



CONSTITUTION OF POTATOES NEW ZEALAND INCORPORATED

(As adopted on **Date**)

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THE CONSTITUTION OF POTATES NEW ZEALAND INCORPORATED

1. DEFINITIONS

1.1 In these Constitution unless the context otherwise requires:

- (a) "Act" means the Incorporated Societies Act 2022;
- (b) "Associate Member" has the meaning given to it in clause 4.1(a)(iii);
- (c) "Board" means Directors of the Society who number not less than the required quorum acting together as a board of Directors;
- (d) "Business Day" means a day when registered banks are customarily open for business in the place where the Society's registered office is located;
- (e) "Chairperson" means the Chairperson of the Society elected or appointed pursuant to these Constitution;
- (f) "Chief Executive" means the person employed or engaged by the Society to manage the day to day operations of the Society;
- (g) "Complaint" has the meaning set out in section 38 of the Act;
- (h) "Director" means a person holding office for the time being as a director of the Society;
- (i) "Dispute" has the meaning set out in section 38 of the Act;
- (j) "Dispute Procedures" means the procedures set out in Schedule 2;
- (k) "Financial Year" means the 12 months ending on 31 March of each year, unless the Board adopts another date from time to time;
- (l) "Grower" means a person or entity that is, or will be, primarily responsible to pay a Levy in respect of the then current Levy Year or, if at any time a Levy is not in effect, then it means a person who is actively engaged in the business of growing potatoes in New Zealand;
- (m) "Grower Member" has the meaning given to it in clause 4;
- (n) "Interests Register" means the interests register kept by the Society pursuant to section 73 of the Act;
- (o) "Levy" means a levy payable to the Society under an Order (or any similar payment, by whatever named called);
- (p) "Levy Payer" means a means a person or entity that is, or will be, primarily responsible to pay a Levy in respect of the then current Financial Year.
- (q) "Life Member" has the meaning given to it in clause 4;
- (r) "Meeting" means any meeting of the Members of the Society;
- (s) "Member" means an entity or person that becomes a member of the Society;
- (t) "Nominated Representative" means a natural person who has been appointed by a Member which is not a natural person to represent that Member in accordance with this Constitution;
- (u) "Order" means the Commodity Levies (Potatoes) Order 2019 and any levy order made upon the revocation of that Order;
- (v) "Register of Members" means the register of members kept by the Society pursuant to section 79 of the Act;
- (w) "Registrar" means the Registrar of Incorporated Societies;
- (x) "Society" means Potatoes New Zealand Incorporated; and

(y) "Trade Member" has the meaning given to it in clause 4.

1.2 In the interpretation of this constitution:

- (a) A reference to "writing" or "in writing" includes a reference to an electronic communication as that term is used in Part 4 of the Contract and Commercial Law Act 2017;
- (b) A reference to persons present or voting at a Meeting shall be deemed to include persons present or voting by proxy or by Nominated Representative;
- (c) A reference to a "month" means a calendar month;
- (d) References to the singular shall include the plural and reference to the one gender shall include other genders;
- (e) A reference to any legislation, regulation or order includes a modification and re-enactment of that legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation;
- (f) A reference to any regulation, order-in-council and other instrument from time to time issued or made under any legislation includes a modification and re-enactment enacted in substitution for such regulation, order-in-council and other instrument;
- (g) A reference to this "Constitution" is to this constitution, including the schedules, as amended from time to time and a reference to a "Rule" shall be interpreted as referring to a clause or clauses in this Constitution;
- (h) Headings in this Constitution are included for the purpose of ease of reference only and shall not have any effect on construction and interpretation;
- (i) A reference to a person is a natural person and a reference to an entity includes a partnership and also a body of persons, whether corporate or unincorporated; and
- (j) A reference to "includes" and "including" shall be by way of inclusion and shall not limit other matters to which no reference is made.

2. NAME AND REGISTERED OFFICE

2.1 The name of the Society shall be Potatoes New Zealand Incorporated.

2.2 The registered office of the Society shall be situated at such place as from time to time shall be decided by the Board. Notice of any change of situation of the registered office shall be sent by the Chief Executive to the Registrar.

3. OBJECTS

3.1 The Society is established for the object of promoting and providing benefits to the whole potato industry in New Zealand by creating a positive industry profile and business environment for members, this shall include the following objects:

- (a)** Actively engaging and participating in the following areas of activity, as they relate to the interests of members and the potato industry generally:
 - (i) Research and extension;
 - (ii) General regulatory policy and resulting compliance costs;
 - (iii) Resource management and the environment, including but not limited to making appropriate submissions on local government plans in key production areas;
 - (iv) Industry development;
 - (v) Marketing the nutritional and health value of potatoes;
 - (vi) Support market activities in domestic and overseas markets;
 - (vii) Education, training and leadership; and
 - (viii) Biosecurity
- (b)** Promoting to the general public, the media, policy makers and Members of Parliament, the potato industry as a vital and growing sector of major social and economic significance to New Zealand.
- (c)** Representing to the general public, the media, policy makers and Members of Parliament, the common views of the potato industry on generic issues, including, but not limited to, the issues list under paragraph (a) above.
- (d)** To undertake any obligations that are required of the Society pursuant to the Commodity Levies Act 1990, the Biosecurity Act 1993, and any other relevant legislation.

3.2 In carrying out its objects the Society shall have all the capacity, rights, powers, and privileges set out in the Act, including the power to do all things and make such arrangements whatsoever which are incidental or conducive to the above objects of the Society.

4. MEMBERSHIP

4.1 Classes of Members

- (a)** There shall be at least four classes of Members:
 - (i) Grower Members;
 - (ii) Trade Members;
 - (iii) Associate Members; and
 - (iv) Life Members.

