

Constitution

Australian Food and Grocery Council Ltd

ACN 068 732 883

A Public Company Limited by Guarantee

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1 Name of the Company

The name of the Company is Australian Food and Grocery Council Limited.

2 Type of Company

- (a) The Company is a not-for-profit public company limited by guarantee.
- (b) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
 - (i) payment of debts and liabilities of the Company;
 - (ii) payment of the costs, charges and expenses of winding up; and
 - (iii) any adjustment of the rights of the contributories among Members.
- (c) The amount that each Member or past Member is liable to contribute is limited to \$100.00.

3 Replaceable Rules

This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

4 Definitions and Interpretation

4.1 Definitions

In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) **Affiliate Member** means a Member in the Membership class set out in **clause 7.1(c)**;
- (b) **AGM** means annual general meeting;
- (c) **Alternate Director** means a person of a Director's choosing who sits on the Board in lieu of a Director in the event that the Director cannot attend a meeting;
- (d) **Associate Member** means a Member in the Membership class set out in **clause 7.1(b)**;
- (e) **Board** means the board of Directors of the Company;
- (f) **Business Day** means a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory;
- (g) **By-Laws** means the by-laws adopted and amended by the Board from time to time in accordance with **clause 52**;
- (h) **Chair** means a Director appointed to that position pursuant to **clause 33.7(a)(i)**;
- (i) **Chairperson** means the person holding that office under this Constitution and includes any assistant or acting chairperson;

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- (j) **Committee** means a committee of the Board established in accordance with **clause 48**;
- (k) **Company** means Australian Food and Grocery Council Ltd (ACN 068 732 883);
- (l) **Constitution** means this constitution as amended or supplemented from time to time;
- (m) **Co-Opted Director** means a person with specific skills, including, but not limited to, a lawyer, accountant or person with expertise for a particular project the Company may undertake, appointed as a Director pursuant to **clause 33.5**;
- (n) **Corporations Act** means *Corporations Act 2001* (Cth);
- (o) **Deputy Chair** means a Director appointed to that position pursuant to **clause 33.7(a)(ii)**;
- (p) **Director** means any person holding the position of a director of the Company (and includes both Elected Directors and Co-Opted Directors) and **Directors** means the directors for the time being of the Company or, as the context permits, such number of them as has authority to act for the Company;
- (q) **Elected Director** means a person elected as a Director pursuant to **clause 33.3**;
- (r) **Financial Year** means the period from 1 July in one calendar year until 30 June in the following calendar year;
- (s) **Full Member** means a Member in the Membership class set out in **clause 7.1(a)**;
- (t) **Industry** means Australia's food, beverage and grocery supply industry, including the manufacturing or processing of food, beverage and grocery products (in Australia and elsewhere), the distribution of such products, and the brand Ownership of such products;
- (u) **Member** means a member of the Company pursuant to **clause 6** and **clause 7** (and includes each of Full Members, Associate Members and Affiliate Members) and **Membership** has the corresponding meaning;
- (v) **Member Present** means in connection with a meeting of Members, a Voting Member being present by proxy or attorney or Member Representative;
- (w) **Member Representative** means a person authorised in accordance with section 250D of the Corporations Act to act as a representative of a body corporate, as described in **clause 11**;
- (x) **Member's Guarantee Amount** means the amount referred to in **clause 2(c)**;
- (y) **Objects** means the objects of the Company as set out in **clause 5.1**;
- (z) **Office** means the registered office for the time being of the Company;
- (aa) **Office Bearer** means a Director holding any of the offices specified in **clause 33.7**;
- (bb) **Officer** has the same meaning as given to that term in section 9 of the Corporations Act;
- (cc) **Owner**, with respect to a brand, means the person which holds the intellectual property rights in that brand, and **Ownership** has the corresponding meaning;

- (dd) **Poll** means any process of voting by which votes are received, recorded and counted;
- (ee) **Register** means the register of Members to be kept pursuant to the Corporations Act;
- (ff) **Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act;
- (gg) **Retailer** means an entity which sells finished goods to consumers, including, but not limited to, supermarkets, general merchandise stores, restaurants and non-store retailers (such as through mail order or online shopping services);
- (hh) **Secretary** means the person appointed as the secretary of the Company under **clause 51(a)** and includes any assistant or acting secretary;
- (ii) **Special Resolution** has the meaning given to it by the Corporations Act;
- (jj) **Subscription** means the subscription fees payable by Members pursuant to **clause 12**;
- (kk) **Subsidiary** has the meaning given to that term by the Corporations Act; and
- (ll) **Voting Members** are Full Members which have paid any payable annual Subscription within the time limits specified in **clause 13(a)(v)**, namely, at the latest, within thirty (30) days after having been notified by the Company that the Full Member is in arrears to the Company; and
- (mm) **Wholesaler** means an entity which purchases finished goods from the Industry and sells finished goods to Retailers.

4.2 Interpretation

In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes the other gender;
- (c) the word **person** means a natural person and any partnership, association, body or entity whether incorporated or not;
- (d) the words **writing** and **written** include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (f) a reference to any clause or schedule is to a clause or schedule of this Constitution;
- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (h) italicisation of a word does not affect its meaning;
- (i) an expression used in a particular Part or Division of the Corporations Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with

- a matter dealt with by that Part or Division the same meaning as in that Part or Division; and
- (j) headings do not form part of or affect the construction or interpretation of this Constitution.

