

## **Constitution**

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**Auscitrus Limited**

**(trading as Auscitrus)**

*A company limited by guarantee*

## Table of Contents

|           |                                       |          |
|-----------|---------------------------------------|----------|
| <b>1.</b> | <b>Preliminary</b>                    | <b>1</b> |
| 1.1       | Definitions                           | 1        |
| 1.2       | Interpretation                        | 2        |
| <b>2.</b> | <b>Company</b>                        | <b>3</b> |
| 2.1       | Name                                  | 3        |
| 2.2       | Objects                               | 3        |
| 2.3       | Powers                                | 3        |
| 2.4       | Application of “Replaceable Rules”    | 3        |
| 2.5       | Application of Corporations Act       | 3        |
| <b>3.</b> | <b>Limited Liability of Members</b>   | <b>3</b> |
| <b>4.</b> | <b>No Distribution to Members</b>     | <b>4</b> |
| <b>5.</b> | <b>Members and Fees</b>               | <b>4</b> |
| 5.1       | Membership Eligibility                | 4        |
| 5.2       | Initial Members                       | 4        |
| 5.3       | Admission of New Members              | 5        |
| 5.4       | Delegates                             | 5        |
| 5.5       | Delegate qualifications               | 6        |
| <b>6.</b> | <b>Register of Members</b>            | <b>6</b> |
| <b>7.</b> | <b>Rights and Duties of Members</b>   | <b>6</b> |
| 7.1       | Transferability                       | 6        |
| 7.2       | Benefits                              | 6        |
| <b>8.</b> | <b>Cessation of Membership</b>        | <b>6</b> |
| 8.1       | Cessation of Membership               | 6        |
| 8.2       | Expulsion                             | 7        |
| 8.3       | Disciplinary action                   | 7        |
| 8.4       | Right of appeal of disciplined Member | 8        |
| 8.5       | Removal from the Register             | 8        |
| <b>9.</b> | <b>General Meetings</b>               | <b>8</b> |

Constitution – Auscitrus Limited

|            |                                       |           |
|------------|---------------------------------------|-----------|
| 9.1        | General Meetings                      | 8         |
| 9.2        | Special General Meetings              | 9         |
| 9.3        | Notice to Members                     | 9         |
| 9.4        | Location and Technology               | 9         |
| 9.5        | Quorum                                | 10        |
| 9.6        | Chair                                 | 10        |
| 9.7        | Regulation of General Meetings        | 10        |
| 9.8        | Manner of Voting                      | 10        |
| 9.9        | Minutes                               | 11        |
| 9.10       | Proxies                               | 11        |
| 9.11       | Postponement                          | 12        |
| 9.12       | Decisions at General Meetings         | 12        |
| 9.13       | Direct Voting                         | 12        |
| 9.14       | Circulating Resolutions               | 13        |
| <b>10.</b> | <b>Board of Directors</b>             | <b>13</b> |
| 10.1       | Constitution of the Board             | 13        |
| 10.2       | Eligibility                           | 13        |
| 10.3       | Nominations                           | 14        |
| 10.4       | Chair and Deputy Chair                | 14        |
| 10.5       | Vacation of Office                    | 15        |
| 10.6       | Removal of Director                   | 15        |
| <b>11.</b> | <b>Powers and Duties of the Board</b> | <b>15</b> |
| <b>12.</b> | <b>Proceedings of the Board</b>       | <b>16</b> |
| 12.1       | Board Meetings and Quorum             | 16        |
| 12.2       | Technology                            | 16        |
| 12.3       | Passing of Resolutions                | 16        |
| 12.4       | Circulating Resolution                | 17        |
| 12.5       | Conflicts of interest                 | 17        |
| 12.6       | Delegation                            | 17        |
| 12.7       | Remuneration                          | 17        |
| <b>13.</b> | <b>Policies</b>                       | <b>18</b> |
| <b>14.</b> | <b>Accounts and Finance</b>           | <b>18</b> |
| 14.1       | Financial Year                        | 18        |
| 14.2       | Accounts                              | 18        |

Constitution – Auscitrus Limited

|            |                               |           |
|------------|-------------------------------|-----------|
| 14.3       | Audit                         | 18        |
| 14.4       | Reporting                     | 18        |
| <b>15.</b> | <b>Minutes and Records</b>    | <b>19</b> |
| 15.1       | Minutes of Meetings           | 19        |
| 15.2       | Inspection of Company Records | 19        |
| <b>16.</b> | <b>Committees</b>             | <b>19</b> |
| <b>17.</b> | <b>Secretary</b>              | <b>19</b> |
| <b>18.</b> | <b>Indemnity for Officers</b> | <b>20</b> |
| <b>19.</b> | <b>Notice</b>                 | <b>20</b> |
| 19.1       | Manner of Giving              | 20        |
| 19.2       | When Delivered                | 20        |
| <b>20.</b> | <b>Winding Up</b>             | <b>20</b> |

## 1. Preliminary

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### 1.1 Definitions

In this constitution, unless the context otherwise requires:

**Accounting Principles** means:

- (a) accounting standards (as defined in the Corporations Act); and
- (b) generally accepted accounting practices and principles in Australia consistently applied.

**Board** means the board of Directors of the Company. For so long as the Company has 1 director only, a reference to the Board will be deemed to be a reference to that Director.

