

**CORPORATIONS ACT 2001**

A Public Company Limited by Guarantee

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**CONSTITUTION**

**OF**

**APBSF LTD**

**ACN**

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## CONSTITUTION APBSF LIMITED

### 1 DICTIONARY

#### 1.1 Definitions

In this constitution:

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

**Advisory Committee** has the meaning given in clause 23.1(a).

**Applicant** means an individual, a trust, an authority, an entity, a Governmental authority, a statutory body or other incorporated body which applies for membership of the Company.

**Board of Directors**, or **Board**, means the board of Directors.

**Board Representative** means a member of the Board, the Chief Executive Officer of the Company or some other person nominated by the Board to be the Board's representative.

**Class Meeting** has the meaning given in clause 10.4.

**Class of Members** means the Members of a particular membership class established in accordance with clause 4.

**Class Representative** means, in connection with a General Meeting, a duly appointed representative of a Class of Members.

**Class Representatives Present** means, in connection with a General Meeting, a Class Representative being present in person, by representative or by proxy at the venue or venues for the meeting.

**Company** means the company referred to in clause 2.1.

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

**Director** means a director of the Company.

**Elected Chairperson** means a person elected by the Directors to be the Company's chairperson under clause 20.8.

**General Meeting** means a meeting of Members and includes the annual General Meeting, under clause 9.1.

**General Member** means a Member that the Directors are satisfied meets the criteria in clause 4.6.

**Initial Member** means an Applicant named in the application for registration of the Company, with their consent, as a proposed member of the Company.

**Industry Member** means a Member that the Directors are satisfied meets the criteria in clause 4.5.

**Member** means a member of the Company and includes a Member present in person or by proxy, attorney or representative.

**Plant Biosecurity Sector** includes persons or entities who undertake any of:

- (a) carrying on a business; or
- (b) investing or otherwise commercially participating in; or
- (c) investigation, monitoring, research or development,

relating to supporting, protecting and managing plant biosecurity in Australia and internationally and includes RDE & CB Providers, Authorities and Industries.

**RDE&CB** means research, development, extension and capacity building.

**RDE&CB Member** means a Member that the Directors are satisfied meets the criteria in clause 4.3.

**RDE&CB Provider** means an entity:

- (a) that provides RDE&CB in the Plant Biosecurity Sector; or
- (b) which is part of the Plant Biosecurity Sector and which represents the majority interests of RDE & CB Providers as a whole,

regardless of how and where that entity is owned or controlled and will further the achievement of the objects of the Company.

**Registered Charity** means a charity that is registered under the ACNC Act.

**Regulatory Member** means a Member that the Directors are satisfied meets the criteria in clause 4.4.

**Special Resolution** means a resolution:

- (a) of which notice has been given under clause 10.3(c), and
- (b) that has been passed by at least 75% of the votes cast by each Class of Members at its Class Meeting; and
- (c) that has been passed by at least 75% of the votes cast by the Class Representatives Present and entitled to vote on the resolution.

**Surplus Assets** means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

## 1.2 Reading this constitution with the Corporations Act

- (a) The replaceable rules set out in the Corporations Act do not apply to the Company.

- (b) While the Company is a Registered Charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.
- (c) If the Company is not a Registered Charity (even if it remains a charity), the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.
- (d) A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

### 1.3 Interpretation

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

## 2 PRELIMINARY

### 2.1 Name of the Company

The name of the company is APBSF Ltd (the Company).

### 2.2 Type of Company

The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

### 2.3 Limited liability of Members

The liability of Members is limited to the amount of the guarantee in clause 2.4.

### 2.4 The guarantee

Each Member must contribute an amount not more than \$10.00 (the guarantee) to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:

- (a) debts and liabilities of the Company incurred before the Member stopped being a Member; or
- (b) costs of winding up.

### 2.5 Definitions

In this constitution, words and phrases have the meaning set out in clauses 1.1 and 1.3.

### **3 CHARITABLE PURPOSES AND POWERS**

#### **3.1 Object**

The Company:

- (a) has been formed with the purpose of advancing the environment by managing the investment of funds to benefit Australian plant industries, regional communities and the environment through plant biosecurity research, development extension and capacity building;
- (b) has charitable purposes, as further detailed in clause 3.2;
- (c) will cooperate with other organisations in the furtherance of these objects; and
- (d) will carry out any other objects which are:
  - (i) consistent with the objects; and
  - (ii) approved by the Company from time to time.

#### **3.2 Charitable purposes**

The charitable purposes for which the Company is established are to invest, which may include co-investment, in plant biosecurity research, development extension and capacity building and promote the outputs and outcomes in one or more of the following areas, to the extent that they are charitable, including, but not limited to:

- (a) minimising the risk of invasive pests being introduced into Australia;
- (b) the prevention, detection, diagnosis and response which will minimise the impact plant pests have;
- (c) enhance Australia's capacity to export produce free of plant pests;
- (d) enhance the capacity of Australia's communities to be involved in biosecurity;
- (e) utilisation of intellectual property (IP) and other assets owned by the Company;
- (f) plant biosecurity capacity building, education and training;
- (g) environmental plant biosecurity;
- (h) plant biosecurity cross-industry science;
- (i) plant biosecurity non-levy payer agricultural science;
- (j) plant biosecurity strategic science; and
- (k) plant biosecurity international scientific collaborations.

### 3.3 Powers

Subject to clause 3.4, the Company has the following powers, which may only be used to carry out its purposes set out in clause 3.1:

- (a) the powers of an individual, and
- (b) all the powers of a Company limited by guarantee under the Corporations Act.

### 3.4 Not-for-profit

- (a) The Company must not distribute any income or assets directly or indirectly to its Members, except as provided in clauses 3.4(b) and 33.2.
- (b) Clause 3.4(a) does not stop the Company from doing the following things, provided they are done in good faith:
  - (i) paying a Member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company; or
  - (ii) making a payment to a Member in carrying out the Company's charitable purposes.