5 Objects and Powers

5.1 Objects

- (a) The Company is established to represent Australia's Industry. The Company will achieve this object by:
- (i) fostering the environment for a dynamic, competitive, responsible and profitable Industry in Australia that meets the needs of Australian and international consumers, including by:
 - (A) promoting higher levels of competitiveness and efficiency;
 - (B) encouraging fair relationships between Retailers and the Industry; and
 - (C) encouraging confidence and trust in the Industry;
 - (ii) promoting and safeguarding the welfare of the Industry, and taking any action to benefit or protect its Australian and international interests;
 - (iii) monitoring, and advocating in relation to, governmental and other authorities' regulation and policies that impact the Industry, including (but not limited to) its relationship with other industries, consumers and with the environment;
 - (iv) being the voice of the Industry, in Australia and overseas, including by:
 - (A) representing and promoting the Industry externally;
 - (B) clarifying and resolving overall Industry objectives and policy issues within the Industry; and
 - (C) negotiating on behalf of the Industry;
 - (v) facilitating collaboration between Members (within the bounds of the law), and where appropriate with external stakeholders,
 - (vi) promoting education regarding the Industry, including by:
 - (A) supporting and assisting research and experimentation;
 - (B) producing and distributing materials and disseminating information;
 - (C) providing guidance to Members; and
 - (D) conducting or participating in training courses, seminars, symposia, lectures, conferences and other activities;
 - (vii) developing and/ or adopting policies, procedures, standards and codes of practice for the benefit of the Industry; and
 - (viii) anything ancillary to the Objects set out in **clauses 5.1(a)(i) to 5.1(a)(vii)**.

- (b) The Company can only exercise the powers in section 124(1) of the Corporations Act to:
 - (i) carry out the Objects; and
 - (ii) do all things incidental or convenient in relation to the exercise of power under **clause 5.1(b)(i)**.

5.2 Income and Property

- (a) The income and property of the Company will only be applied towards the promotion of the Objects of the Company.
- (b) No income or property of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company. However nothing in this Constitution will prevent payment in good faith to a Member:
 - (i) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
 - (ii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
 - (iii) of reasonable and proper rent for premises leased by any Member to the Company.

5.3 Remuneration of Directors

No payment shall be made to any Director (except any executive Director in that Director's capacity as an employee of the Company) other than the following payments in good faith by the Company:

- (a) in the case of Co-Opted Directors, such remuneration, and on such conditions, as the Board sees fit;
- (b) out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; and
- (c) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service.

MEMBERSHIP

6 Admission to Membership

6.1 Eligibility for Membership

Any individual or body corporate is eligible to apply to become a Member if the person or body corporate:

- (a) agrees to assume the liability to pay the Member's Guarantee Amount;
- (b) satisfies the criteria for the relevant class of Membership in accordance with **clause 7**;

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- (c) supports the Objects of the Company and agrees to comply with:
 - (i) the terms of this Constitution;
 - (ii) any code of conduct which the Board may produce from time to time; and
 - (iii) any Industry codes of practice prescribed by the Board (whether produced by the Board or by a third party);
 - (d) is, in the Board's opinion, of good character; and
 - (e) lodges an application form in accordance with **clause 8**.

6.2 Benefits

- (a) Each Voting Member will be entitled to vote at all general meetings.
- (b) In addition to each Voting Member being entitled to vote at all general meetings, the Board will determine from time to time what additional benefits shall attach to Membership.

7 Classes of Membership

7.1 Classes of Membership

There shall be the following classes of Membership:

(a) **Full Members**

Full Members:

- (i) must be bodies corporate; and
- (ii) must be:
 - (A) directly engaged in the manufacturing or processing of food, beverages or groceries in Australia or elsewhere; or
 - (B) Owners or distributors of brands within the Industry; or
 - (C) a holding company of any such bodies corporate;
- (iii) must not be:
 - (A) bodies corporate which derive the majority of their revenue from acting as a Wholesaler or Retailer of food, beverages or grocery products;
 - (B) with respect to the Industry, solely suppliers; or
 - (C) solely primary producers; and
- (iv) shall be entitled to vote.

(b) **Associate Members**

Associate Members:

- (i) must be individuals or bodies corporate;
- (ii) must be concerned with, involved in or interested in, the Industry;
- (iii) must not be:

- (A) bodies corporate which derive the majority of their revenue from acting as a Wholesaler or Retailer of food, beverages or grocery products; or
- (B) eligible for Membership under **clause 7.1(a)**; and
- (iv) shall not be entitled to vote.
- (c) **Affiliate Members**
Affiliate Members:
 - (i) must be bodies corporate; and
 - (ii) must be member-based industry associations which have a direct interest related to the Industry; and
 - (iii) shall not be entitled to vote.
- (d) The Board may determine from time to time additional qualifications for admission to each Membership class and the rights attached to each Membership class.

7.2 Change in Eligibility

If, at any point in time, a Member ceases to fulfil the Membership eligibility criteria under **clause 7.1** (whether with respect to a Membership class, or Membership as a whole), but has paid all annual Subscriptions up until the end of the then current Financial Year, that Member may remain in that Membership class until the end of that Financial Year.

8 Applications for Membership

8.1 Applications for Membership

- (a) An application for Membership of the Company must:
 - (i) be made in writing in the form prescribed by the Board from time to time;
 - (ii) specify the class of Membership being applied for by the applicant;
 - (iii) include a signature, or equivalent acknowledgement by the applicant acknowledging that the applicant agrees to be bound by:
 - (A) the Constitution;
 - (B) any code of conduct which the Board may produce from time to time; and
 - (C) any Industry codes of practice prescribed by the Board (whether produced by the Board or by a third party); and
 - (iv) be lodged with the person to whom the Board has delegated the function of receiving Membership applications.
- (b) As soon as practicable after receiving an application for Membership, the person referred to in **clause 8.1(a)(iv)** must refer the application to the Board which is to determine whether to approve or reject the application.
- (c) As soon as practicable after the Board makes that determination, the person referred to in **clause 8.1(a)(iv)** must:

- (i) notify the applicant, in writing, that the Board approved or rejected the application (whichever is applicable); and
- (ii) if the Board approved the application:
 - (A) enter the applicant's name and class of Membership in the Register and, subject to the Corporations Act, the person becomes a Member on the name being so entered; and
 - (B) provide the applicant with an invoice for the initial annual Subscription, which must not be due any earlier than ten (10) Business Days after the date of the invoice.
- (d) If the Board rejects a Membership application, the Board will not be required to provide the applicant with any reasons for the rejection.