4.2 Members Criteria

(a) Grower Members

- (i) Persons eligible for membership of the Society as “Grower Members” shall be those persons actively engaged in the agricultural production of potatoes for commercial purposes such as processing, domestic fresh market, export or seed who in the preceding 12 month period, have paid a Levy in respect of such activity.
- (ii) Grower members shall have full voting rights.
- (iii) A person will cease to be entitled to be a Grower Member if:
 - (1) In the Board’s reasonable view, the person has ceased to be a commercial grower of potatoes; or
 - (2) The person has not, in the 12 month period proceeding the relevant date, paid a Levy; or
 - (3) The person has not, in the Board’s reasonable view and provided it has first followed the Dispute Procedures, complied with its obligations pursuant to this Constitution.

(b) Trade Members

- (i) Persons eligible for membership of the Society as “Trade Members” shall be those persons who are actively engaged in processing, trading or retailing potatoes or potato product.
- (ii) Trade member shall have full voting rights, save that Trade Members may not vote in any respect of the Levy.
- (iii) A person will cease to be entitled to be a Trade member if the person does not pay the annual subscription or membership fee set by the Board for Trade Members in the manner prescribed by the Board.

(c) Associate Members

- (i) Persons eligible for membership of the Society as “Associate Members” shall be persons (other than Grower Members and Trade Members) who are, in the Board’s opinion, associated with the potato industry and are engaged in supplying services to Grower Members or Trade Members. The criteria for eligibility for this class of membership shall be set out from time to time in policies adopted by the Board for this purpose.
- (ii) Associate Members must pay an annual subscription or membership fee as determined by the Board.

- (iii) Associate Members do not have any voting rights.
- (d) Life Members**
 - (i) The Board may recommend to a Meeting of the Society that a natural person be designated a Life Member of the Society in recognition of special services rendered by the person to the Potato industry in New Zealand. The person shall be designated a Life Member if:
 - (1) The resolution to so designate the person is approved by 50% of the votes of those entitled to vote and voting on the resolution; and
 - (2) The person consents in writing to be a Life Member.
 - (ii) Life Members do not have voting rights unless the Life Member remains a Grower Member or a Trade Member.

(e) Other Categories

The Board may from time to time by policies create further classes of membership and stipulate the criteria for admission to such classes of membership. The Board may also disestablish classes of membership (other than the Grower Member and Trade Member classes) by policy. Upon such disestablishment, all persons who are Members of that class shall cease to be Members, unless such person continues to qualify as a member of the continuing established classes.

4.3 Conditions of Membership

- (a)** A Member shall not do any act or thing which is contrary to the best interests of the Society or the potato industry or which may bring the Society or the potato industry into disrepute.
- (b)** The Board may from time to time impose conditions which are consistent with the objects of the Society on persons being or becoming Members or any class or classes of Members and which are applicable to all persons being or becoming Members or any class or classes of Members.
- (c)** The Board may require membership applicants to present evidence to show they meet the membership qualifications.

4.4 Application for Membership

- (a)** Any person or entity who wishes to become a Member (other than Life Members) must complete the Society's membership application form for the class or classes of membership for which that person or entity qualifies (which shall include the consent of the applicant to becoming a Member, as required by the Act) and must provide such details and information as the Board may require.

- (b) A person may be granted membership in one or more of the classes of membership at the same time.
- (c) Once a person or entity has applied for membership as a Trade Member or an Associate Member then the Board shall consider that person's application at the next Board meeting. The Board may either accept or decline the application and inform the applicant in writing of the outcome of the application, or adjourn the consideration of the application and call for more information regarding the applicant.
- (d) The Board may not unreasonably decline any application for membership or for any class of membership.
- (e) If the application is declined, the Board must advise the applicant in writing of its reasons for declining the application and the applicant may seek a rehearing in person at the Board meeting following notification that the application has been declined. If the application is declined after the rehearing, no further application from that applicant will be considered by the Board during that Financial Year.
- (f) An applicant who has applied for membership as a Trade Member or an Associate Member shall only become a Member upon receipt by the Board of the relevant membership fee (if any) for such class of membership.

4.5 Change of Membership Status

Members may apply for membership in a different or additional class by written notice to the Board. The applicant must meet the membership criteria. Every such notice shall (unless otherwise stated in the notice) take effect from the time of approval by the Board. Rules 4.3 and 4.4 shall apply to such an application with all necessary modifications.

4.6 Resignation or Removal from Membership

- (a) Any Member may resign from membership by written notice to the Society. Every such notice shall (unless otherwise stated in the notice) take effect from the date on the notice.
- (b) A notice in writing from a Member to the Society stating that the Member no longer meets the Membership Criteria relevant to the Member's class of membership shall be deemed to be a notice of resignation from that class of membership.
- (c) A Member shall cease to be a Member if that Member:
 - (i) Is convicted of an indictable offence; or
 - (ii) Is adjudged bankrupt or makes a compromise with creditors; or

- (iii) Dies, or where the Member is not a natural person, if any effective resolution or order of court is passed or made for the winding up or dissolution of the Member.
- (d) Provided that it has first complied with the Dispute Procedures, the Board may, at any time, end a Member's membership if:
 - (i) the Member no longer meets the criteria relevant to the Member's class of membership; or
 - (ii) the Board is satisfied that the Member:
 - (1) is in default of any of the Member's obligations under these Constitution (including obligations to pay membership fees or to provide information); or
 - (2) has acted in a manner which is not in the best interests of the Society or the potato industry or which may bring the Society or the potato industry into disrepute.