### 3.5 Amending the constitution

- (a) Subject to clause 3.5(b), the Members may amend this constitution by passing a Special Resolution.
- (b) The Members must not pass a Special Resolution that amends this constitution if passing it causes the Company to no longer be a charity.

## 4 MEMBERSHIP

### 4.1 Constitution of Members

The Members of the Company are:

- (a) Initial Members; and
- (b) any other Applicant that the Directors allow to be a Member, in accordance with this constitution.

### 4.2 Membership Classes

The Company will have the following classes of Members:

- (a) RDE&CB Member;
- (b) Regulatory Member;
- (c) Industry Member; and

(d) General Member.

#### 4.3 RDE&CB Member

The Directors may only admit an entity as a RDE&CB member ('RDE&CB Member') if the Directors are satisfied that the entity is a RDE&CB Provider.

#### 4.4 Regulatory Member

The Directors may only admit an entity as a regulatory member ('Regulatory Member') if the Directors are satisfied that the entity has an interest in the Plant Biosecurity Sector as a biosecurity regulator.

#### 4.5 Industry Member

The Directors may only admit an entity as an industry member ('Industry Member') if the Directors are satisfied that the entity is an Industry end user or is an entity which is part of the Plant Biosecurity Sector.

#### 4.6 General Member

The Directors may only admit an Applicant as a general member ('General Member') if the Directors are satisfied that the Applicant is a part of, or is interested in, the Plant Biosecurity Sector. In the case of an individual, they cannot represent an entity.

#### 4.7 Categories of Membership and Rights

The Board of Directors may create different Classes of Members and determine the rights and privileges of each class so long as any new Class of Members cannot have voting rights which are more than the maximum number of votes of an existing Class of Members.

#### 4.8 Rights of Members are Personal

- (a) The rights and privileges of each Member are the same regardless of the Member's class, except in respect of voting rights, which are set out in clause 18.
- (b) The rights and privileges of every Member will be personal to each Member and will not be transferable by the Member's own act or by operation of law.

#### 4.9 Register of Members

The Company must establish and maintain a register of Members. The register of Members must be kept by the secretary and must contain:

- (a) for each current Member:
  - (i) name;
  - (ii) address;
  - (iii) any alternative address nominated by the Member for the service of notices; and



- (iv) date the Member was entered on to the register.
- (b) for each former Member who stopped being a Member in the last 7 years:
  - (i) name;
  - (ii) address;
  - (iii) any alternative address nominated by the former Member for the service of notices; and
  - (iv) dates the membership started and ended.

#### 4.10 Access to the Register

- (a) The Company must give current Members access to the register of Members.
- (b) Information that is accessed from the register of Members must only be used in a manner relevant to the interests or rights of Members.

#### 4.11 Who can be a Member

- (a) An Applicant who supports the purposes of the Company is eligible to apply to be a Member of the Company under clause 4.12.
- (b) An Applicant may only be admitted as a Member in a single class. The Applicant must nominate the class it prefers, provided that the Applicant is eligible for that class. Subject to the Directors' right to reject an application for membership and clause 4.16, the Directors must admit the Applicant in the class nominated.

#### 4.12 How to apply to become a Member

An Applicant may apply to become a Member of the Company by writing to the secretary stating that they:

- (a) want to become a Member;
- (b) support the purposes of the Company; and
- (c) agree to comply with the Company's constitution, including paying the guarantee under clause 2.4 if required.

#### 4.13 Directors decide whether to approve membership

- (a) The Directors must consider an application for membership within a reasonable time after the secretary receives the application.
- (b) The Directors may accept or reject applications for membership by an Applicant who qualifies for a class in accordance with clauses 4.3 to 4.6 in their absolute discretion.
- (c) If the Directors approve an application, the secretary must as soon as possible:

- (i) enter the new Member on the register of Members; and
  - (ii) write to the Applicant to tell them that their application was approved, and the date that their membership started (see clause 4.14).
- (d) If the Directors reject an application, the secretary must write to the Applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- (e) For the avoidance of doubt, the Directors may approve an application even if the application does not state the matters listed in clauses 4.12(a), 4.12(b) or 4.12(c). In that case, by applying to be a Member, the Applicant agrees to those three matters.

#### 4.14 When an Applicant becomes a Member

Other than Initial Members, an applicant will become a Member when they are entered on the register of Members.

#### 4.15 When membership ceases

A Member immediately stops being a Member if they:

- (a) die (if an individual);
- (b) are wound up or otherwise dissolved or deregistered (for an incorporated entity);
- (c) resign, by writing to the secretary;
- (d) are expelled under clauses 4.16 or 7; or
- (e) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a Member and have paid all outstanding fees.

#### 4.16 Resolution to terminate membership

The Directors may resolve to terminate the membership of a Member if:

- (a) where the Member has been appointed as a RDE&CB Member, the Member ceases to satisfy the requirements of clause 4.3;
- (b) where the Member has been appointed as an Regulatory Member, the Member ceases to satisfy the requirements of clause 4.4;
- (c) where the Member has been appointed as an Industry Member, the Member ceases to satisfy the requirements of clause 4.5; or
- (d) where the Member has been appointed as a General Member, the Member ceases to satisfy the requirements of clause 4.6; or

- (e) where the Member has been eligible for membership in more than one class, and the Directors form the view (acting reasonably) that the Member is no longer able to satisfy the requirements of any of the classes of membership for which the Member is eligible.

## **5 SUBSCRIPTION FEES OF MEMBERS**

### **5.1 Fees**

The Board of Directors may decide whether to impose a fee on Members and, if so, the type of fee and amount.

### **5.2 Collection and Payment of Fees**

The Board of Directors may make rules relating to the collection and payment of any fees imposed in accordance with clause 5.1.