9 Register

- (a) The Company must establish and maintain a Register of Members.
- (b) The Register must be kept by the Secretary at the Office and must contain:
 - (i) for each current Member:
 - (A) their name;
 - (B) their address;
 - (C) any alternative address or addresses provided by the Member for the service of notices;
 - (D) their class of Membership;
 - (E) the date the Member was entered on to the Register; and
 - (ii) for each person who ceased to be a Member in the last seven (7) years:
 - (A) their name;
 - (B) their address last listed on the Register, or any alternative address nominated by the Member for the service of notices; and
 - (C) the dates the Membership started and ended.

10 Membership Entitlements Not Transferable

A right, privilege or obligation which a person has by reason of being a Member:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of the person's Membership.

11 Member Representative(s)

- (a) This **clause 11** only applies to Members which are bodies corporate.
- (b) A Member which is a body corporate or a body corporate which is an applicant for Membership must appoint as its Member Representative(s) a minimum of one (1) natural person.

- (c) A Member which is a body corporate may appoint more than one (1) Member Representative, but only one (1) Member Representative may exercise that Member's powers at any one time.
- (d) The name and address of the Member Representative(s) will be entered in the Register as the representative of the Member which is a body corporate.
- (e) All correspondence and notices from the Company will be served on that Member Representative(s) and any notice served on the Member Representative(s) will be deemed to be service on the Member which is a body corporate and which is represented by that particular Member Representative.
- (f) If the appointment of a Member Representative by the Member which is a body corporate is made by reference to a position held, the appointment must identify the position.
- (g) Despite **clause 9**, a Member which is a body corporate may remove and replace a Member Representative where the Member which is a body corporate gives written notice to the Board (or a person to whom that function is delegated by the Board) in a form approved by the Board.
- (h) A signature by a Member Representative of a Member which is a body corporate on behalf of that Member which is a body corporate is taken to be the signature of that Member which is a body corporate for the purposes of this Constitution.
- (i) Any power or right of a Member which is a body corporate as granted by this Constitution can be exercised by the Member Representative of that particular Member which is a body corporate.
- (j) Members which are bodies corporate are represented at meetings of Members by their Member Representatives, subject to the right of a Member Representative to appoint a proxy pursuant to **clause 28(a)**.
- (k) The actions of a Member Representative bind the Member which is a body corporate and which is represented by that particular Member Representative.
- (l) Each Member Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if a Member himself or herself.

12 Subscriptions

12.1 Subscriptions

- (a) Subject to **clause 12.1(d)**, there shall be an annual Subscription payable by each Member to the Company.
- (b) Subject to **clause 12.1(d)**, the amount of the annual Subscription shall be payable by Members at such times and in such manner as determined by the Board from time to time.
- (c) The Board may charge different classes of Membership different annual Subscriptions.
- (d) The Board (or other person to whom the function is delegated in accordance with this Constitution) may in its discretion:
 - (i) determine that no annual Subscription is payable by a Member or Members (in whole or in part) in a given year;

- (ii) determine that there will be different annual Subscriptions for different Members within the same Membership class; and
- (iii) extend the time for payment of the annual Subscription by any Member.
- (e) No part of any annual Subscription shall be refunded to a Member who ceases to be a Member in accordance with **clause 13**, unless otherwise agreed by the Board.

12.2 Entrance Fee

There shall be no entrance fee payable by applicants for Membership or by new Members.

13 Cessation of Membership

- (a) A Member's Membership will cease:
 - (i) on the date that the Secretary receives written notice of resignation from that Member;
 - (ii) in the case of a Member who is a natural person, upon that Member dying;
 - (iii) subject to **clause 7.2**, upon that Member no longer satisfying the criteria for its respective class of Membership (unless transferred to another class of Membership by the Board);
 - (iv) in the case of a Member who is a natural person, upon that Member becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
 - (v) subject to **clause 12.1(d)**, if that Member fails to pay an annual Subscription:
 - (A) within thirty (30) days after it falls due; and
 - (B) then fails to rectify this default within thirty (30) days of being notified of the default by the Company;
 - (vi) if the Member is expelled from the Company pursuant to **clause 14**;
 - (vii) if, being a Member which is a body corporate:
 - (A) that Member is dissolved or otherwise ceases to exist;
 - (B) that Member has:
 - (1) a receiver;
 - (2) a receiver and manager;
 - (3) a liquidator;
 - (4) an administrator;
 - (5) an administrator of a deed of company arrangement;
or

- (6) a trustee of other person administering a compromise or arrangement between the Member and someone else,
appointed to it; or
 - (viii) if the Company in general meeting resolves by Special Resolution to terminate the Membership of a Member whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company. The Member must be given at least twenty-one (21) days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed.
- (b) A Member may at any time, pursuant to **clause 13(a)(i)**, resign as a Member but shall continue to be liable for:
 - (i) any monies due by the Member to the Company;
 - (ii) any sum for which the Member is liable as a Member of the Company under **clause 2(b)**.