4.7 Register of Members

- (a) The Society shall keep a register of its members, in accordance with the Act.
- (b) The register of members must contain:
 - (i) the name of each Member;
 - (ii) the Member's membership class;
 - (iii) the last known contact details of each Member;
 - (iv) the date on which each person became a Member;
 - (v) details of production and export of potatoes as supplied by Members from time to time;
 - (vi) the name of each person who has ceased to be a Member of the Society within the previous 7 years and the date on which each person ceased to be a Member; and
 - (vii) any other information required by the Act.
- (c) A Member shall notify the Society in writing of any changes to the information recorded on the register in relation to that Member.

- (d) The Society must ensure that the register of members is updated as soon as practicable after becoming aware of changes to the information recorded on the register.
- (e) The Society may delegate its duties under this clause to the Chief Executive.

4.8 Provision of Information

- (a) The Board may from time to time require any Member or class of Members to provide information to the Society concerning any matter which is relevant to the application of this Constitution to that Member or class of Members in such form, within such period, and at such time or times as the Board determines.
- (b) A Member shall provide all information in such form, within such period, and at such time or times as the Board requires pursuant to Rule 4.8(a).

5. MEMBERSHIP FEES

5.1 The Board may from time to time determine the amount (or manner of calculation of the amount) of any annual membership fee payable by any class of Members, and to:

- (a) Determine different amounts for different classes of Member; and
- (b) Provide for a discount for prompt payment.

5.2 Upon an application for membership being granted, the Member shall be liable to pay the annual membership fee for the Member's class of membership. The Board may, in its discretion, reduce the membership fee for a member joining or changing its class of membership during a financial year.

5.3 Where any Member pays the Society a Levy, the Board may deem such payment as constituting payment in full of the relevant membership fee.

5.4 If a Member fails to pay any applicable membership fee in full by the due date for payment, the Board may by written notice to the Member, suspend all, or a part of, that Member's voting rights until such time as the membership fee is paid in full **PROVIDED THAT** the Board has first complied with the Dispute Procedures.

6. DISPUTES

If a Dispute arises, the Dispute Procedures at Schedule 2 shall apply.

7. BALANCE DATE/FINANCIAL YEAR

7.1 The balance date for the Society shall be 31 March in each year, unless the Board adopts another date from time to time.

8. MEETINGS

8.1 Annual General Meeting

- (a)** An Annual General Meeting of the Society shall be held within 6 months of the end of each Financial Year and not later than 15 months after the previous Annual General Meeting at such time and place as the Board from time to time determines.
- (b)** The purpose of the Annual General Meeting shall be to:
 - (i)** receive an Annual Report from the Board,
 - (ii)** appoint an auditor for the ensuing Financial Year if the Act so requires an audit; and
 - (iii)** consider any matters of general business which may be duly submitted to the Annual General Meeting.
- (c)** The Annual Report shall contain the following matters:
 - (i)** an annual report on the operations and affairs of the Society during the preceding Financial Year;
 - (ii)** audited financial statements of the Society for the preceding Financial Year; and
 - (iii)** notice of the disclosures, or types of disclosures, made under section 63 of the Act (disclosure of interests) during the preceding Financial Year (including a brief summary of the matters, or types of matters, to which those disclosures relate).
- (d)** At least 10 days' notice of every Annual General Meeting shall be given to every Member.
- (e)** The notice shall state the business to be transacted at that Meeting, including the full text of any resolution which is proposed to be adopted at that meeting, and a copy of the Annual Report shall be made available.

8.2 Special General Meetings

- (a)** The Board shall convene a Special General Meeting on a date and at a venue determined by the Board:
 - (i)** upon the direction of the Board by simple majority from time to time, for the consideration of such matters as it determines; or
 - (ii)** by the Chairperson if 75% or more Directors are prevented from voting on a matter under section 64(1) of the Act and clause 10.5 of these Constitution;

- (iii) upon the requisition in writing of at least 15% in number of the Members stating the purpose for which the Meeting is required.
- (b) At least 10 days' notice of every Special General Meeting shall be given to every Member.
- (c) The notice shall state the business to be transacted at that Meeting, including the text of any resolution which is proposed to be adopted at that meeting.
- (d) The Special General Meeting shall only consider and deal with the business specified in the notice given pursuant to clause 8.2(c).

8.3 General Provisions Regarding Notice

- (a) No business other than that stated in the notice convening the Meeting shall be transacted at any Meeting but if a Meeting is adjourned, a new notice which complies with Constitution 8.2(b) and 8.2(c) may be given to Members of the matters to be considered at the adjourned meeting.
- (b) The accidental omission to give notice of a Meeting to, or the failure to receive notice of a Meeting by, a Member does not invalidate the proceedings at that Meeting.
- (c) The period applicable to a notice of a Meeting shall be counted from and including the day on which the notice is delivered or deemed to be delivered and shall end on the day before the day of the Meeting.

8.4 Chairperson

- (a) The Chairperson of a Meeting shall be the Chairperson of the Board.
- (b) If the Chairperson is unavailable, the Board shall appoint one of its number to chair the meeting in the Chairperson's absence.
- (c) The Chairperson shall not have a casting vote in the case of an equality of votes.

8.5 Quorum

- (a) A quorum for a Meeting is 12 Members present in person, by proxy or by Nominated Representative or by participating in the Meeting by means of audio link, audiovisual link or other electronic communication.

8.6 Proxy

- (a) Any instrument appointing a proxy shall be in writing in the form attached as Schedule 1, or in similar form.