## **6 DISPUTE RESOLUTION**

### **6.1 Dispute resolution**

- (a) The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a Member or Director and:
  - (i) one or more Members;
  - (ii) one or more Directors; or
  - (iii) the Company.
- (b) A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 7 until the disciplinary procedure is completed.
- (c) Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- (d) If those involved in the dispute do not resolve it under clause (c), they must within 10 days:
  - (i) tell the Directors about the dispute in writing;
  - (ii) agree or request that a mediator be appointed; and
  - (iii) attempt in good faith to settle the dispute by mediation.

### **6.2 Mediator**

The mediator must:

- (a) be chosen by agreement of those involved, or

- (b) where those involved do not agree:
  - (i) for disputes between Members, a person chosen by the Directors, or
  - (ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the Company has its registered office.

### 6.3 Qualification of mediator

A mediator chosen by the Directors under clause 6.2(b)(i):

- (a) may be a Member or former Member of the Company;
- (b) must not have a personal interest in the dispute; and
- (c) must not be biased towards or against anyone involved in the dispute.

### 6.4 Conduct of mediation

When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard;
- (b) allow those involved a reasonable chance to review any written statements;
- (c) ensure that those involved are given natural justice; and
- (d) not make a decision on the dispute.

## 7 DISCIPLINARY PROCEDURES

### 7.1 Disciplining Members

In accordance with this clause 7, the Directors may resolve to warn, suspend or expel a Member from the Company if the Directors consider that:

- (a) the Member has breached this constitution; or
- (b) the Member's behaviour is causing, has caused, or is likely to cause harm to the Company.

### 7.2 Notification to the Member

At least 14 days before the Directors' meeting at which a resolution under clause 7.1 will be considered, the secretary must notify the Member in writing:

- (a) that the Directors are considering a resolution to warn, suspend or expel the Member;
- (b) that this resolution will be considered at a Directors' meeting and the date of that meeting;

- (c) what the Member is said to have done or not done;
- (d) the nature of the resolution that has been proposed; and
- (e) that the Member may provide an explanation to the Directors, and details of how to do so.

### 7.3 Right to respond

Before the Directors pass any resolution under clause 7.1, the Member must be given a chance to explain or defend themselves by:

- (a) sending the Directors a written explanation before that Directors' meeting, and/or
- (b) speaking at the meeting.

### 7.4 Directors resolutions

- (a) After considering any explanation under clause 7.3, the Directors may:
  - (i) take no further action;
  - (ii) warn the Member;
  - (iii) suspend the Member's rights as a Member for a period of no more than 12 months;
  - (iv) expel the Member;
  - (v) refer the decision to an unbiased, independent person on conditions that the Directors consider appropriate (however, the person can only make a decision that the Directors could have made under this clause); or
  - (vi) require the matter to be determined at a General Meeting.
- (b) The Directors cannot fine a Member.

### 7.5 Procedure

- (a) The secretary must give written notice to the Member of the decision under clause 7.4 as soon as possible.
- (b) Disciplinary procedures must be completed as soon as reasonably practical.
- (c) There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause.

## **8 GENERAL MEETINGS OF MEMBERS**

### 8.1 General meetings called by Directors

- (a) The Directors may call a General Meeting.

- (b) If at least 5% of Members make a written request to the Company for a General Meeting to be held, the Directors must:
  - (i) within 21 days of the Members' request, give all Members notice of a General Meeting; and
  - (ii) hold the General Meeting within 2 months of the Members' request.
- (c) The Members who make the request for a General Meeting must:
  - (i) state in the request any resolution to be proposed at the meeting;
  - (ii) sign the request; and
  - (iii) give the request to the Company.
- (d) Separate copies of a document setting out the request may be signed by Members if the wording of the request is the same in each copy.

## 8.2 General meetings called by Members

- (a) If the Directors do not call the meeting within 21 days of being requested under clause 8.1(b), 50% or more of the Members who made the request may call and arrange to hold a General Meeting.
- (b) To call and hold a meeting under clause (a) the Members must:
  - (i) as far as possible, follow the procedures for General Meetings set out in this constitution;
  - (ii) call the meeting using the list of Members on the Company's Member register, which the Company must provide to the Members making the request at no cost; and
  - (iii) hold the General Meeting within three months after the request was given to the Company.
- (c) The Company must pay the Members who request the General Meeting any reasonable expenses they incur because the Directors did not call and hold the meeting.

## 9 ANNUAL GENERAL MEETING

### 9.1 Annual General Meeting

A General Meeting, called the annual General Meeting, must be held:

- (a) within 18 months after registration of the Company, and
- (b) after the first annual General Meeting, at least once in every calendar year.

## 9.2 Business at an Annual General Meeting

Even if these items are not set out in the notice of meeting, the business of an annual General Meeting may include:

- (a) a review of the Company's activities;
- (b) a review of the Company's finances;
- (c) any auditor's report;
- (d) the election of Directors; and
- (e) the appointment and payment of auditors, if any.

## 9.3 Information for Members

- (a) Before or at the annual General Meeting, the Directors must give information to the Members on the Company's activities and finances during the period since the last annual General Meeting.
- (b) The chairperson of the annual General Meeting must give Members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

# 10 NOTICE OF GENERAL MEETINGS

## 10.1 Persons entitled to Notice of General Meeting

Notice of a General Meeting must be given to:

- (a) each Member;
- (b) each Director; and
- (c) the auditor (if any).

## 10.2 Length of Notice

- (a) Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- (b) Subject to clause 10.2(c), notice of a meeting may be provided less than 21 days before the meeting if:
  - (i) for an annual General Meeting, all the Members entitled to attend and vote at the annual General Meeting agree beforehand; or
  - (ii) for any other General Meeting, 95% of Members agree beforehand.
- (c) Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
  - (i) remove a Director;

- (ii) appoint a Director in order to replace a Director who was removed; or
- (iii) remove an auditor.

### 10.3 Details of Notice

Subject to clause 10.4, a notice of a General Meeting must include:

- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) the general nature of the meeting's business;
- (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;
- (d) if there is to be a Class Meeting, a statement that Members have the right to appoint proxies for the Class Meeting and that, if a Member appoints a proxy:
  - (i) the proxy must be a Member or a Director of the Company;
  - (ii) the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
  - (iii) the proxy form must be delivered to the Company at least 48 hours before the meeting.

