

BY-LAW NO. 1

A by-law relating generally to the conduct
of the affairs of

**Office of the Grocery Sector Code of Conduct (OGSCC)/
Bureau du code de conduite pour le secteur des
produits d'épicerie (BCCSPÉ)
(the "Corporation")**

SECTION 1 GENERAL

1.01 Definitions

In this by-law and all other by-laws of the Corporation, unless the context otherwise requires:

- a. **"Act"** means the Canada Not-For-Profit Corporations Act S.C. 2009, c.23, including the regulations made pursuant to the Act (the **"Regulations"**), and any statute or regulations that may be substituted, as amended from time to time.
- b. **"Affiliate"** has the meaning set out in the Act.
- c. **"Annual Sales"** shall have the meaning set out in the Operating Rules. As this term is defined in the Operating Rules, it can only be amended by amending the Operating Rules. .
- d. **"Articles"** means the original or restated articles of incorporation or articles of amendment, amalgamation, continuance, reorganization, arrangement or revival of the Corporation.
- e. **"Board"** means the board of directors of the Corporation and **"Director"** means a member of the Board, collectively the **"Directors"**.
- f. **"By-Law" or "By-Laws"** means this by-law and any other by-law of the Corporation as amended and which are, from time to time, in force and effect.
- g. **"Chair" and Co-Chair** have the meanings set out in Section 7.01 of this By-Law.
- h. **"Code"** means the Grocery Sector Code of Conduct, as further described herein and in the Operating Rules.
- i. **"Code Resolution Process"** means the process for addressing concerns, disputes, complaints and non-compliance in respect of the Code by Members, as set out in the Operating Rules and Code.
- j. **"Employee" or "Employees"** means a person affiliated with the business operations of a Member or applicant with or without compensation, whether on a permanent, temporary or contract basis, and includes, but is not limited

to, owners, self- employed individuals, contractors, associates and consultants.

- k. **“First Elected Board”** has the meaning set out in Section 5.03 of this By-Law.
- l. **“Grocery Products”** shall have the meaning set out in the Code. As this term is defined in the Code, it can only be amended by amending the Code.
- m. **“First Board”** means the Board as set out on the Form 4002 filed on incorporation of the Corporation, as may be changed from time to time by resignation or appointment of Directors in accordance with this By-Law.
- n. **“Independent Retailer”** shall have the meaning set out in the Operating Rules. As this term is defined in the Operating Rules, it can only be amended by amending the Operating Rules.
- o. **“Interim Members”** has the meaning set out in Section 2.01(a) of this By-Law.
- p. **“Large Manufacturer/Supplier”** shall have the meaning set out in the Operating Rules. As this term is defined in the Operating Rules, it can only be amended by amending the Operating Rules. .
- q. **“Member Approval Date”** has the meaning set out in Section 9.03(a) of this By-Law.
- r. **“Member Code Vote”** means a Weighted Vote passed by a majority of not less than 2/3 of the votes cast on that resolution. As this term is set out in the Articles, it can only be amended by amending the Articles.
- s. **“Meeting of Members”** includes an annual meeting of members (an **“Annual Meeting”**) or a Special Meeting; **“Special Meeting”** includes a meeting of any class or classes of members and a special meeting of all members entitled to vote at an Annual Meeting.
- t. **“Member”** means a member of the Corporation, collectively the **“Members”**.
- u. **“Non-Affiliated Wholesalers/Distributors”** has the meaning set out in Section 2.01(b)(v) of this By-Law.
- v. **“Officer” or “Officers”** means any one or more persons, respectively, who have been appointed as officers of the Corporation in accordance with the By-Laws.
- w. **“Operating Rules”** means the operating rules of the Corporation as prescribed by the Board from time to time in accordance with the By-Laws and shall include, but not be limited to, any general rules, regulations or policies prescribed by the Board from time to time as well as the Corporation’s Mediation and Arbitration Rules.
- x. **“Ordinary Resolution”** means a resolution passed by a majority of not less than fifty percent plus 1 (50% + 1 vote) of the votes cast on that resolution.