- (b)** No proxy is effective in relation to a Meeting unless a copy of the notice of appointment is produced:
 - (i) before the start of the Meeting; or
 - (ii) if the notice of Meeting so provides, at the registered office of the Society at least 24 hours before the start of the Meeting.
- (c)** A proxy for a Member is entitled to attend, vote and be heard at a Meeting as if the proxy were the Member.

8.7 Nominated Representative

- (a)** A Member, which is not a natural person, may appoint a natural person as its Nominated Representative to act on its behalf, including to attend, vote and be heard at Meetings, by giving a written notice to the Society which:
 - (i) must be signed by at least 1 director of the Member or, if the Member is not a company, a person holding a position equivalent to that of a director;
 - (ii) must be deposited with the Society:
 - (1) at its registered office; or,
 - (2) in the case of an appointment that is specific to a Meeting or Meetings, in the same manner as a proxy would have to be deposited to be effective at that Meeting or those Meetings; and
 - (iii) may specify that it is valid for a specific Meeting or Meetings, time or purpose in which case the appointment shall be valid in accordance with its terms.
- (b)** No Member may have more than 1 Nominated Representative.
- (c)** A Member may, at any time by notice in writing to the Society, revoke the appointment of its Nominated Representative.
- (d)** If a Member which is not a natural person does not have a current Nominated Representative, then in the absence of actual knowledge to the contrary, the Society may recognise any person who is, or purports to be, a director or officer of the Member or, if the Member is not a company, a person who holds or purports to hold a position equivalent to that of a director of the Member, as the Member's authorised representative to act on its behalf, including to attend, vote and be heard at Meetings.

8.8 Voting Rights – Grower Members

- (a)** On all matters in respect of which a Grower Member is entitled to exercise a vote, a Grower Member shall have one vote.

- (b) Grower Members shall be entitled to vote on any resolution regarding a Levy and on all other matters.
- (c) No Member other than a Grower Member shall be entitled to vote on a resolution regarding:
 - (i) a Levy; and
 - (ii) remuneration of Directors and Members serving on a sub-committee pursuant to clause 9.6.

8.9 Voting Rights – Trade Members

- (a) On all matters in respect of which a Trade Member is entitled to exercise a vote, a Trade Member shall have one vote.
- (b) Trade Members shall be entitled to vote on all matters other than:
 - (i) a resolution regarding the Levy; and
 - (ii) remuneration of Directors and Members serving on a sub-committee pursuant to clause 9.6.

8.10 Voting Rights – Associate Members

An Associate Member shall not have any right to vote on any matter.

8.11 Voting Rights - Life Members

A Life Member shall not have any right to vote on any matter, unless the Life Member is also a Grower Member or a Trade Member.

8.12 Majority Voting

Unless otherwise provided in these Constitution, every resolution of the Society shall be duly made if a simple majority of the valid votes recorded are in favour of the resolution.

8.13 Voting at Meetings

- (a) At any Meeting a resolution put to the vote shall be decided by a show of hands unless a poll is (before, or on, the declaration of the result of the show of hands) demanded by the Chairperson of the Meeting or at least 4 Members.
- (b) Unless a poll is demanded, a declaration by the Chairperson that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against that resolution.

- (c) If a poll is duly demanded, it shall be taken in such manner as the Chairperson directs and the result of the poll shall be deemed to be the resolution of the Meeting at which the poll was demanded.
- (d) A poll demanded on a question of adjournment shall be held forthwith. A poll demanded on any other question shall be taken at such time as the Chairperson directs.

8.14 Postal and Electronic Voting

- (a) Any matter which may be determined at a Meeting may, at the discretion of the Board, be determined by a postal ballot of Members and, for the purposes of this Rule a “postal ballot” includes a ballot which is conducted by electronic means (including e-mail).
- (b) If the Board so determines (which determination shall be evidenced by a statement to that effect in the notice of the meeting), Members may cast a postal vote on all or any of the matters to be voted on at a Meeting by sending a written notice of the manner in which the Member’ votes are to be cast to a person authorised to receive and count postal votes at that meeting. The notice must reach that person before the date specified as the date by which votes must be returned.
- (c) The notice calling for a postal vote or permitting the casting of postal votes at a Meeting shall be in such form as the Board determines but shall state:
 - (i) that Members are entitled to cast a postal vote;
 - (ii) the name and address of the person or persons authorised by the Board to receive and count postal votes;
 - (iii) the text of the resolution to be voted on; and
 - (iv) the date by which votes must be returned.
- (d) It is the duty of a person authorised to receive and count postal votes:
 - (i) to collect together all postal votes received;
 - (ii) in relation to each resolution to be voted on, to count the number of votes in favour of, and against, the resolution;
 - (iii) to sign a certificate that he or she has carried out the duties set out in paragraphs (i) and (ii) of this Rule and which sets out the results of the counts required by paragraph (ii) of this Rule; and

- (iv) to ensure that the certificate required by paragraph (iii) of this Rule is presented to the Chairperson.
- (e) Except as specified in this Rule the Board may determine the manner in which it conducts a postal vote.

8.15 Methods of Holding Meetings

A Meeting must be held by a quorum of Members:

- (a) being assembled together at the time and place appointed for the meeting;
- (b) participating in the meeting by means of audio link, audiovisual link, or other electronic communication; or
- (c) by a combination of both of the methods described in paragraphs (a) and (b).

8.16 Minutes

- (a) The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of the Society.
- (b) Minutes of the meeting which have been approved by subsequent meeting are prima facie evidence of the proceedings.