**Chair** means each person appointed as Chair from time to time in accordance with this constitution.

**Company** means Auscitrus Limited (trading as Auscitrus).

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

**Delegate** means a delegate appointed by a Member in accordance with clause 5.4.

**Deputy Chair** means each person appointed as Deputy Chair from time to time in accordance with this constitution.

**Director** means any person duly appointed to perform the duties of a director of the Company from time to time.

**Financial Statements** means, a statement of financial performance, a statement of financial position and a statement of cash flows prepared in accordance with the Accounting Principles.

**Grower Member** means a Member that meets the Grower Member Requirement.

**Grower/Nursery Organisation Member** means a Member that meets the Grower/Nursery Organisation Member Requirement

**Member** means a member of the Company from time to time.

**Member Requirements** mean:

**Grower Member Requirement** means that the Member must be owner of an orchard of at least 5ha of commercial citrus plantings.

**Nursery Member Requirement** means that the Member must be the owner of a citrus nursery that must be consistently purchasing at least 5,000 buds per year from the Company.

**Variety Manager Requirement** means that the Member must be the owner of a citrus variety management company that is consistently selling at least 5,000 buds per year of its varieties through Auscitrus.

**Grower/Nursery Organisation Member Requirement** means that the Member must be an Australian Citrus Grower or Nursery organisation with relevance to the Australian Citrus industry.

**Nursery Member** means a Member that meets the Nursery Member Requirement.

**Officer** means any Director or Secretary of the Company from time to time.

**Organisation** means any qualifying citrus grower or nursery business or industry organisation.

**Present** in relation to a Member means present in person (by its Delegate) or by proxy.

Constitution – Auscitrus Limited

**Register** means the register of Members required to be kept by the Company in accordance with clause 6(a).

**Revenue** has the same meaning as given to that term by the Accounting Principles.

**Secretary** means any person duly appointed to perform the duties of a secretary of the Company from time to time.

**Special General Meeting** means a general meeting of the Members of the Company other than an annual general meeting.

**Variety Manager Member** means a Member that meets the Variety Manager Member Requirement.

## 1.2 Interpretation

In this constitution, the following rules of interpretation apply unless the context requires otherwise:

- (a) a word importing a gender shall include all other genders;
- (b) a word importing the singular shall include the plural and vice versa;
- (c) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of the word or phrase shall have a corresponding meaning;
- (d) a word denoting an individual (such as **person**) shall include a corporation, firm, authority, government body or agency, unincorporated association or instrumentality;
- (e) a reference to a clause, sub-clause, paragraph, or sub-paragraph is a reference to a clause, sub-clause, paragraph or sub-paragraph of this Constitution;
- (f) a reference to any statute, proclamation, regulation, order or similar instrument shall include all amendments and revisions made to it from time to time and any statute, proclamation, regulation, order or similar instrument brought into operation in substitution for it or incorporating any of its provisions or made under it from time to time;
- (g) a reference to a party's determination, consent, agreement, authorisation or approval shall mean its determination, consent, agreement, authorisation or approval in its absolute discretion;
- (h) the headings and index used in this constitution are for convenience only and shall not affect the interpretation of this constitution;
- (i) a reference to '\$', 'dollars' or 'money' is to currency of the Commonwealth of Australia;
- (j) an expression has, in a provision of this constitution which relates to a particular provision of the Act, the same meaning as in that provision of the Act; and
- (k) the meaning of general words or provisions shall not be limited by references to specific matters that follow them (for example, introduced by words such as **including, such as** or **in particular**) or which are included elsewhere in this Agreement.

## **2. Company**

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### **2.1 Name**

The name of the Company governed by this constitution is “Auscitrus Limited” (trading as Auscitrus).

### **2.2 Objects**

The objects of the Company are to encourage the development and promotion of suitable horticultural propagation material such as seeds, budwood, cuttings, plants etc in co-ordination with the promotion of research into the development of suitable horticultural propagation material such as seeds, budwood, cuttings, plants etc in Australia.

### **2.3 Powers**

The Company has all the powers given to it by the Corporations Act and any other applicable law including all powers necessary to enable the Company to carry out its objects.

### **2.4 Application of “Replaceable Rules”**

No “Replaceable Rules”, within the meaning of Part 2B.4 of the Corporations Act, are applicable to the Company.

### **2.5 Application of Corporations Act**

Subject to clause 2.4, any mandatory provisions of the Corporations Act prevail over the provisions of this constitution to the extent of any inconsistency.

## **3. Limited Liability of Members**

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- (a) The Company is a company limited by guarantee.
- (b) The liability of Members is limited.
- (c) Subject to clause 3(d), if the Company is wound up, present Members and past Members, who were Members at any time during the 12 months immediately before commencement of the winding up, must contribute to the Company's property 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 among themselves.
- (d) Notwithstanding clause 3(c), no present Member or past Member need contribute more than \$10.00.
- (e) On a winding up:
  - (i) any surplus must be given to an institution:
    - (A) which has objects similar to the Company's objects; and
    - (B) which cannot distribute its income and assets to its Members; and

- (ii) the Members may decide the institution. If they do not do so, the Supreme Court of New South Wales may decide the institution.

#### **4. No Distribution to Members**

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- (a) The Company's income and assets must be used solely to promote the Company's objects set out in clause 2.2.
- (b) The Company must not pay or distribute any profits, income or assets to the Members.
- (c) This does not prevent the Company paying in good faith:
  - (i) reasonable remuneration to a Member or other person for services rendered to the Company;
  - (ii) for goods supplied to the Company in the ordinary course of business;
  - (iii) reasonable interest on money lent by a Member to the Company, or reasonable rent for premises let by a Member to the Company;
  - (iv) out-of-pocket expenses incurred by a Member on behalf of the Company.

