

FINLAYSONS

draft

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Constitution

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*of Citrus Australia Limited (a company limited by
guarantee)*

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1. Preliminary

1.1 Definitions

In this Constitution:

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

Affiliate means a Member referred to in clause 8.1(b) and 8.2(c).

AGM means an 'AGM' as defined in the Act.

Board means the board comprised of the *Directors*.

CEO means the person appointed as chief executive officer under clause 22.2.

Chair means the person appointed as chair pursuant to clause 22.1(a).

Company means Citrus Australia Limited, which is governed by this Constitution.

Deputy Chair means the person appointed as deputy chair pursuant to clause 22.1.

Director means a person appointed as a director under clause 17.2 or 17.5.

Director Selection Committee means the committee appointed under clause 17.2 (c).

Farm means a single parcel of land, upon which citrus trees are planted in order to harvest the fruit for commercial sale (whether or not they are yet bearing fruit);

Financial Year means a year expiring on 30 June.

General Meeting means a meeting of *Members*.

Grower Member means a *Member* referred to in clause 8.1(a) and 8.2(a).

Member means any person who is, for the time being, registered as a member of the *Company*, pursuant to clauses 8 and 9.

Membership Class means a class of *Membership* set out in clause 8.1.

Membership Fee means the fee required to be paid by *Members* pursuant to clause 11.1.

Objects means the objects of the *Company* specified in clause 3.

Register means the register of *Members* required to be kept by the *Secretary* under clause 9.

Secretary means the person appointed as secretary pursuant to clause 22.3.

Voting Member means, in relation to a resolution at a *General Meeting*, a Member with a right to vote on that resolution.

1.2 Interpretation

In this Constitution, unless it is stated to the contrary:

- (a) the singular includes the plural and conversely;
- (b) references to any gender include the other genders;
- (c) where a word or phrase is given a defined meaning in, or for the purposes of, the Act, the word or phrase shall have the same meaning in this Constitution;
- (d) where a word or phrase is given a defined meaning in this Constitution, in or for the purposes of the Act, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (e) a reference to a **person** includes a body politic or corporation;
- (f) words following the word *include* are not limited by anything preceding that word;
- (g) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (h) a reference to this **Constitution** means this Constitution as amended or regulated from time to time;
- (i) a reference to any legislation means that legislation as amended or replaced from time to time and includes subordinate legislation made under it; and
- (j) references to clauses are references to clauses in this constitution;

1.3 Headings and Table of Contents

The table of contents and headings in this Constitution do not affect its interpretation.

1.4 Replaceable Rules

No “replaceable rules”, within the meaning of Part 2B.4 of the Act, are applicable to the Company.

2. Name

The name of the Company governed by this Constitution is “Citrus Australia Limited”.

3. Objects

The objects of the Company are to:

- (a) be the peak body for the Australian citrus industry, representing and furthering the interests of Australian citrus growers on

- regional, national and international issues affecting the citrus industry;
- (b) execute the strategic plan, from time to time, of the Australian citrus industry;
 - (c) advocate the Australian citrus industry's position and make representations to Government;
 - (d) actively promote the good reputation of the Australian citrus industry;
 - (e) encourage good practice and high standards in Australian citrus production;
 - (f) source, collate and distribute statistical data, market intelligence and other industry or general information to *Members* or other participants in the Australian citrus industry;
 - (g) develop effective relationships with citrus industry and other relevant rural and commercial organisations;
 - (h) develop effective relationships within the Australian citrus industry supply chain;
 - (i) plan, fund, facilitate and undertake market development and promotion initiatives to support domestic and export sales of citrus fruits and citrus products from Australia and advise and assist Australian citrus participants in relation to marketing issues;
 - (j) plan, fund, facilitate and coordinate citrus research and development, complemented by effective extension of research information to citrus growers and other citrus industry participants in Australia and facilitate the adoption and commercialisation of that research and development;
 - (k) advise and assist Australian citrus industry participants in relation to food safety, pests and diseases, biosecurity and other production issues and plan, fund and facilitate the conduct of citrus pest and disease management and control measures;
 - (l) undertake commercial activities incidental or ancillary to the above objects; and
 - (m) undertake other incidental or ancillary activities.

4. Powers

- (a) Subject to this Constitution, the *Company* has the rights, powers and privileges of a natural person.
- (b) Subject to this Constitution, the *Company* also has the powers of a body corporate including the power to:
 - (i) raise fees, levies and other charges from *Members*;
 - (ii) borrow money;

- (iii) issue debentures;
- (iv) grant a floating charge on its property;
- (v) charge fees for its services; and
- (vi) do anything which it can do under the *Act* or by law.