8.17 Resolution in lieu of Meeting

- (a) Members may pass a resolution in lieu of a Meeting in accordance with this clause.
- (b) A written resolution is as valid for the purposes of the Act and this Constitution as if it had been passed at a general meeting if it is approved by no less than 50% of the number of Members in attendance who are eligible to vote.
- (c) A written resolution under this clause may consist of 1 or more documents in similar form (including letters, electronic mail, or other similar means of communication) each approved by or on behalf of 1 or more of the Members who are entitled to vote.
- (d) For the purposes of this clause, a Member may give their approval by:
 - (i) signing the resolution; or
 - (ii) giving their approval to the resolution by electronic means, such as by email.

8.18 Other Proceedings

- (a) Unless otherwise provided in these Constitution, all Members shall have the right to speak at meetings of the Society.

- (b) Subject to these Constitution, a meeting of Members may regulate its own procedure.

9. THE BOARD

9.1 Composition of Board

- (a) The Board shall comprise at least 5 and up to 9 Directors, of whom:
 - (i) A minimum of 5 and a maximum of 8 Directors shall be elected by Grower and Trade Members; and
 - (ii) up to 3 Directors “Appointed Directors”, who need not be Members, may be appointed and removed by the Board.
- (b) The persons who are eligible to be elected as a Director under Rule 9.1(a)(i) are natural persons who are not disqualified by section 47(3) of the Act from being appointed or holding office as an officer of the Society, and at the time of their election, are either:
 - (i) a Grower Member; or
 - (ii) a person who is engaged as an employee of:
 - (1) a Grower Member;
 - (2) a Trade Member; or
 - (3) an entity associated (in the reasonable opinion of the Board) with a Grower Member.
- (c) The persons who are eligible for appointment as an Appointed Director under Rule 9.1(a)(ii) are natural persons who are not disqualified by section 47(3) of the Act from being appointed or holding office as an officer of the Society.

9.2 Election of Directors

- (a) The election of Directors to be elected by the Members pursuant to Rule 9.1 shall be conducted as follows:
- (b) The Board shall call for nominations for election to the Board from All Members at least 2 months before the Annual General Meeting of the Society by written notice to All Members. The notice shall:
 - (i) specify that nominations must be returned to the CEO within the time specified in the notice which shall not be less than 28 days after the date of the notice; and
 - (ii) identify the Directors whose term of office is due to expire;

- (c) A nomination must be signed by the person making the nomination and the person seconding the nomination both of whom must be Members or Representatives of Members;
- (d) If the nominations received do not exceed the number of Directors to be elected in that year, the Board shall then declare those so nominated elected and those nominated shall take office at the conclusion of the next Annual General Meeting;
- (e) If the nominations received exceed the number of Directors to be elected in that year, then the election of Directors shall be determined by a ballot. The CEO will forward postal ballots to Grower and Trade Members entitled to vote and, for the purposes of this Rule a “postal ballot” includes a ballot which is conducted by electronic means (including e-mail). Those Directors elected by postal ballot shall take office from the conclusion of the next Annual General Meeting;
- (f) Subject to Rule 9.4, every Director elected pursuant to Rule 9.1 shall hold office until the end of the third Annual General Meeting after he or she takes office; and
- (g) A Director whose term of office is due to expire may offer him or herself for re-election PROVIDED THAT no person shall be eligible for re-election as a Director if, as at the date of the next Annual General Meeting, that person will have served as a Director for a consecutive period of 9 years from the date he or she took office.

9.3 Appointed Directors

- (a) The Board will establish a “Director Selection Group” comprising the Chairperson and 2 members of the Board.
- (b) The Director Selection Group will advertise, screen and recommend to the Board persons considered suitable to be Appointed Directors by virtue of their relevant skills and/or experience and their eligibility pursuant to clause 9.1 (c).
- (c) A person may be reappointed by the Board as an Appointed Director without further recommendation by the Director Selection Group.
- (d) The Board may at any time remove from office any Appointed Director.

9.4 Vacancy of Office

The office of any Director shall become vacant if the Director:

- (a) dies;

- (b) resigns in writing;
- (c) is absent without leave of the Chairperson from more than 2 successive Board meetings;
- (d) is removed from office at an Annual or Special General Meeting by a resolution of Grower Members (but only if the notice of meeting stated that one of the matters to be considered at the Meeting was the removal of the Director);
- (e) was appointed by the Board pursuant to Rule 9.1(a)(ii) and is removed from office by the Board; or
- (f) ceases to be eligible for appointment as a Director pursuant to Rule 9.1(b) or Rule 9.1(c).

9.5 Filling of Vacancy

- (a) If a vacancy arises on the Board, the Board may either:
 - (i) conduct an election process under Rule 9.2 (with such modifications as the Board considers necessary); or
 - (ii) appoint such person as it thinks fit to fill the vacancy.
- (b) Every person so elected or appointed shall hold office until the next AGM and shall be eligible for re-election.

9.6 Remuneration:

- (a) Directors and Members who serve the Board on sub-committees may be paid, if approved by majority vote of Grower Members at an Annual General Meeting:
 - (i) by way of an annual honorarium; or
 - (ii) by way of meeting fee; and
 - (iii) other amounts (if any) for additional services provided by the Director in that capacity to the Society.
- (b) Each Director will be entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in connection with the Society's business and the Board may authorise such payments without requiring the approval of Members.

9.7 Duties of Directors

- (a) In exercising powers or performing duties as a Director, each Director shall:

- (i) act in good faith and in what the Director believes to be the best interests of the Society;
 - (ii) exercise a power as a Director for a proper purpose;
 - (iii) not act, or agree to the Society acting, in a manner that contravenes the Act or these Constitution;
 - (iv) exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances taking into account (without limitation):
 - (1) the nature of the Society;
 - (2) the nature of the decision; and
 - (3) the position of the Director and the nature of the responsibilities undertaken by him or her.
- (b)** A Director must not:
- (i) agree to the activities of the Society being carried on in a manner likely to create a substantial risk of serious loss to the Society's creditors;
 - (ii) cause or allow the activities of the Society to be carried on in a manner likely to create a substantial risk of serious loss to the Society's creditors; or
 - (iii) agree to the Society incurring an obligation unless the Director believes at that time on reasonable grounds that the Society will be able to perform the obligation when it is required to do so.