#### **5. Members and Fees**

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##### **5.1 Membership Eligibility**

- (a) To be eligible to become a Member of the Company, the Board must be satisfied that they are either:
  - (i) an Australian citrus industry organisation,
  - (ii) an Australian nursery industry organisation,
  - (iii) a citrus variety manager,
  - (iv) a commercial citrus grower, or
  - (v) a commercial citrus nursery

and that they:

  - (vi) Satisfy the Requirements as defined in Member Requirements
  - (vii) have a significant involvement in citrus production, citrus variety development, and/or citrus nursery tree propagation in Australia; and
  - (viii) fairly represent members of the general citrus or nursery industry.
- (b) Each Member must nominate a natural person from their organisation to be the Member's Delegate in accordance with clause 5.4 and 5.5.

##### **5.2 Initial Members**

The initial Members of the Company shall be the organisations that were the members of the Australian Citrus Propagation Association Incorporated as at the date that the members of that Association resolved in accordance with the provisions of the Part 7, Division 3 the *Associations Incorporation Act 2009* (NSW) to transfer its registration to become a company limited by guarantee under the Corporations Act.



### 5.3 Admission of New Members

- (a) An organisation may make an application in writing to become a Member of the Company in the form approved by the Board from time to time.
- (b) Each application must be:
  - (i) accompanied by a Delegate nomination form for the new Member, in the form approved by the Board from time to time;
  - (ii) lodged with the Secretary.
- (c) An application to become a Member must be approved by the Board by ordinary resolution.
- (d) An applicant becomes a Member upon the Board approving the application and applicant's details being entered in the Register.

### 5.4 Delegates

- (a) Each Member shall act through its appointed Delegate.
- (b) A nomination of a Delegate:
  - (i) must be made by a Member in writing in the form approved by the Board and;
  - (ii) must be lodged with the Secretary.
- (c) The nomination of a Delegate by a Member must be approved by the Board and is not effective unless and until so approved.
- (d) If a Delegate nomination is rejected by the Board, the Board must notify the nominating Member of the rejection and provide reasons for the rejection.
- (e) The Directors may by resolution remove a person as being the Delegate for a Member if they determine that the person no longer meets the requirements in clause 5.5.
- (f) The Board may, at its discretion, allow a Delegate to represent a Member despite not meeting the qualifications in clause 5.5 if there are no other delegates available for that Member organisation however any Delegate so appointed will not be eligible for appointment or election as a Director.
- (g) A Member may remove an existing Delegate and appoint a new Delegate by notice in writing to the Secretary but the appointment of the new Delegate shall not be effective unless and until that appointment has been approved by the Board.
- (h) The Directors may by resolution remove a person as being the Delegate for a Member if they determine that the person no longer meets the requirements to be a Delegate.
- (i) A person nominated as a Delegate of a Member shall retain that position unless and until:
  - (i) The Member who appointed the Delegate gives notice in writing to the Secretary removing that person as its Delegate in which case the person shall cease to be a Delegate on the earlier of:
    - (A) the date specified in the notice; or
    - (B) if no date is specified – the date that the notice is received by the Secretary; or

- (ii) The Board determines that the Delegate no longer meets the requirements for the person to be a Delegate and gives notice to the Member of the removal of its Delegate and the requirement for the Member to nominate a new person as its Delegate.

## 5.5 Delegate qualifications

- (a) All Delegates:
  - (i) In case of Nursery, Grower, or Variety Manager members - must be current owners, employees, or shareholders of their nominating business;
  - (ii) In case of Grower organisation or Nursery organisation members – must be active members of their nominating organisation;
  - (iii) must not be representing any other member;
  - (iv) must be actively involved in the citrus or nursery industry; and
  - (v) must not be operating any business or activity that conflicts with the objects of the Company.

## 6. Register of Members

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- (a) The Secretary shall keep the Register and shall enter in it:
  - (i) the full names and addresses of Members;
  - (ii) the date upon which the Members became Members;
  - (iii) the full name and address of the Member organisation's Delegate; and
  - (iv) the date upon which any Member ceased to be a Member.
- (b) Any Member may inspect the Register.

## 7. Rights and Duties of Members

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### 7.1 Transferability

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

### 7.2 Benefits

Members shall be entitled to receive all benefits of membership of the Company as provided in this constitution and as otherwise determined by the Board from time to time subject always to clause 4.

## 8. Cessation of Membership

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### 8.1 Cessation of Membership

- (a) A Member ceases to be a Member, if:
  - (i) the Member ceases to exist in Australia;
  - (ii) the Member resigns as a Member by giving a minimum of 1 months' notice (or other such period as the Board may determine) in writing to the Secretary;

Constitution – Auscitrus Limited

- (iii) the Member is expelled as a Member pursuant to clause 8.2;
- (iv) an order is made or a resolution is passed for the winding up or dissolution of the Member;
- (v) the Member is unable to pay its debts as and when they are due and payable.
- (b) Upon a Member ceasing to be a Member, the Member's rights and privileges cease.
- (c) Nothing in this clause 8 prejudices or affects a Member's obligation to contribute to the Company's property as provided for in clause 3.