### 10.4 Notice of Class Meeting

If at any time there is more than one Member within a Class of Members, the notice of General Meeting must also specify that a meeting of that Class of Members ('Class Meeting') will occur within 48 hours prior to the time of the general meeting, to enable the class to determine how to vote in accordance with clause 18.

### 10.5 Adjournment

If a General Meeting is adjourned (put off) for one month or more, the Members must be given new notice of the resumed meeting.

## 11 QUORUM AT GENERAL MEETINGS

### 11.1 Requirement for Quorum

For a General Meeting to be held, a quorum of Class Representatives must be present (in person or by representative) for the whole meeting.

### 11.2 Quorum

- (a) For a General Meeting, a quorum is:
  - (i) if there is only one Class of Member, the Class Representative



for that Class of Member;

- (ii) if there are 2 Classes of Members, the Class Representatives of both Classes of Members; and
  - (iii) if there are 3 or more Classes of Members, sufficient Class Representatives so that more than 50% of the then Classes of Members are represented.
- (b) When determining whether a quorum is present, a Class Representative may only be counted once.

### 11.3 Where Quorum not Present

- (a) No business may be conducted at a General Meeting if a quorum is not present.
- (b) If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
  - (i) if the date is not specified – the same day in the next week;
  - (ii) if the time is not specified – the same time; and
  - (iii) if the place is not specified – the same place.
- (c) If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## 12 AUDITOR'S RIGHT TO ATTEND MEETINGS

### 12.1 Right to Attend General Meeting

The auditor (if any) is entitled to attend any General Meeting and to be heard by the Members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

### 12.2 Communications to give to Auditor

The Company must give the auditor (if any) any communications relating to the General Meeting that a Member of the Company is entitled to receive.

## 13 REPRESENTATIVES OF MEMBERS

- (a) An incorporated Member may appoint as a representative:
  - (i) one individual to represent the Member at meetings and to sign circular resolutions under clause 17.3; and
  - (ii) the same individual or another individual for the purpose of being appointed or elected as a Director.

- (b) The appointment of a representative by a Member must:
  - (i) be in writing;
  - (ii) include the name of the representative;
  - (iii) be signed on behalf of the Member; and
  - (iv) be given to the Company or, for representation at a meeting, be given to the chairperson before the meeting starts.
- (c) A representative has all the rights of a Member relevant to the purposes of the appointment as a representative.
- (d) The appointment may be standing (ongoing).

## **14 USING TECHNOLOGY TO HOLD MEETINGS**

- (a) The Company may hold a General Meeting, and a Class Meeting, at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.
- (b) Anyone using this technology is taken to be present in person at the meeting.

## **15 CHAIRPERSON FOR GENERAL MEETINGS**

### **15.1 Responsibility**

The Elected Chairperson is entitled to chair General Meetings.

### **15.2 Board may Elect Chair**

The Board may choose a Director or Member to be the chairperson for that meeting if:

- (a) there is no Elected Chairperson ; or
- (b) the Elected Chairperson is not present within 30 minutes after the starting time set for the meeting; or
- (c) the Elected Chairperson is present but says they do not wish to act as chairperson of the meeting.

### **15.3 Conduct of the General Meeting**

The chairperson is responsible for the conduct of the General Meeting, and for this purpose must give the Class Representatives and any Members present a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).

### **15.4 No Vote**

The chairperson does not have a vote.

## **16 ADJOURNMENT OF MEETINGS**

- (a) If a quorum is present, a General Meeting must be adjourned if a majority of Class Representatives present direct the chairperson to adjourn it.
- (b) Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## **17 MEMBERS' RESOLUTIONS AND STATEMENTS**

### **17.1 Members' Resolutions and Statements**

- (a) Members comprising at least 50% of the Members in a Class of Members may give:
  - (i) written notice to the Company of a resolution they propose to move at a General Meeting (Members' resolution), and/or
  - (ii) a written request to the Company that the Company give all of its Members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (Members' statement).
- (b) A notice of a Members' resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.
- (c) A request to distribute a Members' statement must set out the statement to be distributed and be signed by the Members making the request.
- (d) Separate copies of a document setting out the notice or request may be signed by Members if the wording is the same in each copy.
- (e) If the Company has been given notice of a Members' resolution under clause 17.1(a)(i), the resolution must be considered at the next General Meeting held more than two months after the notice is given.
- (f) This clause does not limit any other right that a Member has to propose a resolution at a General Meeting.

### **17.2 Company must give notice of proposed resolution or distribute statement**

- (a) If the Company has been given a notice or request under clause 17.1:
  - (i) in time to send the notice of proposed Members' resolution or a copy of the Members' statement to Members with a notice of meeting, it must do so at the Company's cost; or
  - (ii) too late to send the notice of proposed Members' resolution or a copy of the Members' statement to Members with a notice of meeting, then the Members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving Members notice of the proposed

Members' resolution or a copy of the Members' statement. However, at a General Meeting, the Members may pass a resolution that the Company will pay these expenses.

- (b) The Company does not need to send the notice of proposed Members' resolution or a copy of the Members' statement to Members if:
  - (i) it is more than 1,000 words long;
  - (ii) the Directors consider it may be defamatory;
  - (iii) clause 17.2(a)(ii) applies, and the Class of Members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending the notice of the proposed Members' resolution or a copy of the Members' statement to Members; or
  - (iv) in the case of a proposed Members' resolution, the resolution does not relate to a matter that may be properly considered at a General Meeting or is otherwise not a valid resolution able to be put to the Members.