9.8 Indemnities and Insurance

- (a)** The Society may, in accordance with subpart 6 of the Act, indemnify a Director, officer, a Member, or an employee of the Society for:
- (i) liability to any person other than the society for any act or omission in their capacity as an officer, a member, or an employee of that society (not being a liability specified in paragraph (b));
 - (i) subject to paragraph (c), costs incurred by the officer, member, or employee in defending or settling any claim or proceeding relating to that liability.
- (b)** The liabilities for which the Society may not indemnify a Director, officer, a Member, or an employee of the Society are:
- (i) criminal liability; and

- (ii) a liability that arises out of a failure to act in good faith and in what the Director, officer, Member, or employee believes to be the best interests of the Society when acting in their capacity as a Director, officer, a Member, or an employee of the Society.
- (c)** The Society may indemnify a Director, officer, a Member, or an employee of the Society for any costs incurred by them in defending or settling a proceeding that relates to liability of a kind referred to in paragraph (a)(i) if:
 - (i) judgment is given in their favour or if they are acquitted; or
 - (ii) the proceeding is discontinued.
- (d)** The Society may, with the prior approval of the Board, effect insurance for a Director, officer, a Member, or an employee of the Society in respect of:
 - (i) liability (other than criminal liability) of a kind referred to in section 94 of the Act; or
 - (ii) costs incurred by the Director, officer, Member, or employee in defending or settling any claim or proceeding relating to that liability; or
 - (iii) costs incurred by the Director, officer, Member, or employee in defending any criminal proceedings:
 - (1) that have been brought against the Director, officer, Member, or employee in relation to any alleged act or omission in their capacity as a Director, officer, Member, or employee; and
 - (2) in which they are acquitted.
- (e)** The Directors who vote in favour of authorising the insurance under paragraph (d) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Society.
- (f)** For the purposes of section 98 of the Act, the Society is expressly authorised to indemnify a Director or officer, or to effect insurance for a Director or officer, for the following matters:
 - (i) liability (other than criminal liability) for a failure to comply with:
 - (1) a duty under sections 54 to 61 of the Act (officers' duties); or
 - (2) any other duty imposed on the Director or officer in their capacity as an officer; and
 - (ii) costs incurred by the Director or officer for any claim or proceeding relating to that liability.

10. CONFLICTS OF INTEREST

10.1 Where a Director is interested (as defined in the Act) in a matter relating to the Society, the Director must, as soon as practicable after the Director becomes aware that they are interested in the matter, disclose details of the nature and extent of the interest (including any monetary value of the interest if it can be quantified):

- (a)** To the Board; and
- (b)** In the Interests Register kept by the Society.

10.2 A director who has a conflict of interest:

- (a)** must not vote or take part in a decision of the Board relating to the matter; and
- (b)** must not sign any document relating to the entry into a transaction or the initiation of the matter; but
- (c)** may take part in any discussion of the Board relating to the matter and be present at the time of the decision of the Board (unless the Board decides otherwise).

10.3 A Director who is prevented from voting on a matter under the Act and this Constitution may still be counted for the purpose of determining whether there is a quorum at any meeting at which the matter is considered.

10.4 Paragraphs (a) and (b) of clause 10.2 do not apply to a Director if all Directors who are not interested in the matter consent to the Director so acting.

10.5 If 75% or more of the Directors are prevented from voting on the matter under clause (a), a Special General Meeting of the Society must be called to consider and determine the matter.

10.6 Section 64(3) of the Act is hereby negated.

10.7 No member of the Society or any person associated with a member shall participate or materially influence any decision made by the Society, in respect of the payment to or on behalf of that member or associated person of any income, benefit or advantage whatsoever. Any such income shall be reasonable and relative to that which would be paid in an arm's length transaction (being open market value).

11. MEETINGS OF THE BOARD

11.1 Chairperson

- (a)** At the first meeting of the Board following the Annual General Meeting, the Directors will elect one of their number to be Chairperson of the Board until the conclusion of the next Annual General Meeting.

- (b) If the Chairperson should resign from office, die, becomes bankrupt or in some other way become incapable of carrying out his or her duties as Chairperson the Board will meet to elect a new chairperson.
- (c) If the Chairperson is unavailable, the Board shall appoint one of its number to chair the meeting in the Chairperson's absence.

11.2 Convening Meetings

Meetings of the Board may be convened by written notice to all of the Directors at such times and places as the Chairperson or the Board from time to time determines. At least 5 meetings of the Board shall be convened each calendar year.

11.3 Quorum

The quorum for a meeting of the Board is a majority of Directors.

11.4 Voting

Each Director shall have one vote on any resolution at a Board meeting.

11.5 Notice

- (a) Not less than 5 days written notice of a meeting of the Board must be sent to every Director, and the notice must include the date, time, and place of the meeting and the matters to be discussed.
- (b) An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.

11.6 Manner of Holding Board Meetings:

A Meeting must be held by a quorum of Directors:

- (a) being assembled together at the time and place appointed for the meeting;
- (b) participating in the meeting by means of audio link, audiovisual link, or other electronic communication; or
- (c) by a combination of both of the methods described in paragraphs (a) and (b).