5. Liability and Guarantee

- (a) The *Company* is a company limited by guarantee.
- (b) Each *Member* undertakes to contribute to the *Company's* property, if the *Company* is wound up, to an amount sufficient:
 - (i) to pay the *Company's* debts and liabilities and the costs, charges and expenses of the winding up; and
 - (ii) to adjust the rights of the contributories amongst shareholders,but up to a maximum amount of \$10.00 per *Member* and subject to clause 5(c).
- (c) A past *Member* need not contribute:
 - (i) in respect of a debt or liability of the *Company* contracted after the *Member* ceased to be a *Member*; or
 - (ii) if they were a *Member* at no time during the year ending on the day of the commencement of the winding up of the *Company*.

6. No Profits for Members

The assets and income of the *Company* shall be applied solely in furtherance of the *Objects* and no portion shall be distributed, directly or indirectly to *Members*, except as bona fide compensation for services rendered or expenses incurred on behalf of the *Company*.

7. Winding Up or Dissolution

In the event of the *Company* being wound up or dissolved, any surplus assets shall be transferred to another organisation with similar objects, which is not carried on for the profit or gain of its individual members, selected by the *Board* or otherwise by the Supreme Court of South Australia.

8. Membership

8.1 Classes of Membership

The *Company* consists of the following classes of *Members*:

- (a) *Grower Members*;
- (b) *Affiliates*; and
- (c) such other classes of *Membership* as the *Grower Members* may create, from time to time, by special resolution.

8.2 Qualification criteria for Membership Classes

- (a) A person is eligible to become a *Grower Member*, if they own, lease or both occupy and manage a *Farm* of at least 1 hectare in size.
- (b) Notwithstanding clause 8.2(a), only 1 person can be admitted as a *Grower Member* in respect of a single *Farm*. In the event that *Grower Membership* applications are received by 2 or more applicants in respect of the same *Farm*, the *Board* has a discretion as to which *Membership* application to approve (if any).
- (c) A person is eligible to become an *Affiliate*, if they belong to any of the following categories:
 - (i) citrus industry bodies;
 - (ii) marketers, distributors or retailers of citrus fruits or products of citrus fruits;
 - (iii) suppliers of goods or services to citrus growers; and
 - (iv) persons closely associated with the citrus industry.

8.3 Initial Membership

The initial members of the *Company* are:

- (a) Willowood Nominees Pty Ltd as trustee for NJ & JL Eagle Family Trust;
- (b) N&D Ulcoq Pty Ltd;
- (c) PM & JL Davidson;
- (d) Fellsdale Pty Ltd;
- (e) KVC Pty Ltd as trustee for Cock Family Trust
- (f) Warringa Investments Pty Ltd as trustee for Warringa Family Trust;
- (g) CA & CC Scott;
- (h) Glengrove Orchards Pty Ltd; and
- (i) Sartor Management Pty Ltd as trustee for L Sartor Family Trust.

8.4 Application for Membership

- (a) No person shall be admitted as a member of the *Company* unless that person is approved by the *Board* in its discretion.

- (b) A person who wishes to become a *Member* shall deliver to the *Company* an application for *Membership* in such form as the *Board* requires.
- (c) If required by the *Board*, an application for *Membership* must be accompanied by the *Membership Fee*, set for the particular *Membership Class*, for the remainder of the then current *Financial Year* and, if the *Board* also requires, for the following *Financial Year*.

8.5 Determination of Application by the Board

- (a) The *Board* must determine whether or not to approve an application for *Membership*, as soon as practicable after receipt of the application.
- (b) The *Board* may require an applicant to provide it with such further information as it desires before approving or rejecting an application for *Membership*.
- (c) An applicant for *Membership* is taken to be admitted as a *Member* upon the *Board* approving the application and the applicant being entered in the *Register*.
- (d) If a *Membership* application is rejected by the *Board*, the *Board* is not required to provide reasons for the rejection.

9. Register of Members

- (a) The *Secretary* shall keep a register of *Members* in accordance with the *Act* and shall enter in it:
 - (i) the full name and address of each *Member*;
 - (ii) the date upon which each *Member* became a *Member*;
 - (iii) the *Membership Class* applicable to each *Member*;
 - (iv) the date upon which each former *Member* ceased to be a *Member*; and
 - (v) such other information required by the *Act*.
- (b) Any *Member* may inspect the *Register* in accordance with the *Act*.

10. Rights of Members

10.1 Transferability

The rights, powers and privileges of a *Member* cannot be transferred to any person.

10.2 Benefits

Members shall be entitled to receive all benefits of *Membership* relevant to their *Membership Class*, as provided in this Constitution and as otherwise determined by the *Board* from time to time.

10.3 Class Rights

- (a) *Affiliates* may:
- (i) attend *General Meetings*;
 - (ii) speak at *General Meetings*, if the *Chair* consents;
 - (iii) not vote at *General Meetings*;
 - (iv) have matters included on the *Board's* agenda, if the *Chair* consents;
 - (v) refer to themselves as an "Affiliate Member" of the *Company*; and
 - (vi) have no other *Membership* rights, powers or privileges under this Constitution.
- (b) Other *Members*, including *Grower Members*, shall have all of the rights, powers and privileges of a member of the *Company* at law, including all of the other rights, powers and privileges of a *Member* provided for in this Constitution.