## 8.2 Expulsion

- (a) Subject to clause 8.2(b), the Directors may expel a Member if a Member:
  - (i) breaches any provision of this constitution;
  - (ii) ceases in the reasonable opinion of the Board to satisfy any membership criteria;
  - (iii) fails to attend 2 consecutive annual general meetings of the Company;
  - (iv) no longer meets the Objects and operations of the Company;
  - (v) engages in any conduct which, in the reasonable opinion of the Directors, is unbecoming of a Member or which is prejudicial or adverse to the interests of the Company; or
  - (vi) for disciplinary reasons in accordance with clause 8.3.
- (b) Subject to clause 8.4, the Directors can only expel a Member by a special resolution of the Directors.

## 8.3 Disciplinary action

- (a) A complaint may be made to the Board by any Member that another Member:
  - (i) has persistently refused or neglected to comply with a provision of this constitution; or
  - (ii) has persistently and wilfully acted in a manner prejudicial to the interests of the Company.
- (b) On receiving such a complaint, the Board:
  - (i) must cause notice of the complaint to be served on the Member concerned; and
  - (ii) must give the Member at least 14 days from the time the notice is served within which to make submissions to the Board in connection with the complaint; and
  - (iii) must take into consideration any submissions made by the Member in connection with the complaint.
- (c) The Board may, by special resolution, expel the Member from the Company or suspend the Member from membership of the Company if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved.
- (d) If the Board expels or suspends a Member, the Secretary must, within 7 days after the action is taken, cause written notice to be given to the Member of the action taken, of the reasons given by the Board for having taken that action and of the Member's right of appeal under clause 8.4.

Constitution – Auscitrus Limited

- (e) The expulsion or suspension does not take effect:
  - (i) until the expiration of the period within which the Member is entitled to appeal against the resolution concerned, or
  - (ii) if within that period the Member exercises the right of appeal, unless and until the Company confirms the resolution under clause 8.4,
 whichever is the later.

#### **8.4 Right of appeal of disciplined Member**

- (a) A Member may appeal to the Company against a resolution of the Board under clause 8.3, within 7 days after notice of the resolution is served on the Member, by lodging with the Secretary a notice to that effect.
- (b) The notice may, but need not, be accompanied by a statement of the grounds on which the Member intends to rely for the purposes of the appeal.
- (c) On receipt of a notice from a member under clause 8.4(a), the Secretary must notify the Board which is to convene a Special General Meeting of the Company to be held within 28 days after the date on which the Secretary received the notice.
- (d) At a Special General Meeting of the Company convened under clause 8.4(c):
  - (i) no business other than the question of the appeal is to be transacted; and
  - (ii) the Board and the Member must be given the opportunity to state their respective cases orally or in writing, or both; and
  - (iii) the Members Present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (e) If at the Special General Meeting the Company passes a special resolution in favour of the confirmation of the resolution, the resolution is confirmed.

#### **8.5 Removal from the Register**

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

### **9. General Meetings**

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#### **9.1 General Meetings**

- (a) An annual general meeting of the Company must be held each year as required by the Corporations Act.
- (b) As required by the Corporations Act, the first general meeting of the Company must be held within 18 months of the Company being registered.
- (c) The ordinary business of the annual general meeting is:
  - (i) the consideration and, if deemed appropriate, approval and confirmation of the minutes of the last annual general meeting;
  - (ii) the consideration of the annual financial report, Directors' report and auditor's report;
  - (iii) the appointment of Directors and the Secretary;
  - (iv) the fixing of the remuneration of the Board; and

Constitution – Auscitrus Limited

- (v) the appointment of the auditor.
- (d) The annual general meeting may transact special business of which notice is given pursuant to clause 9.3.

## 9.2 Special General Meetings

- (a) The Board may, when it thinks fit, call a Special General Meeting for a time and place determined by the Board.
- (b) In accordance with the Corporations Act:
  - (i) the Board must call a Special General Meeting when requested by the Members specified in the Corporations Act; and
  - (ii) if the Board fails to call a Special General Meeting in accordance with clause 9.2(b)(i) the Members may call a Special General Meeting in accordance with the Corporations Act.

## 9.3 Notice to Members

- (a) Subject to the Corporations Act, at least twenty-one (21) days' notice of a meeting of the Members of the Company (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given), must be given to each Member.
- (b) The notice must:
  - (i) set out the place, date and time for the meeting (and, if applicable, the technology that will be used to facilitate the meeting); and
  - (ii) confirm the minutes of the last preceding annual general meeting and of any extraordinary general meeting held since that meeting; and
  - (iii) state the general nature of the meeting's business; and
  - (iv) if a special resolution is to be proposed at the meeting—set out an intention to propose the special resolution and state the resolution; and
  - (v) in the case of an election of Directors, state the name of the candidates for election; and
  - (vi) if a Member is entitled to appoint a proxy—contain a statement setting out the following information:
    - (A) that the Member has a right to appoint a proxy; and
    - (B) whether or not the proxy needs to be a Member of the Company; and
  - (vii) contain anything else required by the Corporations Act.
- (c) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice does not invalidate the proceedings at the meeting.
- (d) Any Member may put forward a proposition or motion for consideration at a general meeting by giving written notice to the Board at least 45 days before the relevant general meeting.

## 9.4 Location and Technology

- (a) The Company may hold a general meeting using any technology that gives all Members a reasonable opportunity to participate.
- (b) The Company may hold a general meeting at two or more venues using any technology that gives all Members a reasonable opportunity to participate.