11.7 Written Resolution: A resolution in writing agreed by a majority of the Directors entitled to receive notice of a Board meeting shall be valid and effectual as if it had been passed at a Board meeting duly convened and held.

11.8 Other Proceedings: Except as provided in this Rule 11, the Board may regulate its own procedure.

12. MANAGEMENT

12.1 Subject to Rule 12.2, the business and affairs of the Society must be managed by or under the direction or supervision of the Board.

12.2 The Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the Society except to the extent that these Constitution expressly require those powers to be exercised by the Members or any other person.

12.3 The Board may delegate to a committee of Directors, a Director, or an employee of the Society or any other person any one or more of its powers, other than this power of delegation.

12.4 To the extent that the Board delegates a power, the Board is responsible for the exercise of the power by the delegate as if the power had been exercised by the Board, unless the Board:

- (a)** believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on Directors of the Society by these Constitution; and
- (b)** has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

13. CHIEF EXECUTIVE OFFICER

13.1 The Board shall appoint a Chief Executive Officer, who shall hold office for such period and upon such terms as to salary or otherwise as the Board shall from time to time determine.

13.2 The Board will determine and agree the responsibilities and duties of the Chief Executive Officer.

14. RECORDS

14.1 The Board shall ensure that:

- (a)** a record is kept of all proceedings of the Society and the Board;
- (b)** the Register of Members and Interests Register required by the Act are kept;
- (c)** a correct record is kept of all monies due to the Society, or all payments made by the Society; and
- (d)** all correspondence, records and reports connected with the Society are kept for a reasonable period.

15. AUDITOR

15.1 The auditor shall be a person who is not a Member, but who is a chartered accountant (within the meaning of section 19 of the Institute of Chartered Accountants of New Zealand Act 1996).

15.2 A partnership may be appointed by the firm name to be the auditor of the Society if all or some of the partners are persons who are qualified to be appointed as auditors of the Society and:

- (a)** the appointment of a partnership by the firm name to be the auditor of the Society is deemed to be the appointment of all the persons who are partners in the firm from time to time; and
- (b)** where a partnership that includes persons who are not qualified to be appointed as auditors of the Society is appointed as auditor, the persons who are not qualified to be appointed as auditors must not act as auditors of the Society.

15.3 The auditor shall audit the financial statements of the Society.

16. METHOD OF CONTRACTING

16.1 Unless expressly required by law, a contract or other enforceable obligation may be entered into by the Society as follows:

- (a)** An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Society in writing signed under the name of the Society by:
 - i. 2 or more Directors; or
 - ii. An officer, or other person or class of persons, whose signature or signatures must be witnessed; or
 - iii. 1 or more attorneys appointed by the Society;
- (b)** An obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the Society in writing by a person acting under the Society's express or implied authority; and
- (c)** An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Society in writing or orally by a person acting under the Society's express or implied authority.

17. SOCIETY FUNDS

17.1 All monies received by or on behalf of the Society shall forthwith be paid to the credit of the Society in a bank account nominated by the Board and all payments and withdrawals drawn on the account shall be signed by any one or more persons appointed for that purpose by the Board.

17.2 The Society may from time to time invest and reinvest the whole or any part of its funds into a bank if not required for the immediate business of the Society. The Board in exercising their powers pursuant to this Rule shall exercise the care, diligence, and skill that a prudent person of business would exercise in managing the affairs of others.

17.3 None of the income and property of the Society shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profits to members of the Society.

18. BORROWING

The Society may in addition to the other powers vested in it borrow or raise money from time to time by the issue of debentures, bonds, mortgages or any other security founded or based on all or any of the property and/or rights of the Society or without any security and upon such terms as to priority and otherwise as the Society thinks fit.

19. WINDING UP

19.1 The Society may be wound up voluntarily if; at a Meeting of its Members, the Members pass a simple majority resolution:

- (a)** requiring the Society to be wound up; or
- (b)** subject to compliance with Part 5 of the Act, to appoint a liquidator.

19.2 If the Society is wound up, any surplus assets after payment of the Society's liabilities, debts, costs and the expenses of the winding-up shall be distributed to such one or more not for profit entities that align closely with the Objects of the Society as set out in clause 3.1 and in accordance with section 216 of the Act.

19.3 For the avoidance of doubt, no part of any surplus assets may be paid to or distributed amongst the Members or other owners of the Society.

20. AMENDMENT OF CONSTITUTION

20.1 With the exception of this clause, this Constitution may be amended by a resolution passed by at least 75% of the votes of Members entitled to vote and voting at a Meeting of which 10 Business Days' notice has been given. No alteration shall be made to this Constitution if it would enable the income or other funds of the Society to be used for or be available for the private pecuniary profit of any member or in any other way would affect the charitable or non-profit status of the Society.

20.2 Every notice given in terms of Rule 20.1 shall set out the wording and purpose of the proposed amendment to this Constitution.

20.3 Duplicate copies of every amendment to these Constitution shall forthwith be delivered to the Registrar in accordance with the Act.

20.4 The Society may from time to time make, amend or rescind regulations or policies not inconsistent with this Constitution governing the affairs of the Society and the procedures at its Meetings.

20.5 The decision of the Board on the interpretation of this Constitution or any matter or thing not contained in this Constitution, and which pertains to the Society shall be conclusive and binding on all Members unless revoked at a Meeting.

21. CONTACT PERSON

For the purposes of the Act, the contact person of the Society shall be the Chief Executive and one other employee of the Society.