10.4 Variation of class rights

The rights attaching to a *Membership Class* can only be varied by special resolution of *Grower Members*.

10.5 Consultation with the Company

At least once in each *Financial Year*, the *Company* shall convene a consultation forum with the *Members* in each major citrus growing region of Australia (including at least one forum in each State), at which forum the *Members* shall have the opportunity to raise with the *Company* issues of concern to them.

11. Membership Fees

11.1 Annual Membership Fees

- (a) Unless exempted by the *Board*, each *Member* is obliged to pay such annual membership fee as determined by the *Board* for their *Membership Class*.
- (b) Annual *Membership Fees*, for a *Financial Year*, shall be paid in full no later than a date prescribed by the *Board* or, in the absence of such prescription, 1 July at the commencement of that *Financial Year*.

- (c) The annual *Membership Fee* for a *Financial Year* for a *Grower Member* shall be:
- (i) a minimum fee determined by the *Board* from time to time; or, if greater
 - (ii) an amount determined by the *Board* being either:
 - (A) an amount per hectare of *Farm* or *Farms* (rounded up to the nearest hectare), owned, leased or both occupied and managed by the *Member*, on a date prescribed by the *Board* in that or the previous *Financial Year*; or
 - (B) an amount per tonne of citrus fruit (rounded up to the nearest tonne) harvested from the *Farm* or *Farms*, owned, leased or both occupied and managed by the *Member*, in the year to a date prescribed by the *Board* in that or the previous *Financial Year*, which amount per tonne may or may not be different for different varieties of citrus fruit.
- (d) The annual *Membership Fee* for a *Financial Year* for an *Affiliate* or other *Member* shall be an amount determined by the *Board* from time to time.
- (e) The mode of payment of *Membership Fees*, for each *Membership Class*, shall be determined by the *Board* from time to time.
- (f) The *Board* may, at its discretion, revoke, postpone, extend or vary the *Membership Fees* of any *Member*, and/or the payment arrangements for a *Membership Fee*, from time to time.

11.2 Unpaid Membership Fees

- (a) If a *Membership Fee* for a *Financial Year* is not paid by the date 150 days after it is due (or such later date prescribed by the *Board*), the relevant *Member* shall cease to be entitled to any rights and privileges of *Membership*.
- (b) The *Board* may, at its discretion, reinstate all rights and privileges of a *Member's Membership*, upon payment of all arrears (including interest and collection expenses) of *Membership Fees* by the *Member*.

11.3 Interest

- (a) Subject to clause 11.3(b), a *Member* shall pay to the *Company*:
- (i) interest at a rate reasonably determined by the *Board*, on any *Membership Fees* which are not paid on or before the time appointed for payment, from the time appointed for payment to the time of the actual payment; and
 - (ii) expenses incurred by the *Company* because of the failure to pay, or late payment of, that amount.

- (b) The *Board* may, at its discretion, waive payment of all or any part of an amount payable under clause 11.3(a).

12. Cessation of Membership and Expulsion of Members

12.1 Cessation

- (a) A *Member* ceases to be a *Member*, if:
- (i) the *Member* resigns as a *Member*, by giving a minimum of 3 months notice in writing to the *Secretary*, in which case the *Member* shall not be entitled to a refund of any *Membership Fees* (whether pro-rata or otherwise) paid in connection with their *Membership*;
 - (ii) the *Member* is expelled as a *Member* pursuant to clause 12.2;
 - (iii) the *Board* determines that the *Member* ceases to satisfy the relevant qualification criteria specified for the *Membership Class* of that *Member* and gives the *Member* a minimum of 1 month's notice of that fact;
 - (iv) in the case of a natural person, the *Member* dies;
 - (v) in the case of a body corporate, an order is made or a resolution is passed for the winding up or dissolution of the *Member*; or
 - (vi) the *Member* is unable to pay their debts as and when they are due and payable.
- (b) Upon a *Member* ceasing to be a *Member*, the *Member's* rights and privileges shall cease.
- (c) Nothing in this clause shall prejudice or affect a *Member's* obligation to:
- (i) pay any amount due and payable to the *Company*; or
 - (ii) contribute to the *Company's* property as provided for in clause 5.

12.2 Expulsion

- (a) Subject to clause 12.2(b), the *Board* may expel a *Member*, if the *Member*:
- (i) fails to pay any money payable under this Constitution and that amount remains unpaid for more than 90 days;
 - (ii) otherwise breaches any provision of the Constitution binding on the *Member*; or
 - (iii) engages in any conduct which, in the reasonable opinion of the *Board*, is unbecoming of a *Member* or which is

prejudicial or adverse to the interests of the *Company* or the Australian citrus industry generally.