### 17.3 Circular resolutions of Members

- (a) Subject to clause 17.3(c), the Directors may put a resolution to the Members to pass a resolution without a General Meeting being held (a circular resolution).
- (b) The Directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to Members, and set out the wording of the resolution.
- (c) Circular resolutions cannot be used:
  - (i) for a resolution to remove an auditor, appoint a Director or remove a Director;
  - (ii) for passing a Special Resolution; or
  - (iii) where the Corporations Act or this constitution requires a meeting to be held.
- (d) A circular resolution is passed if all the Members of the Company (including all Members of each Class of Member) sign or agree to the circular resolution, in the manner set out in clause 17.3(e) or clause 17.3(f).
- (e) Members may sign:
  - (i) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
  - (ii) separate copies of that document, as long as the wording is the same in each copy.

- (f) The Company may send a circular resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## **18 VOTING AT GENERAL MEETINGS**

### **18.1 Overview**

Voting on resolutions is undertaken by a two tiered system. All Members are in a Class of Members and will vote on resolutions in their classes to determine the consensus view of each Class of Members. Each Class then has a set number of votes ('class votes') to cast at the general meeting in accordance with its consensus view. These class votes will be cast by the Class Representative.

### **18.2 Voting as a class**

- (a) Members within a Class of Members may only vote at general meetings collectively as a class in accordance with this clause 18, and not as individual Members.
- (b) Members will not be permitted to vote if their membership fees are outstanding.
- (c) Only the Class Representative may vote in the General Meeting on behalf of the Class of Members.
- (d) All Members within a Class of Members may attend the General Meeting and speak at the meeting.

### **18.3 Class Meetings**

- (a) Members within a Class of Members will meet and vote on the resolutions to determine the class vote by that Class of Members.
- (b) A Board Representative must attend each Class Meeting and ensure that minutes of the Class Meeting are recorded. Minutes of the Class Meeting will be made available to Members of that Class and the Board.
- (c) At a Class Meeting:
  - (i) the class will determine a consensus to exercise the class vote on each resolution by holding a vote;
  - (ii) the vote will be carried by a majority of votes cast on the resolution by the Members in that class other than a Special Resolution which requires at least 75% of the votes;
  - (iii) each Member within the class has one vote;
  - (iv) votes will be made by a show of hands or in writing as determined by the Elected Chairperson; and

- (v) each Member within the class may be represented in person, by proxy, attorney or representative.
- (d) At the Class Meeting, the Members will appoint a representative of the Class of Members (the Class Representative) who will cast the class vote(s) on behalf of the class at the General Meeting.
- (e) The Class Representative must cast the class vote(s) consistently with the decision of the Class of Members.
- (f) If the duly appointed Class Representative is unable to attend the vote at the general meeting for any reason, the Members may appoint another representative of the Class of Members to vote on behalf of the Class of Members.
- (g) In addition to casting the class vote(s) for a Class of Members, the Class Representative may vote on matters of procedure at the general meeting (such as a vote under clause 18.7 or clause 20.3(c)).
- (h) A Class Meeting will have no effect, and the class will not be entitled to exercise a right to vote on a resolution at a general meeting of the Company, unless the Class Meeting is held within the 48 hours prior to the time of the General Meeting of the Company at which the resolution will be proposed.

#### 18.4 Votes at a General Meeting per Class of Members

- (a) Each Class of Members is entitled to exercise the following number of class votes at a General Meeting:
  - (i) in the case of RDE&CB Members, 1 vote;
  - (ii) in the case of Regulatory Members, 2 votes;
  - (iii) in the case of Industry Members, 2 votes; and
  - (iv) in the case of General Members, 1 vote.

Subject to clause 4.7, for the avoidance of doubt, the total number of votes which may be cast at General Meetings is 6 votes.

- (b) If at any time there is only one Member within a Class of Members, that Member may exercise the right to vote on behalf of that Class of Members.
- (c) If at any time there is more than one Member within a Class of Members, none of those Members may exercise the right to vote on behalf of that Class of Members except in accordance with clause 18.3.

#### 18.5 Challenge to Class Representative's right to vote at the General Meeting

- (a) A Member or the chairperson may only challenge a Class Representative's right to vote at a General Meeting at that meeting.

- (b) If a challenge is made under clause 18.5(a), the chairperson must decide whether or not a Class Representative may vote. The chairperson's decision is final.

#### 18.6 How voting is carried out at the General Meeting

- (a) Voting must be conducted and decided by:
  - (i) a show of hands;
  - (ii) a vote in writing; or
  - (iii) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- (b) On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- (c) The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

#### 18.7 When and how a vote in writing must be held at the General Meeting

- (a) A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by the chairperson.
- (b) A vote in writing must be taken when and how the chairperson directs, unless clause 18.7(c) applies.
- (c) A vote in writing must be held immediately if it is demanded under clause 18.7(a) to decide whether to adjourn the meeting.
- (d) A demand for a vote in writing may be withdrawn.

### 19 PROXIES

#### 19.1 Appointment of proxy – Class Meeting

A Member may appoint a proxy to attend and vote at a Class Meeting on their behalf.

#### 19.2 Proxy must be a Member or Director

A proxy must be a Member or a Director.

#### 19.3 Rights of Proxy same as Member

A proxy appointed to attend and vote for a Member has the same rights as the Member to:

- (a) speak at the meeting; and
- (b) vote in a vote in writing (but only to the extent allowed by the appointment).

#### 19.4 Appointment of Proxy Form

An appointment of proxy (proxy form) must be signed by the Member appointing the proxy and must contain:

- (a) the Member's name and address
- (b) the Company's name
- (c) the proxy's name or the name of the office held by the proxy, and
- (d) the meeting(s) at which the appointment may be used.

#### 19.5 Appointment in Approved Form

- (a) An appointment of a proxy must be in a form approved by the Company.
- (b) The form in Schedule 1 is taken to be approved by the Company unless it resolves otherwise.

#### 19.6 Term of Proxy appointment

A proxy appointment may be standing (ongoing).

#### 19.7 Form to be received by the Company

Proxy forms must be received by the Company at the address stated in the notice under clause 10.3(d) or at the Company's registered address at least 48 hours before a meeting.