Constitution – Auscitrus Limited

- (c) A Member who takes part in a general meeting using technology is taken to be Present in person at the meeting.
- (d) In the event a technical difficulty arises out of the use of technology before or during the general meeting, which results in a Member not being able to participate, the Chair may:
  - (i) allow the meeting to continue, provided the meeting would remain quorate; or
  - (ii) adjourn the meeting for the reasonable period of time required to remedy the technical difficulty, or to such other date, time and location the Chair determines (subject to this constitution).
- (e) The Board may, subject to the Corporations Act, make policies and procedures relating to the process for using technology to hold general meetings from time to time.
- (f) For the avoidance of doubt, all the provisions in this constitution relating to general meetings apply insofar as they can and with any necessary changes, to meetings held using technology.

## 9.5 Quorum

- (a) No business will be transacted at any general meeting unless a quorum of Members is Present at the time when the meeting proceeds to business.
- (b) A quorum for a general meeting is 5 Members entitled to vote.
- (c) If a quorum is not Present within 30 minutes after the time appointed for the general meeting:
  - (i) if the meeting was called on the request of Members or by Members, the meeting is dissolved;
  - (ii) any other meeting is adjourned to any day, time and place the Directors decide.
- (d) If virtual technology was used in the meeting adjourned, and sufficient information allowing Members to participate in the resumed meeting by technology is not specified, participation in the resumed meeting by technology must be provided in the same manner as specified in the notice of the original meeting.
- (e) If a quorum is not Present within 30 minutes after the time appointed for a general meeting resumed after an adjournment, the meeting will be dissolved.

## 9.6 Chair

- (a) The Chair shall chair all general meetings.
- (b) If there is no Chair, or if the Chair is not present within 10 minutes after the time appointed for the meeting or is unable or unwilling to act, the Deputy Chair may chair the meeting. If there is no Deputy Chair, or if the Deputy Chair is not present within 10 minutes after the time appointed for the meeting or is unable or unwilling to act, the Directors present must elect one of themselves to chair the meeting. If they do not do so, the Members Present must elect a person to chair the meeting.

## 9.7 Regulation of General Meetings

Subject to this constitution and the law, the Chair of the meeting may give necessary directions for the conduct of any general meeting and the ruling of the Chair of the meeting shall be final unless overruled by a resolution of the general meeting.

## 9.8 Manner of Voting

Constitution – Auscitrus Limited

- (a) At a general meeting, on a show of hands, each Member Present has one vote.
- (b) At any general meeting, a resolution put to the vote of the meeting will be decided either on a show of hands or on a poll (in accordance with clause 9.8(c)).
- (c) A poll may be demanded before, or immediately after, the declaration of the result of the show of hands:
  - (i) by the Chair; or
  - (ii) by at least 3 Members Present.
- (d) A poll will be taken:
  - (i) if the matter to be decided is the election of a Chair for the meeting or a question of adjournment of the meeting – immediately; and
  - (ii) otherwise - in such manner and either at once or after an interval or adjournment or otherwise as the Chair directs.
- (e) The result of the poll will be the resolution of the meeting at which the poll was held.
- (f) In the case of an equality of votes (whether on a show of hands or on a poll) the Chair will be entitled to an additional or casting vote.

## 9.9 Minutes

A declaration by the Chair that a resolution has been carried on a unanimous show of hands, or by a particular majority, or lost, and an entry to that effect in the book containing the Minutes of the proceedings of the Company will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

## 9.10 Proxies

- (a) A Member who is entitled to attend and cast a vote at a general meeting may appoint another Member as that Member's proxy to attend and vote for the Member at the meeting, provided that no Member may hold more than 2 proxies.
- (b) An instrument appointing a proxy must:
  - (i) be in writing;
  - (ii) be signed by the Member entitled to attend and vote at the meeting; and
  - (iii) state the meeting at which the appointment may be used.
- (c) The Board shall have the power to prescribe the form of an instrument appointing a proxy from time to time. In the absence of a prescribed form of proxy, any instrument appointing a proxy which complies with the requirements contained within this constitution is valid.
- (d) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution, and where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- (e) In the absence of any direction contained in the instrument appointing a proxy specifying the manner in which the proxy is to vote in respect of a particular resolution, the proxy may vote as the proxy thinks fit on any motion or resolution.
- (f) For an instrument appointing a proxy to be valid, the instrument appointing the proxy must be received by the Company (at the Office or at such other place as is specified for that purpose in the notice convening the general meeting) no less than 48 hours before the time for holding the general meeting at which the person named in the instrument proposes to vote.

Constitution – Auscitrus Limited

- (g) A vote exercised in accordance with the terms of an instrument of proxy is valid despite:
  - (i) the previous death or unsoundness of mind of the appointing Member; or
  - (ii) the revocation of the instrument (or of the authority under which the instrument was executed),

if no notice in writing of the death, unsoundness of mind or revocation has been received by the Company at the office (or such other place as described in clause 9.10(f)) before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.
- (h) No instrument appointing a proxy shall be treated as invalid merely because it does not contain:
  - (i) the address of the appointor or of a proxy;
  - (ii) the proxy's name or the name of the office held by the proxy; or
  - (iii) in relation to any or all resolutions, an indication of the manner in which the proxy is to vote.
- (i) Where the instrument does not specify the name of a proxy, the instrument shall be taken to be given in favour of the Chair of the general meeting.