- (b) The *Board* cannot expel a *Member* unless it:
- (i) gives the *Member* not less than 30 days' written notice of its intention to consider an expulsion resolution; and
 - (ii) allows the *Member* to present reasons why the *Member* should not be expelled, by making written or oral submissions (at the *Member's* election) to the *Board*, before the expulsion resolution is put to the vote.

12.3 Removal from the Register

Upon cessation or termination of *Membership of a Member*, the *Secretary* shall remove the name of the *Member* from the *Register*.

13. Meetings of Members

13.1 Annual General Meeting

- (a) An *AGM* of the *Company* must be held in accordance with the *Act*.
- (b) The business at the *AGM* must include:
- (i) consideration of the annual financial report, directors' report and auditor's report;
 - (ii) election of *Directors*;
 - (iii) appointment of the auditor;
 - (iv) fixing of the auditor's remuneration; and
 - (v) fixing of the *Directors'* remuneration.

13.2 Holding of General Meetings

The *Board*:

- (a) may convene a *General Meeting* at any time; and
- (b) must convene a *General Meeting* upon a requisition made in accordance with section 249D of the *Act*.

13.3 Notice

- (a) At least 21 clear days' notice of a *General Meeting* must be given to all *Members*, unless the *Act* allows otherwise.
- (b) Notice of a *General Meeting* must:
- (i) specify the place, date and time of meeting;
 - (ii) state the general nature of the business to be transacted at the meeting;
 - (iii) if a special resolution is to be proposed at the meeting:

- (A) set out an intention to propose the resolution as a special resolution; and
 - (B) state the resolution;
- (iv) in the case of an election of *Directors*, state the names of the candidates for election; and
- (v) contain a statement stating:
 - (A) that the *Member* has the right to appoint a proxy;
 - (B) that the proxy needs to be a *Grower Member*; and
 - (C) that a *Member*, who is entitled to cast 2 or more votes, may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.
- (c) The accidental omission to give notice of a *General Meeting* to, or the non-receipt of notice of a *General Meeting* by, any person entitled to receive notice does not invalidate the proceedings at the meeting.

13.4 Cancellation or Postponement

- (a) Except in the case of a *General Meeting* convened on the requisition of *Members*, the *Board* may at any time cancel, postpone or change the venue of a *General Meeting* before the time for holding the meeting.
- (b) The *Board* shall endeavour to notify each *Member*, orally or otherwise, of the change, but failure to notify a *Member* will not affect the validity of the change or of the meeting.

14. Procedure at General Meetings

14.1 Quorum

- (a) No business will be transacted at any *General Meeting*, unless a quorum of *Members* is present at the time the meeting proceeds to business and throughout the meeting.
- (b) The quorum for a *General Meeting* is 20 *Voting Members*.
- (c) For the purpose of determining whether a quorum is present, a person attending as a proxy or as an attorney for a *Voting Member* will be deemed to be present as that *Member*.
- (d) If a quorum is not present within 30 minutes from the time appointed for the meeting:
 - (i) where the meeting was convened on the requisition of *Members*, the meeting will be dissolved; or
 - (ii) in any other case:

- (A) the meeting shall stand adjourned to a day, time and place as the *Board* determines or, if no determination is made by the *Board*, to the same day in the next week at the same time and place; and
- (B) if, at the adjourned meeting, a quorum is not present within 30 minutes from the time appointed for the meeting, the meeting will be dissolved.

14.2 Chair

- (a) The *Chair*, or in their absence the *Deputy Chair*, shall preside as chair at every *General Meeting* during that person's term of office.
- (b) Where a *General Meeting* is held and:
 - (i) the *Chair* or *Deputy Chair* has not been elected; or
 - (ii) the *Chair* or *Deputy Chair* is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act,the *Voting Members* present in person or by proxy or attorney will elect another *Director*, or if there is none present willing to act, one of their number, to chair the meeting.

14.3 Conduct of Meetings

- (a) The *Chair* has a general discretion to conduct a *General Meeting* and to determine the meeting procedures as they see fit (subject to clauses 14.3(b) and 14.3(e)).
- (b) The *Chair* must allow *Members* a reasonable opportunity to ask questions.
- (c) The *Chair* may disallow debate on business not within the notice of meeting or required by the *Act*.
- (d) The *Chair's* decision on conduct of and procedures at a *General Meeting* is final.
- (e) The *Board* may make by-laws governing *General Meeting* procedure, including in relation to election of *Directors*.

14.4 Adjournment

- (a) The *Chair* may, and will if directed by the meeting, adjourn a *General Meeting* from time to time and from place to place.
- (b) No business shall be transacted at any adjourned *General Meeting*, other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a *General Meeting* is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of the original meeting.