#### 19.8 Validity of Proxy Vote

- (a) A proxy does not have the authority to speak and vote for a Member at a meeting while the Member is at the meeting.
- (b) Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:
  - (i) dies (if an individual);
  - (ii) is mentally incapacitated (if an individual);
  - (iii) revokes the proxy's appointment, or
  - (iv) revokes the authority of a representative or agent who appointed the proxy.
- (c) A proxy appointment may specify the way the proxy must vote on a particular resolution.



## 19.9 Voting by proxy

- (a) A proxy is not entitled to vote on a show of hands (but this does not prevent a Member appointed as a proxy from voting as a Member on a show of hands).
- (b) When a vote in writing is held:
  - (i) a proxy does not need to vote, unless the proxy appointment specifies the way they must vote;
  - (ii) if the way they must vote is specified on the proxy form, a proxy must vote that way, and
  - (iii) if the proxy is also a Member or holds more than one proxy, a proxy may cast the votes held in different ways.

## 20 DIRECTORS

### 20.1 Number of Directors

- (a) The Company must have at least three and no more than nine Directors.
- (b) The Company may by a resolution passed at a General Meeting increase or reduce the minimum or maximum number of Directors.

### 20.2 No need to be a Member

A Director does not need to be a Member of the Company.

### 20.3 Election and appointment of Directors

- (a) The initial Directors are the people who have agreed to act as Directors and who are named as proposed Directors in the application for registration of the Company.
- (b) Apart from the initial Directors and Directors appointed under clause 20.6, the Members may elect a Director by a resolution passed in a General Meeting.
- (c) Each of the Directors must be appointed by a separate resolution, unless:
  - (i) the Class Representatives present have first passed a resolution that the appointments may be voted on together, and
  - (ii) no votes were cast against that resolution.

### 20.4 Skills Composition of the Board

Apart from the initial Directors, the Board of Directors will comprise of appointees who between them collectively have skills in all the following categories:

- (a) plant industry production, industry operations and marketing;
- (b) Plant industry and/or environmental research
- (c) plant biosecurity policy and plant biosecurity management and international trends in plant biosecurity practices;
- (d) strategic planning, business and financial management and economics;
- (e) corporate leadership and governance;
- (f) government policy, processes and structures;
- (g) management of research and development;
- (h) education and training;
- (i) technology adoption; and
- (j) intellectual property management and commercialisation.

#### 20.5 Eligibility

A person is eligible for election as a Director of the Company if they:

- (a) hold one or more of the skills set out in clause 20.4;
- (b) are nominated by two Members or representatives of Members entitled to vote (unless the person was previously elected as a Director at a General Meeting and has been a Director since that meeting),
- (c) give the Company their signed consent to act as a Director of the Company, and
- (d) are not ineligible to be a Director under the Corporations Act or the ACNC Act.

#### 20.6 Casual vacancy

The Directors may appoint a person as a Director to fill a casual vacancy or as an additional Director if that person:

- (a) holds one or more of the skills set out in clause 20.4;
- (b) gives the Company their signed consent to act as a Director of the Company, and
- (c) is not ineligible to be a Director under the Corporations Act or the ACNC Act.

#### 20.7 Limited powers

If the number of Directors is less than three or is less than the number required for a quorum, the continuing Directors may act for the purpose of

increasing the number of Directors to three (or higher if required for a quorum) or calling a General Meeting, but for no other purpose.

#### 20.8 Election of chairperson

- (a) The Directors must elect a Director as the Company's Elected Chairperson.
- (b) The Elected Chairperson holds office for a term of 4 years.

#### 20.9 Term of office

- (a) A Director holds office for a term of 4 years provided that in order to avoid all Directors being required to retire at the same time, a Director may hold office for a shorter or longer term (as permitted under the Constitution, including clauses 20.9(i)).
- (b) Subject to clause 20.9(i), a Director may be appointed for a maximum of 2 terms.
- (c) At each annual General Meeting:
  - (i) any Director appointed by the Directors to fill a casual vacancy or as an additional Director must retire, and
  - (ii) at least one-half of the remaining Directors must retire.
- (d) In respect of the initial Board of Directors, one half of the Directors must retire after the second year of his or her first 4 year term and will remain in office until the end of the annual General Meeting being proximate to the expiration of his or her two year term. The retiring Directors will be eligible for re-election at the meeting in accordance with clause 20.3.
- (e) The Directors who must retire at each annual General Meeting under clause 20.9(c)(ii) will be the Directors who have been longest in office since last being elected. Where Directors were elected on the same day, the Director(s) to retire will be decided by lot unless they agree otherwise.
- (f) Other than a Director appointed under clause 20.6, a Director's term of office starts at the end of the annual General Meeting at which they are elected and ends at the end of the annual General Meeting at which they retire.
- (g) Each Director must retire at least once every four years.
- (h) A Director who retires under clause 20.9(a) may nominate for election or re-election, subject to clause 20.9(i).
- (i) A Director who has held office for a continuous period of eight years or more may only be re-appointed or re-elected if the remaining Directors can show good cause.

## 20.10 When a Director stops being a Director

A Director stops being a Director if they:

- (a) give written notice of resignation as a Director to the Company;
- (b) die;
- (c) becomes bankrupt or makes any general arrangement or composition with his or her creditors;
- (d) cannot manage the Company because of their mental incapacity or is a person whose estate is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
- (e) are removed as a Director by a resolution of the Members;
- (f) are absent for three consecutive Directors' meetings without approval from the Directors; or
- (g) become ineligible to be a Director of the Company under the Corporations Act or the ACNC Act.

## 21 POWERS OF DIRECTORS

### 21.1 Powers of Directors

- (a) The Directors are responsible for managing and directing the activities of the Company to achieve the purposes set out in clause 3.1.
- (b) The Directors may use all the powers of the Company except for powers that, under the Corporations Act or this constitution, may only be used by Members.
- (c) The Directors must decide on the responsible financial management of the Company including:
  - (i) any suitable written delegations of power under clause 21.2; and
  - (ii) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- (d) The Directors cannot remove a Director or auditor. Directors and auditors may only be removed by a Members' resolution at a General Meeting.