- y. **“Ordinary Weighted Vote”** means a Weighted Vote passed by a majority of not less than fifty percent plus 1 (50% + 1 vote) of the votes cast on that resolution. As this term is set out in the Articles, it can only be amended by amending the Articles.
- z. **“Person”** means a human individual, corporation, firm, association, partnership, limited liability company or other legal entity or other form of business organization.
- aa. **“President & Adjudicator”** means the employee of the Corporation who holds such title.
- bb. **“Primary Producer”** shall have the meaning set out in the Operating Rules. As this term is defined in the Operating Rules, it can only be amended by amending the Operating Rules. .
- cc. **“Proposal”** means a proposal submitted by a Member of the Corporation that meets the requirements of Section 163 of the Act.
- dd. **“Retailer”** shall have the meaning set out in the Operating Rules and can only be amended by amending the Operating Rules.
- ee. **“Secretary”** has the meaning set out in Section 7.01 of this By-Law.
- ff. **“SME Manufacturer/Supplier”** set out in the Operating Rules. As this term is defined in the Operating Rules, it can only be amended by amending the Operating Rules. .
- gg. **“Special Business”** has the meaning set out in Section 4.05 of this By-Law.
- hh. **“Special Resolution”** means a resolution passed by a majority of not less than two-thirds (2/3rds) of the votes cast on that resolution.
- ii. **“Special Director Vote”** means a resolution of the Board in which Seventy Five Percent (75%) of votes are cast in favour of the amendment and where at least Seventy Five Percent (75%) of the Directors have cast a vote on the resolution. As this term is set out in the Articles, it can only be amended by amending the Articles.
- jj. **“Special Weighted Vote”** means a Weighted Vote passed by a majority of not less than seventy five percent (75%) of the votes cast on that resolution. As this term is set out in the Articles, it can only be amended by amending the Articles.
- kk. **“Treasurer”** has the meaning set out in Section 7.01 of this By-Law.
- ll. **“Vice Chair”** has the meaning set out in Section 7.01 of this By-Law.

1.02 Interpretation

In the interpretation of these By-Laws, words in the singular include the plural and vice-versa,

words in one gender include all genders, and “person” includes an individual, body corporate, partnership, trust and unincorporated organization. If any of the provisions contained in the By-Laws are inconsistent with those contained in the Articles or the Act, the provisions contained in the Articles or the Act, as the case may be, shall prevail.

1.03 Corporate Seal

The Corporation may have a corporate seal in the form approved from time to time by the Board. If a corporate seal is approved by the Board, the Secretary shall be the custodian of the corporate seal.

1.04 Execution of Documents

Deeds, transfers, assignments, contracts, obligations and other instruments in writing requiring execution by the Corporation may be signed by any one (1) Officer accompanied by any one (1) Director. In addition, the Board may from time to time direct the manner in which and the person or persons by whom a particular document or type of document shall be executed. Any person authorized to sign any document may affix the corporate seal (if any) to the document. Any signing officer may certify a copy of any instrument, resolution, By-Laws or other document of the Corporation to be a true copy thereof.

1.05 Financial Year

The financial year of the Corporation shall end on December 31st of each year, or as otherwise determined by the Board.

1.06 Banking Arrangements

The banking business of the Corporation shall be transacted at such bank, trust company or other firm or corporation carrying on a banking business in Canada or elsewhere as the Board may designate, appoint or authorize from time to time by resolution. The banking business or any part of it shall be transacted by an Officer or Officers of the Corporation and/or other persons as the Board may by resolution from time to time designate, direct or authorize.

1.07 Public Accountant and Level of Financial Review

The Corporation shall be subject to the requirements relating to the appointment of a public accountant and level of financial review required by the Act.

1.08 Annual Financial Statements

The Corporation may, instead of sending copies of the annual financial statements and other documents referred to in subsection 172(1) of the Act to the Members, publish between twenty-one (21) to sixty (60) days before the day on which an Annual Meeting is held a notice to its Members stating that the annual financial statements and documents provided in subsection 172(1) are available at the registered office of the Corporation and any Member may, on request, obtain a copy free of charge at the registered office or by prepaid mail.

1.09 Operating Rules and Procedures

The Board may adopt, amend, or repeal by resolution such rules and procedures as they may deem appropriate from time to time, including without limitation the Operating Rules, provided that such rules and procedures are not inconsistent with the requirements of this By-Law. Any rules or procedures adopted by the Board will continue to have force and effect until amended, repealed, or replaced by a subsequent resolution of the Board. The Operating Rules are incorporated herein

by reference and Members shall be bound thereby as though the provisions of the Operating Rules were set out herein.