- (d) Except as provided by clause 14.4(c), it is unnecessary to give any notice of an adjournment or of the business to be transacted at an adjourned *General Meeting*.

14.5 Resolutions

At a *General Meeting*, a resolution put to the vote of the meeting is to be decided on a show of hands or by poll, as the *Chair* of the meeting directs.

14.6 Polls

- (a) Before or immediately after the declaration of the result of a vote on a show of hands, the *Chair*, or not less than 5 *Voting Members*, may demand a poll.
- (b) If a poll is duly demanded, it will be taken in the manner and at the time and place as the *Chair* directs, subject to clause 14.6(d).
- (c) A demand for, or the taking of, a poll will not prevent the meeting dealing with other business in the meantime.
- (d) A poll demanded on the election of the *Chair*, or on a motion to adjourn the *General Meeting*, will be taken immediately.
- (e) The result of the poll will be a resolution of the meeting at which the poll was demanded.

14.7 Minutes as Evidence of Result

Unless a poll is duly demanded, a declaration by the *Chair* of the result of a vote and an entry to that effect in the book containing minutes of the proceedings of the *Company*, signed by the *Chair*, shall be conclusive evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against the resolution.

15. Voting rights

15.1 Number of Votes

- (a) Each *Grower Member* present, in person or by proxy or attorney, shall have 1 vote per dollar of *Membership Fee* paid or payable by the *Member* for the *Financial Year* in which the relevant *General Meeting* is to take place.
- (b) *Affiliates* are not eligible to vote.

15.2 Unpaid amounts

- (a) A *Member* is not entitled to vote at a *General Meeting*, if:
 - (i) all amounts presently payable to the *Company* by that *Member* have not been paid; or
 - (ii) they are prohibited from voting by the *Act* or court order.

- (b) Such votes will be disregarded.

15.3 Equality of votes

In the case of an equality of votes, whether on a show of hands or on a poll, the *Chair* of the relevant *General Meeting* shall not have a casting vote and the resolution shall not be carried.

15.4 Resolutions

A resolution will be taken to be carried at a *General Meeting* if the requisite majority comprises the following:

- (a) in the case of an ordinary resolution of *Members*, there is an affirmative vote of more than 50% of the votes of *Voting Members*; and
- (b) in the case of a special resolution of *Members*, there is an affirmative vote of at least 75% of the votes of *Voting Members*.

15.5 Objections

- (a) An objection may be raised to the qualification of a voter only at the *General Meeting* or adjourned *General Meeting* at which the vote objected to is given or tendered.
- (b) Any such objection will be referred to the *Chair*, whose decision shall be final.
- (c) A vote not disallowed, pursuant to such an objection, shall be valid for all purposes.

16. Proxies

- (a) A *Member* may appoint a proxy, or 2 proxies if they are entitled to 2 or more votes, in accordance with the *Act*.
- (b) The appointment can be for all *General Meetings* or for specified *General Meetings*.
- (c) A proxy must be a *Grower Member*.
- (d) An appointment of a proxy must be in writing and signed by the appointor or by that appointor's properly appointed attorney, or otherwise authenticated in a manner permitted by the *Corporations Regulations 2001 (Cth)*, and contain the following information:
 - (i) the *Member's* name and address;
 - (ii) the *Company's* name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the *General Meetings* at which the proxy may act.
- (e) The *Chair* may determine that an appointment is valid even if it contains only some of the information prescribed by clause 16(d).

- (f) The *Chair's* decision will be final on the validity of a proxy appointment, subject to the *Act*.
- (g) An appointment of a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution.
- (h) A proxy will have the same rights as their appointor, including the right to speak at the meeting, vote (to the extent allowed by the appointment) and join in demanding a poll.
- (i) An appointment of a proxy will not be effective unless the appointment, and any power of attorney under which it was signed or authenticated, have been received by the *Company*, in accordance with the *Act*, not less than 24 hours before the time for holding the meeting or resuming the adjourned meeting.

17. Directors

17.1 Constitution of the Board

- (a) The *Board* shall comprise 7 *Directors*, with a minimum of 4 *Directors* who are *Grower Members* or nominated by and associated with *Grower Members*.
- (b) For the purposes of clause 17.1(a) and 17.2(c) a person is "associated with" a *Grower Member* if they are:
 - (i) a member, director or employee of; or
 - (ii) a partner in,that *Grower Member*.
- (c) Subject to clause 17.1(a), a *Director* need not be a *Member* or have any affiliation with a *Member*.

17.2 Appointment

- (a) Notwithstanding clause 17.1, the initial directors of the *Company* will be:
 - (i) Tania Chapman;
 - (ii) Kevin Cock;
 - (iii) Greg Dhnaram;
 - (iv) Kelly Jones;
 - (v) Michael McMahon;
 - (vi) Kevin Parr; and
 - (vii) Michele Phillips.
- (b) All subsequent directors shall be appointed by *Voting Members* at an *AGM* of the *Company*, with the benefit of, but without being bound by, a recommendation of the *Director Selection Committee*.