## 21.2 Delegation of Directors' powers

(a) The Directors may delegate any of their powers and functions to a committee, a Director, an employee of the Company (such as a chief executive officer) or any other person, as they consider appropriate.

(b) The delegation must be recorded in the Company's minute book.

## 21.3 Payments to Directors

(a) The Company must not pay fees to a Director for acting as a Director, unless:

(i) the payment has been previously assessed by an appropriately skilled and independent party as appropriate for a charitable organisation and for the skills and experience that the Director brings to the Company; and

(ii) is approved by a resolution passed by the Members at a General Meeting.

(b) The Company may:

(i) pay a Director for work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done, or

(ii) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.

(c) Any payment made under clause 21.3(b) must be approved by the Directors.

(d) The Company may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Corporations Act) and this constitution.

## 21.4 Execution of documents

The Company may execute a document without using a common seal if the document is signed by:

(a) two Directors of the Company; or

(b) a Director and the secretary.

## 22 DIRECTORS' COMMITTEES

### 22.1 Delegation of Directors' Powers

(a) The Board may delegate any of their powers, other than those which by law must be dealt with by the Board, to one or more committees.

(b) At least one member of each committee must be a Director.

- (c) The Board may at any time revoke any delegation of power to a delegate.

## 22.2 Exercise of Committee's Powers

Each committee must exercise its powers in accordance with any directions of the Board and a power exercised in that way is taken to have been exercised by the Board.

## 22.3 Committee to Adhere to Constitution

Meetings of any committee will be governed by the provisions of this Constitution which deal with Board meetings so far as they are applicable and are not inconsistent with any directions of the Board.

## 23 ADVISORY COMMITTEE

### 23.1 Establishment of Advisory Committee

- (a) The Board may establish advisory committees ('Advisory Committee') of one or more persons and appoint and remove, or make provision for the appointment and removal of, members of the Advisory Committees.
- (b) The functions of each Advisory Committee will be decided by the Board and, subject to the Board's decisions, will be for the purposes of providing guidance and advice to the Board and for any other purposes as the Board may decide from time to time.
- (c) At least one member of the Advisory Committee must be a Director.
- (d) A recommendation of the Advisory Committee is advisory only and is not binding on the Board.

### 23.2 Advisory Committee to Adhere to Constitution

Meetings of any Advisory Committee will be governed by the provisions of this Constitution which deal with Board meetings so far as they are applicable and are not inconsistent with any directions of the Board.

## 24 DUTIES OF DIRECTORS

### 24.1 Duties of Directors

The Directors must comply with their duties as Directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
- (b) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in clause 3.1;

- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 25;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

## **25 CONFLICTS OF INTEREST**

### **25.1 Director must Disclose**

A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):

- (a) to the other Directors, or
- (b) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.

### **25.2 Disclosure must be Recorded**

The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

### **25.3 Director must not Participate**

Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution) must not, except as provided under clauses 25.4:

- (a) be present at the meeting while the matter is being discussed, or
- (b) vote on the matter.

### **25.4 Director may remain Present**

A Director may still be present and vote if:

- (a) their interest arises because they are a Member of the Company, and the other Members have the same interest;
- (b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company (see clause 32.3);
- (c) their interest relates to a payment by the Company under clause 32.1 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;

- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter; or
- (e) the Directors who do not have a material personal interest in the matter pass a resolution that:
  - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company, and
  - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

## **26 DIRECTORS' MEETINGS**

### **26.1 When the Directors meet**

The Directors may decide how often, where and when they meet, and must meet at least once every six months.

### **26.2 Calling Directors' meetings**

- (a) A Director may call a Directors' meeting by giving reasonable notice to all of the other Directors.
- (b) A Director may give notice in writing or by any other means of communication that has previously been agreed to by a majority of the Directors.

### **26.3 Chairperson for Directors' meetings**

- (a) The Elected Chairperson is entitled to chair Directors' meetings.
- (b) The Directors at a Directors' meeting may choose a Director to be the chairperson for that meeting if the Elected Chairperson is:
  - (i) not present within 30 minutes after the starting time set for the meeting; or
  - (ii) present but does not want to act as chairperson of the meeting.

### **26.4 Quorum at Directors' meetings**

- (a) Unless the Directors determine otherwise, the quorum for a Directors' meeting is a majority (more than 50%) of Directors.
- (b) A quorum must be present for the whole Directors' meeting.

### **26.5 Using technology to hold Directors' meetings**

- (a) The Directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by a majority of the Directors.
- (b) The Directors' agreement may be a standing (ongoing) one.



- (c) A Director may only withdraw their consent within a reasonable period before the meeting.

#### 26.6 Passing Directors' resolutions

A Directors' resolution must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution.

#### 26.7 Circular resolutions of Directors

- (a) The Directors may pass a circular resolution without a Directors' meeting being held.
- (b) A circular resolution is passed if all the Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 26.7(c) or clause 26.7(d).
- (c) Each Director may sign:
  - (i) a single document setting out the resolution and containing a statement that they agree to the resolution, or
  - (ii) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- (d) The Company may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- (e) A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clause 26.7(c) or clause 26.7(d).

## 27 SECRETARY

#### 27.1 Appointment and role of secretary

- (a) The Company must have at least one secretary, who may also be a Director.
- (b) A secretary must be appointed by the Directors (after giving the Company their signed consent to act as secretary of the Company) and may be removed by the Directors.
- (c) The Directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- (d) The role of the secretary includes:
  - (i) maintaining a register of the Company's Members, and
  - (ii) maintaining the minutes and other records of General Meetings (including notices of meetings), Directors' meetings and circular resolutions.