14 Disciplining of Members

- (a) Where the Board is of the opinion that a Member has:
 - (i) persistently refused or neglected to comply with a provision or provisions of this Constitution, or any policies or codes of practice issued by the Board; or
 - (ii) persistently and wilfully acted in a manner prejudicial to the interests of the Company,
the Board may:
 - (iii) expel the Member from the Company; or
 - (iv) suspend the Member from Membership of the Company for a specified period.
- (b) A resolution of the Board pursuant to **clause 14(a)** is of no effect unless the Board confirms the resolution in accordance with this **clause 14(b)** at a Board meeting held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service on the Member of a notice pursuant to **clause 14(c)**.
- (c) If the Board resolves under **clause 14(a)** to expel or suspend any Member, the Secretary must serve the Member with a notice in writing:
 - (i) setting out the resolution of the Board and the grounds upon which it is based;
 - (ii) stating that the Member may address the Board at a Board meeting to be held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service of the notice;
 - (iii) stating the date, place and time of that meeting; and
 - (iv) informing the Member that the Member may do either or both of the following:

- (A) attend and speak at that meeting;
 - (B) submit to the Board at or before the date of the meeting, written representations relating to the resolution.
- (d) At a meeting of the Board held as referred to in **clause 14(c)**, the Board must:
- (i) give the Member an opportunity to make oral representations;
 - (ii) give due consideration to any written representations submitted to the Board by the Member at or before the Board meeting; and
 - (iii) by a resolution, determine whether to confirm or to revoke the resolution under **clause 14(a)**. A resolution to confirm the resolution under **clause 14(a)** requires the affirmative votes of at least seventy-five per cent (75%) of the Directors voting in the Board meeting.
- (e) The Member must be notified in writing of the decision of the Board within seven (7) days.

GENERAL MEETINGS

15 Convening of General Meetings

15.1 AGMs

The Board must convene AGMs in accordance with the requirements of the Corporations Act.

15.2 Convening of General Meetings by Directors

A minimum of two (2) Directors may, whenever those Directors think fit, convene a general meeting of the Company.

15.3 Convening of General Meetings by Members

The Members may call a general meeting, and the Company will do so in accordance with the provisions of Part 2G.2 of the Corporations Act pertaining to the rights of members to call a general meeting.

15.4 Meeting Venues

A general meeting of the Company may be convened virtually or at one (1) or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting.

16 Notice of General Meeting

- (a) Subject to consent to shorter notice being given in accordance with the Corporations Act, at least twenty-one (21) days' notice of any general meeting must be given specifying:
- (i) the place, day and hour of the meeting;
 - (ii) the general nature of any business to be transacted at the meeting;
 - (iii) if a Special Resolution is to be proposed, the details of and intention to propose it;

- (iv) if the meeting is to be held virtually or in two or more places, the technology that will be used to facilitate this; and
- (v) any other information required by the Corporations Act.
- (b) The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at, or any resolution passed at, the meeting.
- (c) Subject to **clause 16(b)**, notice of every general meeting must be given in any manner authorised by this Constitution to:
 - (i) every Member;
 - (ii) every Director; and
 - (iii) the auditor for the time being of the Company (if any).

17 Cancellation or Postponement of General Meeting

17.1 Cancellation or Postponement of General Meeting

- (a) Subject to the provisions of the Corporations Act and this Constitution, the Board may cancel a general meeting of the Company:
 - (i) convened by the Board; or
 - (ii) which has been convened by the Members pursuant to **clause 15.3** upon receipt by the Company of a written notice withdrawing the requisition signed by the Members who convened the meeting.
- (b) The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.
- (c) Where any general meeting is cancelled or postponed or the venue for a general meeting is changed, the Board must notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting.

17.2 Failure to Notify in Writing

Any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

PROCEEDINGS AT GENERAL MEETINGS

18 Quorum

- (a) No business may be transacted at any general meeting unless there is a quorum of Members Present at all times during the meeting.
- (b) Either:
 - (i) six (6) Members Present; or

- (ii) the number of Members Present which constitutes ten per cent (10%) of the total number of Voting Members (rounded up to the nearest integer), whichever is the higher, shall constitute a quorum for all general meetings.
- (c) If within thirty (30) minutes after the time appointed for holding a general meeting a quorum is not present:
 - (i) the meeting, if convened upon the requisition of Members, shall be dissolved; or
 - (ii) in any other case:
 - (A) it will stand adjourned to such other day time and place as the Board may by notice to the Members appoint; and
 - (B) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.

19 Chairperson

- (a) The Chair shall preside as Chairperson at each general meeting.
- (b) Where a general meeting is held and:
 - (i) there is no Chair; or
 - (ii) the Chair is not present within thirty (30) minutes after the time appointed for the holding of the meeting or, if present, is unwilling to act as Chairperson of the meeting,then the following person will be Chairperson in lieu of the Chair in the order of availability set out below:
 - (iii) Deputy Chair;
 - (iv) another Director chosen by the Directors present at the meeting; and
 - (v) a Member Representative of a Voting Member chosen by a majority of the Members Present.
- (c) The rulings of the Chairperson of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

20 Adjournments

- (a) The Chairperson of a general meeting at which a quorum is present:
 - (i) may adjourn a meeting with the consent of the meeting; and
 - (ii) must adjourn the meeting if the meeting so directs,to a time and place as determined.
- (b) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed, and not on the date of the original meeting.

- (d) It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for thirty (30) days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

21 Determination of Questions

- (a) At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a Poll is demanded by:
- (i) the Chairperson of the meeting; or
 - (ii) at least two (2) Members Present.
- (b) Before a vote on a resolution is taken, the Chairperson must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) A declaration by the Chairperson of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company which has been signed by the Chairperson of the meeting or the next succeeding meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

22 Polls

- (a) A Poll may be demanded:
- (i) before a vote on a resolution is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (b) If a Poll is demanded it must be taken in such manner and at such time and place as the Chairperson of the meeting directs subject to **clause 22(e)**.
- (c) The result of the Poll shall be taken to be the resolution of the meeting at which the Poll was demanded.
- (d) The demand for a Poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a Poll has been demanded.
- (e) A Poll demanded on the election of a Chairperson or any question of adjournment of the meeting must be taken immediately.
- (f) The demand for a Poll may be withdrawn.

23 Voting Rights

A Voting Member has one (1) vote, both on a show of hands and a Poll.

24 Disqualification

No person other than:

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

25 Objection to Qualification to Vote

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

26 Casting Vote

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

27 Right of Non-Members to Attend General Meeting

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

PROXIES

28 Right to Appoint Proxies

- (a) A Voting Member or a Member Representative of a Voting Member may appoint a person as the Voting Member's or the Member Representative's proxy to attend and vote for the Voting Member or the Member Representative at the meeting.
- (b) If a Voting Member or a Member Representative appoints a proxy, the proxy is entitled to vote on a show of hands and on a Poll.