- (c) The *Director Selection Committee* will be appointed by the *Board* from time to time and shall be comprised of:
- (i) 4 *Grower Members* or persons nominated by and associated with *Grower Members*, who are not also *Directors*; and
 - (ii) the *Chair*,
- except that the initial *Director Selection Committee* shall be comprised of the following persons:
- (iii) Mark Chown;
 - (iv) Peter Davidson;
 - (v) Nick Ulcoq;
 - (vi) Leonie Burrows; and
 - (vii) Brian Ramsay.

17.3 Term

- (a) At the conclusion of each *AGM* (including the first *AGM*) of the *Company*, 2 *Directors* shall retire from office. The 2 *Directors* to retire shall be those who have been longest in office. As between 2 or more, who have been in office an equal length of time, the *Directors* to retire shall, in default of agreement between them, be determined by lot. The length of time a *Director* has been in office shall be calculated from their last election.
- (b) A *Director*, who retires under clause 17.3(a), shall be eligible for re-appointment.
- (c) The new appointees will take office at the conclusion of the *AGM*.

17.4 Election Process

- (a) Nominations for *Directors* may be made by the *Director Selection Committee* or by any 3 *Voting Members*, to the *Secretary*, at least 6 weeks before the relevant *AGM*.
- (b) If the number of nominations does not exceed the number of vacancies, there will be no ballot.
- (c) Voting shall be conducted on a “first past the post” system.
- (d) In voting for any election of *Directors* at an *AGM* of the *Company*, each *Voting Member* shall vote for no more than 3 nominees (each a **Choice**), and each *Voting Member* may choose less than 3 nominees, on a “3,2,1”, “2,1” or “1” basis (as the case may be).
- (e) Each *Choice* shall be ascribed 3, 2, or 1 points for each vote the *Voting Member* has under clause 15.1.
- (f) Subject to the requirements of clause 17.1, the nominees with the most points shall be declared elected.

- (g) The *Chair* shall announce the results of the election at the *AGM* or by notice to the *Members* as soon as practicable thereafter.

17.5 Vacancy

- (a) In addition to the circumstances in which the office of a *Director* becomes vacant by virtue of the *Act*, the office of a *Director* shall become vacant if the *Director*:
 - (i) dies or is permanently incapacitated;
 - (ii) becomes of unsound mind or a person whose person or estate is liable to be dealt with under the law relating to mental health;
 - (iii) resigns that office by written notice to the *Company*;
 - (iv) is removed by the *Members* under the *Act*;
 - (v) otherwise becomes prohibited from being a *Director* pursuant to the *Act* or any law;
 - (vi) ceases to be qualified to be a *Director* under this Constitution; or
 - (vii) has missed 4 *Board* meetings in a 12 month period, or 3 consecutive *Board* meetings, without being granted leave of absence, unless the *Board* has resolved that the *Director* should not leave office.
- (b) Any casual vacancy shall be filled by the *Director Selection Committee* and any *Director* appointed to fill such a vacancy shall hold office until the conclusion of the next *AGM* of the *Company* following their appointment, when they will be eligible for re-election.

17.6 Remuneration

- (a) Subject to clause 17.6(b) and the *Act*, the *Directors* shall be remunerated by the *Company* at rates determined by the *Board*, having regard to market rates.
- (b) The maximum aggregate *Directors'* remuneration shall be determined by the *Voting Members* at the *AGM* each Financial Year.
- (c) The *Directors* shall be paid or reimbursed their reasonable travelling and other expenses incurred by them in performing their duties as *Directors* including in attending *Board* or committee meetings.

18. Powers of Directors

- (a) Subject to the *Act* and to this Constitution, the business of the *Company* shall be managed by the *Directors*, who may exercise all powers of the *Company* which are not, by the *Act* or this Constitution, required to be exercised by the *Members*.

- (b) Without limiting clause 18(a), the *Directors* may exercise all the powers of the *Company* to borrow money, to mortgage or charge any property or business of the *Company* and to issue debentures or give any other security, whether to secure a debt, liability or obligation of the *Company* or of any other person.
- (c) The *Directors* may appoint such officers, employees or contractors as are required to carry out the *Objects*, and may delegate any of their powers to such officers, employees and contractors.
- (d) The *Directors* may, by power of attorney, appoint any person to be the attorney of the *Company* for any purpose, with any powers, authorities and discretions of the *Directors*, for any period and subject to such conditions as the *Directors* think fit.
- (e) All cheques, promissory notes, banker's drafts, bills of exchange, electronic funds transfers and other negotiable instruments (whether in written or electronic form), and all receipts for money paid to the *Company*, must be signed, drawn, accepted, endorsed, transmitted or otherwise executed by such persons and in such manner as the *Directors* determine.

