Board's accountability for the exercise of those powers.

12.8 Validity of acts of the Board and Directors

- (a) All actions at any meeting of the Board or by a committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been properly appointed and was qualified and continued to be a Director or a member of the committee.
- (b) If the number of Directors is reduced below the minimum number fixed under this Constitution, the continuing Directors may:
 - (i) act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the Company; and
 - (ii) act to urgently address an emergency situation if they determine that:
 - (A) there is an emergency situation requiring urgent action by the Company; and
 - (B) it is not reasonably practical in the circumstances to increase the number of Directors or call a general meeting of the Company under Article 12.8(b)(i) before taking such urgent action.

12.9 Decisions without meetings

- (a) The Board is taken to have made a decision at a meeting if:
 - (i) without meeting, a majority of the Directors entitled to vote on the proposed decision indicate agreement with the decision;
 - (ii) that agreement is indicated in accordance with the method determined by the Board under Article 12.9(b); and
 - (iii) all the Directors were informed of the proposed decision, or reasonable efforts were made to inform all the Directors of the proposed decision.

- (b) Article 12.9(a) applies only if the Board:
 - (i) has determined that it may make decisions of that kind without meeting; and
 - (ii) has determined the method by which Directors are to indicate agreement with proposed decisions.
- (c) For the purposes of Article 12.9(a)(i), a Director is not entitled to vote on a proposed decision if the Director would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.
- (d) The Company must keep a record of decisions made in accordance with this Article 12.9.

13 Functions and Powers of the Board

13.1 Functions of the Board

The principal functions of the Board are:

- (a) to decide strategies and policies to be followed by the Company; and
- (b) to ensure the proper, efficient and effective performance of the Company's functions.

13.2 General powers of the Board

- (a) The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred on it by this Constitution) may exercise all powers and do all things as are within the power of the Company and are not by this Constitution or by law required to be exercised or done by the Company in general meeting.
- (b) Without limitation to Article 13.2(a), the Board has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (c) Anything done in the name of, or on behalf of, the Company by the Board, or with the authority of the Board, is taken to have been done by the Company.

13.3 Code of Conduct

- (a) The Board must formulate and implement a code of conduct for the Directors and senior officers of the Company in accordance with a commonly accepted standard such as those proposed by the Australian Securities Exchange or the Australian Institute of Company Directors.
- (b) The code is to include provisions concerning, at a minimum:
 - (i) use and disclosure of information;
 - (ii) receiving, keeping, holding and reporting gifts of any description by Directors and senior officers of the Company;

- (iii) conflicts of interest and duty; and
- (iv) ethical behaviour by the Company, Directors and senior officers in relation to the Company's affairs.

14 Chief Executive Officer

14.1 Establishment of office of the CEO

- (a) There is to be a Chief Executive Officer (**CEO**) of the Company.

14.2 Appointment and powers of the CEO

- (a) The Board may appoint a person as the CEO for:
 - (i) a period ending on the occurrence of events (if any) stipulated by the Board; and
 - (ii) a remuneration and on terms determined by the Board.
- (b) The CEO must be appointed:
 - (i) by written instrument; and
 - (ii) on a full-time basis.
- (c) The CEO must not be a Director.
- (d) The Board may confer on and withdraw from the CEO any of the powers exercisable under this Constitution by the Board as it thinks fit and on any conditions it thinks expedient, but the conferring of powers by the Board on the CEO does not exclude the exercise of those powers by the Board.
- (e) Subject to Article 14.2(d), the CEO has power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties.

14.3 Acting appointments as CEO

- (a) The Board may, by written instrument, appoint a person (other than a Director) to act as the CEO:
 - (i) during a vacancy in the office of the CEO (whether or not an appointment has previously been made to the office); or
 - (ii) during any period, or during all periods, when the CEO:
 - (A) is absent from duty or from Australia; or
 - (B) is, for any reason, unable to perform the duties of the office.

14.4 Termination of the CEO

- (a) Subject to the law, the Board may terminate the appointment of the CEO. For the avoidance of doubt, the Company in general meeting has no power to terminate the appointment of the CEO or appoint a person to the position of CEO.
- (b) A person's appointment as CEO automatically terminates if he or she is appointed or elected as a Director.

14.5 Functions of the CEO

- (a) The CEO is responsible for the day to day administration of the Company.
- (b) The CEO must act in accordance with policies determined by the Board.
- (c) The Board may give written directions to the CEO about the performance of the CEO's responsibilities.
- (d) The CEO must comply with a direction given pursuant to Article 14.5(c).

15 Company secretary

- (a) The Board may, by written instrument, appoint one or more company secretaries and may at any time terminate the appointment or appointments.
- (b) The Board may determine the terms and conditions of appointment of a company secretary, including remuneration. Any one of the company secretaries appointed by the Board may carry out any act or deed required by this Constitution, the Law or by any other statute to be carried out by the secretary of the Company.

16 Financial records

- (a) The Board must cause proper financial and other records to be kept and provide annual financial reporting to the Members as required by the Law and as required by any other applicable laws.
- (b) The Board may, from time to time, determine whether and to what extent and at what times and places and under what conditions or regulations any financial or other records of the Company are to be open to the inspection of Members who are not Directors. No Member (who is not a Director) has the right to inspect any records of the Company except as conferred by law or authorised by Directors or by the Company in general meeting.

17 Notices

17.1 Service of notices

- (a) A notice may be given by the Company or the Board to any Member, or in the case of Joint Members to the Joint Member whose name appears first in the Register:

- (i) personally;
 - (ii) by leaving it at the Member's registered address; or
 - (iii) by sending it by prepaid post, or by facsimile, email or other electronic transmission addressed to the Member's registered address, facsimile number, email address or other electronic address notified by the Member to the Company.
- (b) If the notice is signed, the signature may be original, printed or electronic.

17.2 When notice considered to be served

- (a) A notice sent by post is considered to have been served at the expiration of three Business Days after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.
- (b) A notice served on a Member personally or left at the Member's registered address is considered to have been served when delivered.
- (c) A notice served on a Member by facsimile, email or other electronic transmission is considered to have been served when the transmission is sent.

18 Indemnity of officers

- (a) The Company is to indemnify each officer of the Company out of the assets of the Company, to the extent relevant, 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.
- (b) If the Board considers it appropriate, the Board may execute a documentary indemnity in any form in favour of any officer of the Company.
- (c) If the Board considers it appropriate, the Company may:
 - (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company in or arising out of the discharge of the duties of the officer; and
 - (ii) bind itself in any contract or deed with any officer of the Company to make the payments.
- (d) If the Board considers it appropriate, the Company may:
 - (i) give a former Director access to certain papers, including documents provided or available to the Board and other papers referred to in those documents; and
 - (ii) bind itself in any contract with a Director or former Director to give the access.
- (e) In this Article 18:
 - (i) **officer** means:

- (A) a Director, company secretary, executive officer or employee; or
- (B) a person appointed as a trustee by, or acting as a trustee at the request of, the Company,

and includes a former officer;

- (ii) **duties of the officer** includes, in any particular case when the Board considers it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company or, if applicable, a subsidiary of the Company to any other corporation;
- (iii) **to the relevant extent** means:
 - (A) to the extent the Company is not precluded by the 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) when the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer 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; and
- (iv) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

19 Registration under the *Australian Charities and Not-for-profits Commission Act 2012*

In the event that the Company is registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) the Board and Voting Members must arrange for the Constitution to be revised so as to address the requirements of that Act.

END