29 Appointing a Proxy

29.1 Appointing a Proxy

The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing or, if the appointor is a corporation, signed by an authorised officer or attorney of the corporation.

29.2 Instrument of Proxy

- (a) The instrument of proxy is valid if it contains the following information, and any additional information required by the Corporations Act:

- (i) the name and address of the Voting Member or Member Representative of the Voting Member, if applicable;
 - (ii) the name of the Company;
 - (iii) the proxy's name or the name of the office of the proxy; and
 - (iv) the meetings at which the instrument of proxy may be used.
- (b) An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- (c) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 29.2(a)**.
- (d) An instrument of proxy may be revoked at any time by notice in writing to the Company.

30 Lodgement of Proxies

- (a) An instrument appointing:
- (i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
 - (ii) an attorney to exercise a Voting Member's or a Member Representative of a Voting Member's rights at a general meeting or a certified copy of that power of attorney,
- must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than forty-eight (48) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote. In default, the instrument of proxy or the power of attorney will not be treated as valid.
- (b) For the purposes of this **clause 30** it will be sufficient that any document required to be lodged by a Voting Member or Member Representative of a Voting Member be received in legible form by email or other electronic transmission if the notice permits at the place at which the document is required to be delivered by the Voting Member or Member Representative of the Voting Member and the document shall be regarded as received at the time the email or other electronic transmission was received at that place.

31 Validity of Proxies

- (a) A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
- (i) the death or unsoundness of mind of the Voting Member or Member Representative of the Voting Member;
 - (ii) the bankruptcy or liquidation of the Voting Member or Member Representative of the Voting Member; or
 - (iii) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

if the Company has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least twenty-four (24) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

- (b) A proxy who is not entitled to vote on a resolution as a Voting Member or Member Representative of a Voting Member may vote as a proxy for another Voting Member or Member Representative of a Voting Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.
- (c) Except on a show of hands, a proxy may vote as more than one (1) Voting Member or Member Representative of a Voting Member if the proxy holds appointments for those Voting Members or Member Representatives of Voting Members which specify the way the proxy is to vote on the resolution and the proxy votes that way.

32 Rights of Proxies and Attorneys

- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a Poll.
- (b) Subject to **clause 32(c)**, unless a Voting Member or Member Representative of a Voting Member by the instrument of proxy directs the proxy to vote in a certain manner, the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.
- (c) A proxy will not be revoked by the appointor of the proxy attending and taking part in any general meeting, but if the appointor of the proxy votes on a resolution, either on a show of hands or on a Poll, the person acting as proxy for the appointor of the proxy shall not be entitled to vote in that capacity in respect of the resolution.
- (d) The Chairperson of a general meeting may require any person acting as a proxy to establish to the satisfaction of the Chairperson that he or she is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his or her identity, he or she may be excluded from voting either upon a show of hands or upon a Poll.

APPOINTMENT AND REMOVAL OF DIRECTORS

33 Number and Appointment of Directors

33.1 Number of Directors

- (a) The Board of Directors shall consist of not fewer than seven (7) and not more than eleven (11) persons.
- (b) Subject to section 201P of the Corporations Act, the Board may by resolution vary the number of Directors holding office from that referred to in **clause 33.1(a)**, provided that the minimum number is not fewer than seven (7) Directors.

33.2 Composition of Board

The Board shall consist of:

- (a) at least seven (7) and up to nine (9) Elected Directors; and
- (b) up to two (2) Co-Opted Directors appointed by the Board from time to time, the number of whom is to be determined by the Board.

33.3 Eligibility as a Director

A person is eligible to be appointed as a Director if the person:

- (a) has given the Company written consent to act as Director; and
- (b) is not disqualified by the Corporations Act from being a Director of the Company.

33.4 Elected Directors

- (a) Nominations of candidates for election as Elected Directors shall:
 - (i) be in writing in a form prescribed by the Board signed by two (2) Voting Members and be accompanied by the written consent of the nominee (which may be endorsed on the nomination);
 - (ii) be delivered to the Secretary (or other person authorised by the Board for the purpose) not later than close of business five (5) Business Days before the day fixed for the holding of the AGM at which the election is to take place (or at an earlier date, as determined by the Board in its unfettered discretion at the time of calling for nominations); and
 - (iii) specify the Voting Member in relation to which the nominee satisfies the criteria in **clause 33.4(c)**.
- (b) At the AGM at which the election is to take place:
 - (i) if insufficient nominations are received to fill all positions on the Board which are to be filled at the election, the candidate or candidates nominated shall be deemed to be elected and the remaining positions to be filled shall be treated as casual vacancies;
 - (ii) if the number of nominations received is equal to the number of positions to be filled, the persons nominated shall be taken to be elected; and
 - (iii) if the number of nominations received exceeds the number of positions to be filled, a written vote shall be taken.
- (c) An Elected Director must be the chief executive officer (or equivalent) of:
 - (i) a Voting Member; or
 - (ii) a Subsidiary of that Voting Member; or
 - (iii) a division or business unit of that Voting Member; or
 - (iv) a division or business unit of a Subsidiary of that Voting Member,and there may not be more than one (1) Elected Director on the Board at a given time emanating from a particular Voting Member.

33.5 Co-Opted Directors

- (a) The Board may appoint Co-Opted Directors to the Board at any time to fill the positions provided for in **clause 33.2(b)**.
- (b) A Co-Opted Director shall be a person who will bring skills and experience to the Board to enable the Board to advance the Objects.
- (c) A Co-Opted Director may not be an owner (whether one of a number of owners or a sole owner), employee or director of a Full Member.