### 9.11 Postponement

- (a) Except in the case of a general meeting convened on the requisition of the Members, the Board may at any time cancel or postpone a general meeting before the time for holding the meeting.
- (b) The Board will endeavour to notify each Member of the cancellation or postponement, but failure to notify a Member does not affect the validity of the cancellation or postponement.

### 9.12 Decisions at General Meetings

- (a) At general meetings, Members may make a decision by passing a resolution.
- (b) Unless this constitution or the law requires a Special Resolution, a resolution is passed if more than 50% of the votes cast by the Members entitled to vote are in favour of the resolution.

### 9.13 Direct Voting

- (a) The Board may determine that at any general meeting, a Member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution.
- (b) In this clause 9.13, a “**direct vote**” includes a vote delivered to the Company by post, or other electronic means approved by the Board, and “**direct voting**” means the process associated with the making of a direct vote.
- (c) The Board may prescribe rules to govern direct voting from time to time including specifications as to the form, method and timing of giving the direct vote in order for the vote to be valid, and the treatment of direct votes.
- (d) A direct vote on a resolution at a general meeting in accordance with clause 9.13 is of no effect and will be disregarded, if:
  - (i) at the time of the resolution, the person who cast the direct vote:
    - (A) is not entitled to vote on the resolution; or



- (B) would not be entitled to vote on the resolution if the person were Present at the meeting at which the resolution is considered;
- (ii) had the vote been cast in person at the meeting at which the resolution is considered:
  - (A) the vote would not be valid; or
  - (B) the Company would be obliged to disregard the vote;
- (iii) subject to any rules prescribed by the Board, the person who cast the direct vote is Present in person at the meeting at the time the resolution is considered; or
- (iv) the direct vote was cast otherwise than in accordance with any regulations, rules and procedures prescribed by the Board under clauses 9.13(a), 9.13(b) or 9.13(c).

#### **9.14 Circulating Resolutions**

The Company may pass a resolution, without a general meeting being held, if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

## **10. Board of Directors**

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### **10.1 Constitution of the Board**

- (a) The Board shall comprise at least 5 Directors who must fairly represent citrus growers, citrus nurseries, and citrus variety managers.
- (b) Directors are to be appointed by the Company at the annual general meeting or such other meeting referred to in clause 10.6(a), unless required to fill a casual vacancy in which case the Board may appoint a Director in accordance with clause 10.1(g).
- (c) The Company may, in general meeting, increase or reduce the number of required Directors, determine the eligibility criteria for office and the order of rotation by which Directors hold or cease to hold office.
- (d) Each Director is, subject to this constitution, to hold office until the conclusion of the annual general meeting 3 years following the date of the Director's election.
- (e) A Director may apply for re-election for a maximum of 3 consecutive terms (i.e. 9 consecutive years).
- (f) At the conclusion of the 3 consecutive terms, the Director must be absent from the Board for 1 year before being eligible for re-election provided that if there are insufficient nominations to replace a retiring Director, the Board may, at its discretion, agree to allow the Director to stand for re-election, waiving the 1-year absence.
- (g) In the event of a casual vacancy, the Board may appoint a Delegate to fill the vacancy and the Delegate so appointed is to hold office, subject to this constitution, until the conclusion of the annual general meeting next following the date of his or her appointment as a Director.

### **10.2 Eligibility**

To be eligible for appointment or election as a Director a person must:

- (a) be an individual aged 18 years or older;

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- (b) be a Delegate of a Member;
- (c) not be ineligible to be a director under the Corporations Act;
- (d) have an understanding of and be committed to the Objects in clause 2.2;
- (e) have a Director Identification Number;
- (f) satisfy the criteria outlined in the Company’s “Director Skills and Qualifications Policy” document;
- (g) consent to be a director in writing; and
- (h) meet any other criteria as determined by the Board from time to time.

### 10.3 Nominations

- (a) Any current Delegate may nominate for election as a Director subject to the following procedure:
  - (i) Current Delegates and their Member organisations will be notified at least 45 days prior to the annual general meeting of upcoming vacancies on the Board;
  - (ii) Nominations for election to the Board will be made on the form approved by the Board;
  - (iii) Nominations must be completed, signed and returned to the Secretary at least 30 Business Days before the date fixed for the holding of the annual general meeting at which the election is to take place.
- (b) If insufficient nominations are received to fill all vacancies on the Board:
  - (i) the candidates nominated are taken to be elected; and
  - (ii) further nominations are able to be received at the annual general meeting.
- (c) If insufficient further nominations are received, any vacant positions remaining on the Board are taken to be casual vacancies.
- (d) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- (e) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held:
  - (i) at least 21 days prior to the annual general meeting, the Company will distribute voting slips to all Members via any such means as determined by Board;
  - (ii) Members must return the completed voting slips to the Secretary at least 7 days prior to the annual general meeting;
  - (iii) the Secretary shall compile the votes and notify all Members of the successful candidates at least 5 days prior to the annual general meeting.

### 10.4 Chair and Deputy Chair

- (a) At the first meeting of the Board and at the first meeting of the Board after each annual general meeting, the Board must elect, from among its number, Directors to act in each of the following positions:
  - (i) Chair; and
  - (ii) Deputy Chair.