19. Proceedings of Directors

19.1 Proceedings Generally

- (a) The *Directors* may meet together, either in person or by telephone or any other form of instantaneous communication, for the dispatch of business.
- (b) The *Board* may also adjourn and otherwise regulate meetings and proceedings of the *Board*, as they think fit, in accordance with the *Act*.
- (c) A *Director* may at any time, and the *Chair* must on the requisition of a *Director*, convene a meeting of the *Board*, by instruction to the *Secretary* or otherwise.

19.2 Notice

- (a) Notice of a *Board* meeting must be given to each *Director*:
 - (i) at least 7 days before the meeting, except in emergency (as determined by the *Chair*) when only 1 day's notice need be given;
 - (ii) in person or by post, fax, electronic mail, telephone or any other form of instantaneous communication;
 - (iii) specifying the time, date and place (or places) of the meeting and the technology to be used (if the meeting will be held in 2 or more places); and
 - (iv) stating the general nature of the business.
- (b) A *Director* can waive the notice requirements.

- (c) Failure to comply with the notice requirements set out in this clause 19.2 will not invalidate the business, if it was accidental.

19.3 Quorum

- (a) At a meeting of the *Board*, the number of *Directors* whose presence is necessary to constitute a quorum is 4 and a quorum must be present throughout the meeting.
- (b) If there is a vacancy or vacancies in the office of a *Director*, the remaining *Directors* may act, subject to clause 19.3(c).
- (c) If the number of remaining *Directors* is not sufficient to constitute a quorum for a meeting of the *Board*, they may act only for the purpose of increasing the number of *Directors* to constitute a quorum or for convening a *General Meeting*.

19.4 Decisions of Directors

- (a) Issues arising at a meeting of the *Board* will be decided by a majority of votes of *Directors* present and voting and any such decision will, for all purposes, be deemed a decision of the *Board*.
- (b) The *Chair* does not have a casting vote at a *Board Meeting*.
- (c) The *Directors* may pass a resolution without a *Board Meeting* being held, if all the *Directors* entitled to vote on the resolution sign a document (which may be in identical counterparts) containing a statement that they are in favour of the resolution set out in the document. The resolution will be passed when the document is last signed by a *Director*.

19.5 Chair

- (a) The *Chair* will chair meetings of the *Board*.
- (b) Where a meeting of the *Board* is held and:
 - (i) the *Chair* has not been elected; or
 - (ii) the *Chair* is not present, within 15 minutes after the time appointed for the holding of the meeting, or is unwilling to act,the *Deputy Chair* will chair the meeting.
- (c) Where such a meeting of the *Board* is held and:
 - (i) the *Deputy Chair* has not been elected; or
 - (ii) the *Deputy Chair* is not present, within 15 minutes after the time appointed for the holding of the meeting, or is unwilling to act;the *Directors* present will elect one of their number to chair the meeting.

20. Conflicts of Interest

20.1 Disclosure

- (a) Subject to the *Act*, no *Director* shall be disqualified, by the holding of that office, from:
- (i) accepting or holding any office or place of profit, except that of auditor, in the *Company* or any company in which the *Company* is a shareholder or otherwise interested or which is interested in the *Company*; or
 - (ii) contracting with the *Company* as either vendor, purchaser or otherwise in any manner,
- nor will:
- (iii) any such contract or any contract or arrangement entered into by or for the *Company*, in which any *Director* is in any way interested, be avoided; or
 - (iv) any *Director* be liable to account to the *Company* for any profit arising from any such office or place of profit, or realised by any such contract or arrangement, because of that *Director* holding that office or because of the fiduciary relationship established because of that office,
- but the *Director* must disclose that interest (***interest***) at the meeting of the *Board* at which the contract or arrangement is first considered, if the *interest* then exists, or, in any other case, at the first meeting of the *Board* after the acquisition of the *interest*.
- (b) Subject to the *Act*, if a *Director* becomes *interested* in a contract or arrangement after it has been made or entered into, the disclosure of that *interest* must be made at the first meeting of the *Board* held after that *Director* becomes *interested*.
- (c) A general notice, that a *Director* should be regarded as *interested* in all transactions with a particular entity or person, may be given.

20.2 Material personal interest

- (a) Subject to what is permitted or disallowed by the *Act*, a *Director* who has a material personal interest in any matter that is being considered at a meeting of the *Board*:
- (i) must not vote on the matter; and
 - (ii) must not be present while the matter (or proposed resolution of that kind) is being considered at the meeting.
- (b) Clause 20.2(a) does not apply if the *Board* has passed a resolution that:
- (i) specifies the *Director*, the interest and its relation to the affairs of the *Company*; and

- (ii) states that the *Directors* voting for the resolution are satisfied that the interest should not disqualify the *Director* from being present or voting on the matter.