33.6 Term

- (a) Subject to **clause 33.6(c)**:
 - (i) Elected Directors shall hold office for a term of three (3) years, but shall be eligible for re-election for one (1) further consecutive term of three (3) years;
 - (ii) Co-Opted Directors shall hold office for a term of up to three (3) years, as determined by the Board, but shall be eligible for reappointment for further terms of up to three (3) years each, as determined by the Board (subject to **clause 33.6(a)(iii)**); and
 - (iii) Directors shall not hold office for more than six (6) consecutive years.
- (b) Once a Director has served the maximum consecutive term of six (6) years in accordance with **clause 33.6(a)(iii)**, that Director is not eligible for reappointment or re-election to the Board until after a period of at least three (3) years has passed since the expiry of the Director's previous term on the Board.
- (c) If:
 - (i) a Director is elected as Chair or Deputy Chair (other than to temporarily fill an Office Bearer vacancy); and
 - (ii) that Director has less than three (3) years left in his or her term as a Director at the time of such election,then that Director shall commence a new three (3) year term as a Director upon election as Chair or Deputy Chair (as the case may be), and any time served on the Board by that Director at the point of being elected as Chair or Deputy Chair (as the case may be) shall not count for the purposes of **clause 33.6(a)(iii)**.

33.7 Office Bearers

- (a) The Board shall, at the first meeting of the Board held after an Office Bearer has retired, appoint from among the Directors sitting on the Board at the time of the Board meeting:
 - (i) a Chair;
 - (ii) a Deputy Chair; and
 - (iii) such additional Office Bearer positions as the Board deems necessary from time to time,should the position be vacant.
- (b) The Chair and Deputy Chair shall hold office in the capacity of Chair or Deputy Chair, as applicable, for a term of three (3) years in accordance with **clause**

- 33.6(c)**, but shall be eligible for election for one (1) further term of three (3) years as Chair or Deputy Chair.
- (c) The Office Bearers other than the Chair and Deputy Chair shall hold office in the capacity of Office Bearers for a term of one (1) year (or a shorter period, if the Office Bearer has less than one (1) year remaining in his or her term as a Director), but shall be eligible for reappointment for terms of one (1) year each, provided that Office Bearers shall not hold office beyond their retirement or removal from the Board as a Director.
 - (d) Subject to **clause 33.7(b)**, there is no maximum consecutive number of terms for which Office Bearers can be appointed to Office Bearer positions.
 - (e) For the avoidance of doubt, the position of chair of a Committee is not considered an Office Bearer position.
 - (f) A Director may not simultaneously hold more than one (1) Office Bearer position.
 - (g) The Board may in its unfettered discretion remove an Office Bearer from their office at any time through a resolution of the Board (but the Office Bearer the subject of the resolution cannot vote on that resolution). An Office Bearer position shall become vacant if the Office Bearer is removed from office by the Board. For the purpose of clarity, any removal of a person from the position of an Office Bearer pursuant to this **clause 33.7(g)** does not result in a removal of that person from the office of Director.
 - (h) In the event of a vacancy occurring in the position of an Office Bearer, the Board can appoint a Director to fill the vacancy in accordance with **clause 37**.

34 Board May Act Despite Vacancy

The Board may act despite any vacancy in their body, but if the number falls below the minimum fixed in accordance with **clause 33.1** the Board may act:

- (a) for the purpose of:
 - (i) increasing the number of Directors to the minimum; or
 - (ii) convening a general meeting; or
 - (b) in emergencies,
- but for no other purpose.

35 Vacation of Office

- (a) Any Director may resign from office on giving written notice to the Company at the Office of his intention to resign and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).
- (b) The office of a Director shall become vacant if the Director:
 - (i) dies;
 - (ii) becomes bankrupt or makes any arrangement or composition with creditors generally;

- (iii) becomes prohibited from being a director of, or managing, a company by reason of any order made under the Corporations Act;
- (iv) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
- (v) is an Elected Director, and ceases to satisfy the criteria in **clause 33.4(c)**;
- (vi) is a Co-Opted Director, and becomes an owner (whether one of a number of owners or a sole owner), employee or director of a Full Member;
- (vii) is removed from office by the Company in general meeting;
- (viii) resigns by notice in writing to the Company; or
- (ix) is absent without permission of the Board from three (3) consecutive meetings of the Board (unless the Board resolves that the Director should not vacate from his or her office as Director).

36 Filling of Vacancies on the Board

- (a) In the event of a casual vacancy occurring on the Board:
 - (i) in relation to an Elected Director vacancy, the Board can appoint any person who satisfies the criteria in **clause 33.4(c)** to fill the vacancy; and
 - (ii) in relation to a Co-Opted Director vacancy, the Board may appoint any person to fill that vacancy in accordance with **clause 33.5**.
- (b) Any Director appointed pursuant to **clause 36(a)(i)** shall hold office until the next AGM, at which point an election shall be held to elect an Elected Director for a full new term.
- (c) Any Director appointed pursuant to **clause 36(a)(ii)** shall hold office for a full new term.
- (d) Time spent filling a vacancy pursuant to **clause 36(a)(i)** up until the next AGM shall not count towards the maximum consecutive term in **clause 33.6(a)(iii)**.

37 Office Bearer Vacancies

- (a) In the event of a vacancy occurring in the position of Chair, the Deputy Chair shall assume office as acting Chair until the next meeting of the Board, at which time the Board shall elect a new Chair in accordance with **clause 33.7(a)(i)** for the balance of the term of the vacating Chair, or until such time as he or she ceases to be a Director, whichever is earlier.
- (b) In the event of a vacancy occurring in the position of Deputy Chair, the Board shall, at its next meeting, elect a new Deputy Chair in accordance with **clause 33.7(a)(ii)** for the balance of the term of the vacating Deputy Chair, or until such time as he or she ceases to be a Director, whichever is earlier.
- (c) If any Office Bearer is temporarily absent or temporarily unable to perform his or her duties, the Board may authorise another Director to act in the vacant position during the absence or inability of the Office Bearer.