Constitution – Auscitrus Limited

- (b) The Directors elected to the positions pursuant to clause 10.4(a) will hold those positions until the end of the annual general meeting following their appointment, subject to clauses 10.4(c) and 10.5.
- (c) The Board may remove and replace the Chair and Deputy Chair from time to time in its discretion.

### **10.5 Vacation of Office**

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act, the office of a Director immediately becomes vacant if the Member for whom the Director is a Delegate ceases to be a Member or the Director:

- (a) dies;
- (b) ceases to be the Delegate of a Member of the Company;
- (c) becomes bankrupt or insolvent;
- (d) is convicted of an indictable offence;
- (e) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under any law relating to mental health;
- (f) is disqualified from managing a corporation;
- (g) is removed from office under clause 10.6;
- (h) resigns from office by notice to the Secretary; or
- (i) is absent, without the consent of the Board, from all meetings of the Board held during a period of 6 months.

### **10.6 Removal of Director**

- (a) Subject to the Corporations Act, the Company may by special resolution at a general meeting remove any Director before the expiration of the Director's term of office and appoint another person to hold office until the expiration of the term of office of the Director so removed.
- (b) If a Director to whom a proposed resolution referred to in clause 10.6(a) relates makes representations in writing to the Secretary (not exceeding a reasonable length) and requests that the representation be notified to the Members of the Company, the Secretary may send a copy of the representations to each Member of the Company or, if the representations are not so sent, the Director is entitled to require that the representations be read out at the meeting at which the resolution is considered.

## **11. Powers and Duties of the Board**

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The business of the Company will be managed by the Board which may exercise all powers of the Company that are not, by the Corporations Act or by this constitution, required to be exercised by the Company in general meeting.

## 12. Proceedings of the Board

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### 12.1 Board Meetings and Quorum

- (a) The Board may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) The Board must meet as often as required for the Directors to properly discharge their duties, and in any event the Board must meet no less than 3 times per year.
- (c) A Director may at any time, and the Secretary must at the request of a Director, convene a meeting of the Board by notice to every other Director.
- (d) Notice of a Board meeting must:
  - (i) be given to each Director;
  - (ii) specify the date, time and place of the meeting;
  - (iii) state the business to be transacted. No other business other than the specified business is to be transacted at the meeting, except business which the Directors present at the meeting unanimously agree to treat as urgent business;
  - (iv) be given at least 48 hours (or such other period as may be unanimously determined by the Board) before the Board meeting.
- (e) The quorum necessary for the transaction of the business of the Board will be 3 Directors or such greater number as may be fixed by the Board ..
- (f) The Chair will be the Chair of the meetings of the Board. In the Chair's absence, the Deputy Chair will be the Chair.
- (g) Where such meeting is held and the Chair and/or Deputy Chair is absent or is unwilling to act the Directors present will elect one of their number to be the Chair of the meeting.

### 12.2 Technology

- (a) A Board meeting may be called or held using any technology consented to by all the Directors. The consent to that technology may be a standing one. A Director may only withdraw their consent to that technology within a reasonable period before the meeting. A Director who takes part in a Board meeting using approved technology is taken to be present in person at the meeting.
- (b) If, before or during the Board meeting, a technical difficulty arises out of the use of technology resulting in one or more of the Directors not being able to participate, the Chair may:
  - (i) allow the meeting to continue, provided the meeting would remain quorate; or
  - (ii) adjourn the meeting until the technical difficulty is remedied.

### 12.3 Passing of Resolutions

- (a) Questions arising at a meeting of the Board will be decided by a majority of votes of the Directors present and voting on a show of hands on the basis that each Director is entitled to one vote and any such decision will for all purposes be deemed a decision of the Board.
- (b) In case of an equality of votes, the Chair of the meeting, in addition to their deliberative vote (if any), has a casting vote.

- (c) All acts done by any meeting of the Board or of a committee of the Board or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a member of the committee, or to act as Director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a Director or a member of the committee.

#### **12.4 Circulating Resolution**

- (a) If all of the Directors sign a document containing a statement that they are in favour of a resolution of the Board in terms set out in the document a resolution in those terms will be deemed to have been passed at a meeting of the Board held on the day and at the time at which the document was last signed by a Director.
- (b) For the purposes of clause 12.4(a), two or more separate documents containing statements in identical terms each of which is signed by one or more Directors will together be deemed to constitute one document containing a statement in terms signed by those Directors on the respective days on which they signed the separate documents.
- (c) For the purposes of this clause 12.4 where notice is given by email by a Director in accordance with clause 12.2, stating that the Director is in favour of a resolution of the Board, that email shall be deemed to be a document and shall be deemed to be signed by that Director.

#### **12.5 Conflicts of interest**

Unless allowed by the Corporations Act, a Director who has a material personal interest in a matter that is being considered at a meeting of the Board, other than where the material personal interest is constituted by shareholding in a company which is a Member of the Company, must not:

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

#### **12.6 Delegation**

- (a) The Board may from time to time delegate any of its powers, including the day-to-day operation of the Company, to any of its Officers or to a committee created pursuant to clause 16 unless prohibited by law.
- (b) A delegation of a power:
  - (i) must be in writing;
  - (ii) may be made subject to such conditions or limitations as to the exercise of the power as the Board sees fit;
  - (iii) may be made for a specified period of time or indefinitely;
  - (iv) shall remain effective for the period specified at the time of delegation or, if no period was specified, until the delegation has been revoked in writing by the Board.
- (c) The Board may continue to exercise any power that it has delegated despite having made the delegation.