22. NOTICES

22.1 Any notice required or permitted to be given under this Constitution shall be validly given if sent to the last known address of the person as shown in the records of the Society and shall be deemed to have been delivered:

- (a)** if delivered by hand, on delivery;
- (b)** if given by post, five Business Days after posting; and
- (c)** if by email, then on the first Business Day following the day on which the email is sent.

22.2 The Board may, in its discretion, make and amend such further provisions relating to the receipt and delivery of notices as it considers appropriate.

SCHEDULE 1

Form of Proxy

POTATOES NEW ZEALAND INCORPORATED ("the Society")

I/We _____
being a Member/Members of the Society hereby appoint _____
or failing him/her _____, as my/our proxy to vote for me/us
on my/our behalf at the general meeting of the Society to be held on the ___ day
of _____ 20___, and at any adjournment thereof.

My/our voting Entitlement pursuant to the Constitution of the Society is
_____ votes.

This form is to be used as follows [insert resolution numbers and whether for or against]

Resolution No. [] For/Against*

Resolution No. [] For/Against*

Resolution No. [] For/Against*

Resolution No. [] For/Against*

[*Delete One]

Unless otherwise instructed the proxy will vote as he or she thinks fit.

SIGNED this ___ day of _____ 20___,

Signature of Member/Members:

SCHEDULE 2

Dispute Procedures

1 Overview of this schedule

This Schedule sets out the procedures to be followed relating to Disputes (as defined in section 38 of the Act).

2 How Complaint is made

2.1 A Member or a Director may make a Complaint by giving to the Board (or a complaints subcommittee, if the Board has established one) a notice in writing that:

- (a) states that the Member or Director is starting a procedure for resolving a Dispute in accordance with this Constitution; and
- (b) sets out the allegation to which the Dispute relates and whom the allegation is against; and
- (c) sets out any other information reasonably required by the Society.

2.2 The Society may make a Complaint involving an allegation against a Member or a Director by giving to the Member or Director a notice in writing that:

- (a) states that the Society is starting a procedure for resolving a Dispute in accordance with this Constitution; and
- (b) sets out the allegation to which the Dispute relates.

2.3 The information given under clause 2.1(b) or clause 2.2(b) must be enough to ensure that a person against whom an allegation is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.

3 Person who makes Complaint has right to be heard

3.1 A Member or a Director who makes a Complaint has a right to be heard before the Complaint is resolved or any outcome is determined.

3.2 If the Society makes a Complaint:

- (a) the Society has a right to be heard before the Complaint is resolved or any outcome is determined; and
- (b) a Director may exercise that right on behalf of the Society.

3.3 Without limiting the manner in which the Member, Director, or Society may be given the right to be heard, they must be taken to have been given the right if:

- (a) they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and

- (b) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- (c) an oral hearing (if any) is held before the decision maker; and
- (d) the Member's, Director's, or Society's written statement or submissions (if any) are considered by the decision maker.

4 Person who is subject of Complaint has right to be heard

4.1 This clause applies if a Complaint involves an allegation that a Member, a Director, or the Society (the **respondent**)—

- (a) has engaged in misconduct; or
- (b) has breached, or is likely to breach, a duty under this Constitution or bylaws or the Act; or
- (c) has damaged the rights or interests of a Member or the rights or interests of Members generally.

4.2 The respondent has a right to be heard before the Complaint is resolved or any outcome is determined.

4.3 If the respondent is the Society, a Director may exercise the right on behalf of the Society.

4.4 Without limiting the manner in which a respondent may be given a right to be heard, a respondent must be taken to have been given the right if:

- (a) the respondent is fairly advised of all allegations concerning the respondent, with sufficient details and time given to enable the respondent to prepare a response; and
- (b) the respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
- (c) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- (d) an oral hearing (if any) is held before the decision maker; and
- (e) the respondent's written statement or submissions (if any) are considered by the decision maker.

5 Investigating and determining Dispute

5.1 The Society must, as soon as is reasonably practicable after receiving or becoming aware of a Complaint made in accordance with this Constitution, ensure that the Dispute is investigated and determined.

5.2 Disputes must be dealt with under this Constitution in a fair, efficient, and effective manner.

6 The Society may decide not to proceed further with a Complaint

6.1 Despite clause 5, the Society may decide not to proceed further with a Complaint if:

- (a) the Complaint is trivial; or
- (b) the Complaint does not appear to disclose or involve any allegation of the following kind:
 - (i) that a Member or a Director has engaged in material misconduct;
 - (ii) that a member, a Director, or the Society has materially breached, or is likely to materially breach, a duty under this Constitution or bylaws or the Act; or
 - (iii) that a Member's rights or interests or Members' rights or interests generally have been materially damaged; or
- (c) the Complaint appears to be without foundation or there is no apparent evidence to support it; or
- (d) the person who makes the Complaint has an insignificant interest in the matter; or
- (e) the conduct, incident, event, or issue giving rise to the Complaint has already been investigated and dealt with under this Constitution; or
- (f) there has been an undue delay in making the Complaint.

7 The Society may refer matter

7.1 The Society may refer a Complaint to:

- (a) a subcommittee or an external person to investigate and report; or
- (b) a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.

7.2 The Society may, with the consent of all parties to a Complaint, refer the Complaint to any type of consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice).

8 Decision makers

A person may not act as a decision maker in relation to a Complaint if 2 or more Directors or (if there is a complaints subcommittee) 2 or more members of the complaints subcommittee consider that there are reasonable grounds to believe that the person may not be:

- (a) impartial; or
- (b) able to consider the matter without a predetermined view.

9 Time periods and other matters

Except as set out in this Schedule 2, the Board, or any complaints subcommittee, shall determine the timetable to be followed in any investigation, including the dates by which any submissions are due, any hearings will be held and any determination will be made.