38 Alternate Directors

Alternate Directors shall not be permitted.

POWERS AND DUTIES OF DIRECTORS

39 Powers of Directors

The control, management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not by the Corporations Act or by this Constitution required to be exercised in any other manner.

40 Negotiable Instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, all requests or arrangements for electronic fund transfers and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by two (2) people authorised by resolution of the Board. The Board may authorise:

- (a) a Director(s);
 - (b) the Secretary; or
 - (c) another staff member of the Company,
- to sign such instruments.

41 Conferment of Powers

- (a) The Board may from time to time confer upon any Director for the time being or any other person as they may select such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.
- (b) Powers conferred under this **clause 41** may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

DIRECTORS' DISCLOSURE OF INTEREST

42 Contracts

- (a) The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions which apply to such contracts or arrangements.

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- (b) Any interest of a Director must be dealt with in accordance with the provisions of the Corporations Act, which shall include disclosing an interest and having the Secretary record all declarations in the minutes of the relevant meeting.
- (c) Subject to **clause 42(b)**, a Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board may:
- (i) be present while the matter is being considered at a meeting;
 - (ii) vote on the matter;
 - (iii) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (iv) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (v) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- (d) A Director's failure to make disclosure under this **clause 42** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
- (e) A general notice given to the Board by a Director that the Director is an officer, a member of, or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

PROCEEDINGS OF DIRECTORS

43 Meetings of Directors

- (a) The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as it thinks fit, provided that the Board must meet not fewer than four (4) times each calendar year.
- (b) A Director may at any time, and the Secretary upon the request of a Director shall, convene a meeting of the Board by giving at least twenty-four (24) hours' notice of the meeting to all Directors, provided that the Director or Secretary must have used their best endeavours to ensure that the notice was properly served and received.
- (c) Notice of a meeting of the Board need not be in writing.
- (d) Subject to **clause 43(e)**, a Board meeting may be convened or held using any technology consented to by a majority of Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.

- (e) The particular technology used to convene or hold a Board meeting, pursuant to **clause 43(d)**, must be of a type that is available and accessible to all Directors who wish to attend the Board meeting.
- (f) All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors. Attendance by a Director at a meeting of Directors waives any objection which that Director may have to a failure to give notice of the meeting.

44 Quorum

- (a) The quorum necessary for the transaction of the Board's business is six (6) Directors being personally present (or in conference in accordance with **clause 43**).
- (b) A quorum must be present at all times during the meeting in order for business to be transacted.
- (c) A Director who does not vote on a matter shall be counted in the quorum despite not voting.

45 Chairperson

- (a) The Chair of the Board shall be the Chairperson.
- (b) The Chair shall, if present, preside as Chairperson of every meeting of the Board.
- (c) If a meeting of Board is held and the Chair is:
 - (i) not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
 - (ii) if present, does not wish to chair the meeting,then the Deputy Chair shall preside as Chairperson. If the Deputy Chair is:
 - (iii) not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
 - (iv) if present, does not wish to chair the meeting,then the other Directors present must elect one of their number to be Chairperson of the meeting.

46 Voting

- (a) A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- (b) Each Director shall have one (1) vote.

- (c) In case of an equality of votes at a meeting of the Board, the Chairperson is entitled to a casting vote in addition to a deliberative vote.

47 Resolutions by Directors

- (a) The Board may pass a resolution without a Board meeting being held if a majority of the Directors sign a document containing a statement that they are in favour of the resolution set out in that document. For this purpose, signatures can be contained in more than one document.
- (b) An email transmission which is received by the Company and which purports to have been sent by a Director shall for the purposes of this **clause 47** be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Company.
- (c) A vote made by a Director using an online voting platform operated or commissioned by the Company shall for the purposes of this **clause 47** be taken to be in writing and signed by that Director at the time the vote was received by the online voting platform.
- (d) Any decisions made under **clauses 47(a) to 47(c)** shall be tabled at the next Board meeting.

48 Committees

- (a) The Board may form and delegate any of its powers to any Committees, consisting of such Directors or other persons as it thinks fit and may from time to time revoke such delegation.
- (b) The Board has the power to require any Committee to have all decisions made by that Committee ratified by the Board.
- (c) A Committee must in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- (d) The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- (e) A minute of all the proceedings and decisions of every Committee shall 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 and this Constitution to be made entered and signed. A copy of such Committee minutes shall be tabled at the next Board meeting.

49 Validation of Acts of Directors

All acts done:

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

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

appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

MINUTES

50 Minutes

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

SECRETARY

51 Appointment and Tenure

- (a) There must be at least one (1) Secretary, who ordinarily resides in Australia, appointed by the Board for a term and on conditions determined by the Board.
- (b) The Board may remove any Secretary so appointed.
- (c) The Secretary appointed under **clause 51(a)** shall be the Company Secretary for the purposes of the Corporations Act.

BY-LAWS

52 By-Laws

- (a) The Board may from time to time make such By-Laws as are in its opinion necessary and desirable for the proper control, administration and management of the Company's affairs, operations, finances, interests, effects and property and to amend and repeal those By-Laws from time to time.
- (b) A By-Law must be subject to this Constitution and must not be inconsistent with any provision contained in this Constitution.

- (c) When in force, a By-Law is binding on the Members and has the same effect as this Constitution.
- (d) The Board will adopt such measures as it deems appropriate to bring to the notice of the Members all By-Laws, amendments and repeals.