## 28 MINUTES AND RECORDS

### 28.1 Minutes and Records

- (a) The Company must, within one month, make and keep the following records:
  - (i) minutes of proceedings and resolutions of General Meetings
  - (ii) minutes of circular resolutions of Members
  - (iii) a copy of a notice of each General Meeting, and
  - (iv) a copy of a Members' statement distributed to Members under clause 17.2.
- (b) The Company must, within one month, make and keep the following records:
  - (i) minutes of proceedings and resolutions of Directors' meetings (including meetings of any committees), and
  - (ii) minutes of circular resolutions of Directors.
- (c) To allow Members to inspect the Company's records:
  - (i) the Company must give a Member access to the records set out in clause 28.1(a), and
  - (ii) the Directors may authorise a Member to inspect other records of the Company, including records referred to in clause 28.1(b) and clause 28.2(a).
- (d) The Directors must ensure that minutes of a General Meeting or a Directors' meeting are signed within a reasonable time after the meeting by:
  - (e) the chairperson of the meeting, or
  - (f) the chairperson of the next meeting.
- (g) The Directors must ensure that minutes of the passing of a circular resolution (of Members or Directors) are signed by a Director within a reasonable time after the resolution is passed.

### 28.2 Financial and related records

- (a) The Company must make and keep written financial records that:
  - (i) correctly record and explain its transactions and financial position and performance, and
  - (ii) enable true and fair financial statements to be prepared and to be audited.

- (b) The Company must also keep written records that correctly record its operations.
- (c) The Company must retain its records for at least 7 years.
- (d) The Directors must take reasonable steps to ensure that the Company's records are kept safe.

## **29 BY-LAWS**

- (a) The Directors may pass a resolution to make by-laws to give effect to this constitution.
- (b) Members and Directors must comply with by-laws as if they were part of this constitution.

## **30 NOTICE**

### **30.1 What is notice**

- (a) Anything written to or from the Company under any clause in this constitution is written notice and is subject to clauses 30.2 to 30.4, unless specified otherwise.
- (b) Clauses 30.2 to 30.4 do not apply to a notice of proxy under clause 19.7.

### **30.2 Notice to the Company**

Written notice or any communication under this constitution may be given to the Company, the Directors or the secretary by:

- (a) delivering it to the Company's registered office;
- (b) posting it to the Company's registered office or to another address chosen by the Company for notice to be provided;
- (c) sending it to an email address or other electronic address notified by the Company to the Members as the Company's email address or other electronic address, or
- (d) sending it to the fax number notified by the Company to the Members as the Company's fax number.

### **30.3 Notice to Members**

- (a) Written notice or any communication under this constitution may be given to a Member:
  - (i) in person;
  - (ii) by posting it to, or leaving it at the address of the Member in the register of Members or an alternative address (if any) nominated by the Member for service of notices;

- (iii) sending it to the email or other electronic address nominated by the Member as an alternative address for service of notices (if any);
  - (iv) sending it to the fax number nominated by the Member as an alternative address for service of notices (if any), or
  - (v) if agreed to by the Member, by notifying the Member at an email or other electronic address nominated by the Member, that the notice is available at a specified place or address (including an electronic address).
- (b) If the Company does not have an address for the Member, the Company is not required to give notice in person.

#### 30.4 When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 30.3(a)(v) is taken to be given on the business day after the notification that the notice is available is sent.

### 31 FINANCIAL YEAR

#### 31.1 Company's financial year

The Company's financial year is from 1 July to 30 June, unless the Directors pass a resolution to change the financial year.

### 32 INDEMNITY, INSURANCE AND ACCESS

#### 32.1 Indemnity

- (a) The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.
- (b) In this clause, 'officer' means a Director or secretary and includes a Director or secretary after they have ceased to hold that office.
- (c) In this clause, 'to the relevant extent' means:
  - (i) to the extent that the Company is not precluded by law (including the Corporations Act) from doing so, and

- (ii) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

#### 32.2 Continuing Obligation

The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

#### 32.3 Insurance

To the extent permitted by law (including the Corporations Act), and if the Directors consider it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company.

#### 32.4 Directors' access to documents

- (a) A Director has a right of access to the financial records of the Company at all reasonable times.
- (b) If the Directors agree, the Company must give a Director or former Director access to:
  - (i) certain documents, including documents provided for or available to the Directors; and
  - (ii) any other documents referred to in those documents.

### **33 WINDING UP**

#### 33.1 Surplus Assets not to be distributed to Members

If the Company is wound up, any Surplus Assets must not be distributed to a Member or a former Member of the Company, unless that Member or former Member is a charity described in clause 33.2(a).

#### 33.2 Distribution of Surplus Assets

- (a) Subject to the Corporations Act and any other applicable Act, and any court order, any Surplus Assets that remain after the Company is wound up must be distributed to one or more charities:
  - (i) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 3.1, and
  - (ii) which also prohibit the distribution of any Surplus Assets to its Members to at least the same extent as the Company.
- (b) The decision as to the charity or charities to be given the Surplus Assets must be made by a Special Resolution of Members at or before the time of winding up. If the Members do not make this decision, the Company may apply to the Supreme Court to make this decision.



**SCHEDULE 1**

<p style="text-align: center;"><b>FORM 1 – APPOINTMENT OF PROXY</b></p> <p style="text-align: center;"><b>APBSF Ltd</b></p>
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I ..... of address ....., a  
..... of APBSF Ltd hereby appoint ..... to  
act as proxy for me at (*tick whichever applies*):

- the Company meeting on .....
- all Company meetings.

I authorise this proxy to (*tick all that apply, and strike through any inapplicable instruction*):

- vote for/against/abstain on my behalf in the resolution to .....
- vote for/against/abstain on my behalf in the resolution to .....
- vote for/against/abstain on my behalf in the resolution to .....
- vote for/against/abstain on my behalf in the resolution to .....
- vote for/against/abstain on my behalf in the resolution to .....
- vote for/against/abstain on my behalf in the resolution to .....
- vote on my behalf in any other resolution.

I hereby revoke any previous appointments to the extent that they cannot be validly exercised in conjunction with this appointment.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

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