21. Committees

- (a) The *Board* may appoint committees, to advise it concerning various matters, comprising any *Directors*, officers, employees or *Members* of the *Company*, employees or officers of *Members* or other persons it thinks fit.
- (b) The *Board* may delegate any of its powers to a committee if the committee includes
 - at least 1 *Director*.
- (c) As a minimum, there shall be a Director Selection Committee, an Audit Committee and citrus industry issues and/or citrus fruit variety committees, which may have power or be advisory only, as determined by the Board.
- (d) A committee with power must exercise its power at the *Board's* direction.
- (e) Clauses 19.1, 19.2 and 19.4 shall apply to committee meetings (with any necessary alterations or alterations made by the *Board*).
- (f) The appointment of persons to any committee with power must be confirmed by an ordinary resolution of *Voting Members* at the next *AGM*, without prejudice to the validity of any resolution, proceeding or act of the committee prior to that confirmation.

22. Officers

22.1 Chair and Deputy Chair

- (a) At the first meeting of the *Initial Board* and at the first meeting of the *Board* after each *AGM*, the *Board* must elect, from among its number, *Directors* to act in each of the following positions:
 - (i) chair; and
 - (ii) deputy chair.
- (b) The *Directors* elected to positions pursuant to clause 22.1 will hold those positions until the end of the *AGM* following their appointment, subject to clause 22.1(c).
- (c) The office of *Chair* or *Deputy Chair* becomes vacant if they:
 - (i) resign;
 - (ii) cease to be a *Director*; or
 - (iii) are removed by the *Board*.

- (d) If the office of *Chair* or *Deputy Chair* become vacant, the *Board* shall elect, from its number, a *Director* to act in the position until the next *AGM*.

22.2 Chief Executive Officer

- (a) The *Board* may appoint a chief executive officer for any period and at any time.
- (b) The *Board* can delegate any powers to the *CEO* or revoke those powers.
- (c) The *CEO* must exercise those powers in accordance with the *Board's* direction.

22.3 Secretary

The *Board* may appoint a secretary for any period and at any time.

23. Financial Reporting and Audit

- (a) The *Board* must cause proper financial records to be kept in accordance with the *Act*.
- (b) The *Board* must cause the financial records of the *Company* to be audited in accordance with the *Act*.
- (c) The *Board* must cause the *Company* to report to *Members* in accordance with the *Act*.

24. Indemnity

- (a) To the extent permitted by law, the *Company* shall indemnify each *Director* and *Secretary* against any liability incurred by them in or arising out of the conduct of the business of the *Company* or in or arising out of the discharge of their duties.
- (b) In any case where the *Board* considers it appropriate to do so, the *Company* may execute a documentary indemnity in any form in favour of any *Director* or *Secretary*.
- (c) Where the *Board* considers it appropriate to do so, the *Company* may, to the extent permitted by law, pay amounts by way of premium for any contract effecting insurance of a *Director* or *Secretary* against liability incurred by those persons in or arising out of the conduct of the business of the *Company* or in or arising out of the discharge of their duties.
- (d) In this clause 24:
 - (i) *Director* includes a former *Director*;
 - (ii) *Secretary* includes a former *Secretary*;
 - (iii) duties of a *Director* or *Secretary* include, in any particular case where the *Board* considers it

appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of a *Director* or *Secretary* by the *Company*; and

- (iv) *liabilities* include 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.

25. Notices

- (a) A notice may be given by the *Company* to any *Member* by:
 - (i) personal service; or
 - (ii) sending it by post to the address shown in the Register or to the address supplied by that *Member* to the *Company* for delivery of notices.
- (b) Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected:
 - (i) in the case of a notice of meeting, on the day after the date of its posting; and
 - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.

26. Minutes

- (a) Proper minutes of all meetings and resolutions of the *Company*, the *Board* and committees shall be entered, within one month after the relevant meeting, in minute books kept for the purpose.
- (b) The minutes of meetings kept pursuant to this clause shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.
- (c) Where minutes are entered and signed, they shall, until the contrary is proved, be evidence that:
 - (i) the meeting was convened and duly held;
 - (ii) all proceedings conducted at the meeting were duly conducted;
 - (iii) all appointments made are valid; and
 - (iv) all other resolutions passed are valid.

27. By-Laws

The *Board* may make by-laws, relating to any matter within its authority, provided that they are not inconsistent with this Constitution.

28. Seal

- (a) The *Company* shall have a common seal, with its name and Australian Company Number or Australian Business Number inscribed on it in legible writing.
- (b) The *Secretary* shall keep the seal in safe custody.
- (c) The seal shall only be used with express authorisation of the *Board*, which shall be noted in the *Board* minutes.
- (d) The affixing of the seal shall be witnessed by any 2 *Directors* or any 1 *Director* and the *Secretary*, who shall sign the relevant document next to the impression of the seal.
- (e) The *Company* may make contracts and execute documents, without using the seal, in accordance with the *Act*.