EXECUTION OF DOCUMENTS

53 Execution of Documents

- (a) Without limiting the manner in which the Company may execute any contract, including by an agent under delegated authority as permitted under section 126 of the Corporations Act, the Company may execute any agreement, deed or other document by:
 - (i) two (2) Directors signing the same; or
 - (ii) one (1) Director and one (1) Secretary signing the same.
- (b) **Clause 53(a)** does not limit the manner in which the Company may execute any contract, including as permitted under section 126 or 127 of the Corporations Act.
- (c) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.
- (d) A person may sign a document on behalf of the Company, or may sign a document that relates to a Board meeting or a general meeting, or may sign a document that relates to a resolution to be passed without a meeting, by signing:
 - (i) a physical form of the document by hand; or
 - (ii) an electronic form of the document using electronic means if:
 - (A) the method of signing identifies the person and indicates the person's intention in respect of the information recorded in the document; and
 - (B) the method was either:
 - (1) as reliable as appropriate for the purpose, in light of all the circumstances; or
 - (2) proven to have fulfilled the function of identifying the person and their intention as required by **clause 53(d)(ii)(A)**, either by itself or together with further evidence.
- (e) **Clause 53(d)** does not limit the ways in which a document may be signed. It does not require a person to sign the same page or the same form of the

document as another person. It does not require a person to use the same method of signing as another person.

ACCOUNTS AND INSPECTION OF RECORDS

54 Accounts and Inspection

The Board shall:

- (a) cause proper financial records to be kept and must, if required by the Corporations Act, prepare and distribute copies of the financial reports of the Company and a Directors' report;
- (b) where required by the Corporations Act, cause the financial records to be audited or reviewed by a properly qualified auditor or other entity authorised by the Corporations Act; and
- (c) from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of the Members.

NOTICES

55 Service of Notices

- (a) A notice may be given by the Company to any Member by:
 - (i) serving it on the Member personally;
 - (ii) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Company for the giving of notices;
 - (iii) sending it to the email address supplied by the Member to the Company for the giving of notices; or
 - (iv) using any of the methods in **clause 55(a)(i) to 55(a)(iii)** but in relation to a Member Representative appointed under **clause 11** rather than in relation to the Member itself.
- (b) A Member may elect to be sent documents in a physical form or electronic form by notifying the Company of the election, in accordance with the Corporations Act. The Company must take reasonable steps to comply.
- (c) Any Member who has not left at or sent to the Office his or her place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.
- (d) Subject to this Constitution, a notice may be given under this Constitution to any Director by:
 - (i) serving it on the Director personally;
 - (ii) sending it by post to the Director or leaving it at the Director's usual residential or business address; or

- (iii) sending it to the email address supplied by the Director to the Company for the giving of notices.
- (e) Subject to this Constitution, a notice may be given by a Member or Director to the Company by:
 - (i) serving it on the Company at the Office;
 - (ii) sending it by post to the Office; or
 - (iii) email to the Company's principal email address.
- (f) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the third (3rd) Business Day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.
- (g) Where a notice is sent by email, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the Business Day after it is sent.
- (h) A notice may be given by the Company to the persons entitled to a share in consequence of the death or bankruptcy of a Member by:
 - (i) service on the Member personally;
 - (ii) sending it by post addressed to the person by name or by the title of the representative of the deceased or person of unsound mind or the assignee of the bankrupt or by any like description at the address, if any, within Australia, supplied for the purpose by the person claiming to be entitled;
 - (iii) by giving the notice in any manner in which the same might have been given if the death, lunacy or bankruptcy had not occurred.
- (i) Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Company to that effect shall be conclusive evidence of service.
- (j) The Company must send the Members of the Company, at least once in each Financial Year, a notice setting out the following or make such a notice readily available on a website:
 - (i) that they have a right to elect and to request to be sent documents in physical form under sections 110E and 110J of the Corporations Act;
 - (ii) that they have a right to elect and to request to be sent documents in electronic form under sections 110E and 110J of the Corporations Act; and
 - (iii) that they have a right to elect not to be sent annual financial reports under section 314 of the Corporations Act.
- (k) This **clause 55** does not limit the way in which notice may be given, including under Division 2 of Part 1.2AA of the Corporations Act.

WINDING UP

56 Winding Up

- (a) If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed among Members, but will be given or transferred to another institution(s) or corporation(s) which has:
- (i) objects which are similar to the Objects;
 - (ii) a constitution which requires its income and property to be applied in promoting its objects; and
 - (iii) a constitution which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Company by **clause 5.2(b)**.
- (b) The identity of the corporation(s) or institution(s) referred to in **clause 56(a)** is to be determined:
- (i) by the Board; or
 - (ii) if the Board does not decide or does not wish to decide, then by the Members,

in writing at or before the time of dissolution, and failing such determination being made, by application to the Supreme Court of the Australian Capital Territory for determination.

INDEMNITY

57 Indemnity

To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred in that person's capacity as an Officer or employee of the Company (or former Officer or employee of the Company). However, no such Officer or employee (or former Officer or employee) shall be indemnified out of the funds of the Company under this **clause 57** unless:

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

58 Payment of Indemnity Policy Premium

- (a) To the extent permitted by law the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such

person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:

- (i) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
 - (ii) a contravention of sections 182 or 183 of the Corporations Act.
- (b) The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- (c) Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his or her actions or omissions then the Company shall not be required to indemnify the Officer under **clause 57** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

59 Indemnity to Continue

The indemnity granted by the Company contained in **clauses 57** and **58** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring before the date of the deletion or modification.

Annexure A Form of Appointment of Proxy

Australian Food and Grocery Council Ltd (ACN 068 732 883)
(incorporated under the *Corporations Act 2001*)

PROXY FORM

1. Your details

(Please print your name and address)

Name of Member/Member Representative: _____

ACN/ABN/Company Number (if applicable): _____

Address: _____

City: _____

State: _____

Postcode: _____

Telephone: _____

2. Appoints

Name: _____

(Please print name of proxy)

or failing the person so named, or if no person is named, the **Chairperson of the Meeting** to vote in accordance with the following directions or, if no directions have been given, as the proxy or the Chairperson sees fit at the (Annual) General Meeting of Australian Food and Grocery Council Ltd (ACN 068 732 883) to be held on *[insert date]* commencing at *[insert time]* and at any adjournment thereof.

3. Directions

4. Signature

5. Date