#### **12.7 Remuneration**

- (a) Each Director will receive an annual remuneration, to be paid quarterly, at a level to be reviewed and set by Members at each annual general meeting.

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- (b) Under special circumstances, the remuneration may be set at zero, but in all other cases it will be in accordance with market rates for organisations of a similar nature and type.
- (c) If requested by the relevant Director(s), the Company must pay the reasonable travelling and other expenses that are properly incurred by the Directors:
  - (i) in attending Board meetings or any meetings of committees;
  - (ii) in attending any general meetings of the Company; and
  - (iii) in connection with the Company's business.
- (d) A Director may be paid for services rendered to the Company in a professional or technical capacity, only if:
  - (i) the provision of the service has been unanimously approved by a resolution of the Board; and
  - (ii) the amount payable is on reasonable commercial terms and has been unanimously approved by a resolution of the Board.

### **13. Policies**

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- (a) The Board will develop, review annually, and to the best of their ability comply with the following governance documents:
  - (i) Instrument of delegation policy;
  - (ii) Governance policy;
  - (iii) Code of conduct and proper practice policy;
  - (iv) Conflict of interest policy;
  - (v) Director Skills and Qualifications policy.

### **14. Accounts and Finance**

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#### **14.1 Financial Year**

The Company's financial year will end on 30 April each year.

#### **14.2 Accounts**

The Board must cause true and proper Financial Statements to be maintained by the Company at all times and cause a copy of the latest Financial Statements to be presented at each annual general meeting.

#### **14.3 Audit**

If required by the Corporations Act, the Financial Statements of the Company must be examined by one or more properly qualified auditors. The Company's auditor must be appointed and may be removed and their remuneration, rights and duties are to be regulated by the Corporations Act.

#### **14.4 Reporting**

The Board must cause all Financial Statements and related Board reports to be disclosed to the Australian Securities and Investments Commission and the Members as and when required by the Corporations Act.

## **15. Minutes and Records**

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### **15.1 Minutes of Meetings**

The Secretary will cause minutes to be made:

- (a) of all meetings of the Board and the Company;
- (b) of names of persons Present at the meeting; and
- (c) of all proceedings at the meetings.

Such minutes will be signed by the Chair of the meeting at which proceedings were held or by the Chair of the next succeeding meeting.

### **15.2 Inspection of Company Records**

- (a) A Member does not have the right to inspect any books, records or minutes of the Company except as provided by law or this constitution or as authorised by the Board.
- (b) The Board may from time to time determine at what times and places and under what conditions or regulations (if any) the accounting and other books and records of the Company will be open for inspection by the Members.

## **16. Committees**

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- (a) The Board may appoint a committee consisting of representatives of Members for the achievement of an object of the Company. The committee must comply with the directions of the Board.
- (b) The Board may terminate the appointment of the committee notwithstanding that the period of the appointment of the committee has not expired or that the objective has not been achieved.

## **17. Secretary**

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- (a) The Secretary will, in accordance with the Corporations Act, be appointed by the Board for such term and upon such conditions as it thinks fit, and any Secretary so appointed may be removed by it.
- (b) The duties of the Secretary include:
  - (i) establishing the necessary registers required by law;
  - (ii) properly maintaining the registers;
  - (iii) ensuring any required annual returns and reports are lodged with the relevant regulator in a timely manner; and
  - (iv) organising and attending members' and directors' meetings, including circulating notices, preparing agendas and compiling minutes of meetings.
- (c) Acts performed by the Secretary are not invalid due to any defects in the person's appointment as a secretary, nor will an act performed be invalid due to that person being disqualified from being a secretary if:
  - (i) that circumstance was not known by the person; and

Constitution – Auscitrus Limited

- (ii) that circumstance was not known by the Directors, when the act was performed.

## **18. Indemnity for Officers**

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- (a) Subject to the Corporations Act and any other applicable law, every Officer of the Company will be indemnified out of the property of the Company against any liability incurred by the Officer in their capacity as Officer to another person (other than to the Company or to a related body corporate) unless the liability arises out of conduct involving a lack of good faith.
- (b) A liability herein includes, but is not limited to, any loss, cost or expense suffered or incurred by the Officer:
  - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of that officer or in which that officer is acquitted; or
  - (ii) in connection with an application in relation to such proceedings, in which the Court grants relief to that Officer under the Corporations Act.
- (c) The Company may pay the premiums on any policy of insurance in relation to any liability of an Officer, to the fullest extent permitted by the Corporations Act.

## **19. Notice**

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### **19.1 Manner of Giving**

Any notice given to a Member or Director must be in writing and must be sent to the current address or e-mail address of the recipient as most recently notified to the Company.

### **19.2 When Delivered**

- (a) Notices will be taken to be duly given:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of email at the time of sending of the email provided the sender does not receive a message notifying the sender that the email has failed to be delivered.
- (b) If the result under clause 19.2(a) is that a notice would be taken to be given on a day that is not a Business Day in the place to which the notice is sent, then it will be taken to have been given on the next Business Day in that place.

## **20. Winding Up**

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If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same will not be paid to or distributed among the Members, but will be given to, transferred to, some other institution or institutions having objects similar to the objects of the Company, and whose



Constitution – Auscitrus Limited

constitution will prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of clause 3, such institution or institutions to be determined by the Members at or before the time of dissolution and in default thereof by application to the Supreme Court for determination.