1.10 The Code

The Members agree to be bound by, and agree to conform with, the requirements of the Code as though the provisions of the Code were set out herein, including without limitation as to the objectives, principles, trade rules provisions and the arbitration and dispute resolution provisions set out in the Code.

SECTION 2 **MEMBERSHIP**

2.01 Classes of Membership and Membership Conditions

- a. **Interim Members.** As set out in the Articles, the Corporation will establish one (1) class of interim members, who shall be corporations or organizations admitted to membership by the Board and shall be eligible for membership until 11:59 p.m. on the day immediately prior to the first Annual Meeting (the “**Interim Members**”), at which point the Interim Members shall automatically be terminated as Members of the Corporation. At all Meetings of Members prior to the first Annual Meeting, each Interim Member shall be entitled to receive notice of and cast one (1) vote at all Meetings of the Members unless otherwise set out herein. Interim Members shall not be permitted to vote at the first Annual Meeting, as their memberships will have been automatically terminated prior to such meeting.
- b. **Membership.** As set out in the Articles, in addition to the Interim Members, the Corporation is authorized to establish six (6) classes of Members, as set out below. Membership in the Corporation shall be available to corporations, associations and partnerships as set out below, who have applied for and been accepted into membership in the Corporation by resolution of the Board or in such other manner as may be determined by the Board and who meet the eligibility criteria for their respective class of membership, as follows:
 - i. Class A Members – Primary Producers selling Grocery Products directly to Canadian distributors/wholesalers and Retailers shall be eligible for Class A membership in the Corporation.
 - ii. Class B Members – SME Manufacturers/Suppliers of Grocery Products with Annual Sales of Grocery Products to Canadian Retailers equal to or less than the amount determined by the Board from time to time shall be eligible for Class B membership in the Corporation.
 - iii. Class C Members - Large Manufacturers/Suppliers of Grocery Products with Annual Sales of Grocery Products to Canadian Retailers of more than the amount determined by the Board from time to time shall be eligible for Class C membership in the Corporation.
 - iv. Class D Members - Non-Affiliated Wholesalers/Distributors of Grocery Products shall be eligible for Class D membership in the Corporation. For the purposes of these By-Laws a Non-Affiliated Wholesaler/Distributor is a wholesaler or distributor that is not controlled by a Retailer.
 - v. Class E Members - Independent Retailers of Grocery Products in Canada with Annual

Sales of Grocery Products equal to or less than the amount determined by the Board from time to time shall be eligible for Class E membership in the Corporation; and

- vi. Class F Members - Large Retailers of Grocery Products in Canada with Annual Sales of Grocery Products in Canada of more than the amount determined by the Board from time to time shall be eligible for Class F membership in the Corporation.
- c. **Operating Rules.** In addition to the criteria listed above, an applicant for membership must meet the membership qualifications set forth in the Operating Rules.
- d. At or following the first Annual Meeting, any amendment to Section 2.01 (a),(b), (c) or (d) must be approved by Special Weighted Vote. Prior to the first Annual Meeting, this Sections 2.01 (a), (b), (c) and (d) can only be amended in accordance with Section 2.01(a) through unanimous vote.
- e. **Further Membership Criteria.** In addition, each applicant for membership:
 - i. must agree to be bound by and comply with the Articles, By-Laws, Operating Rules and Code as are in force at the time of their admission to membership and as are amended from time to time;
 - ii. must agree to participate in the Code Resolution Process as set out in the Operating Rules and the Code, in the event of a concern, complaint or dispute in respect of the Code;
 - i. must not have suspended the operations of its business;
 - ii. must not, and its Affiliates must not, have failed to comply with any order, award or direction issued as part of or the outcome of the Code Resolution Process, or have failed to comply with a mediated agreement reached pursuant to the Code Resolution Process, within the five (5) year period preceding their application for membership; and
 - iii. must not, and its Affiliates must not, have withdrawn or resigned their membership in anticipation of their involvement in the Code Resolution Process or during such Code Resolution Process, within the five (5) year period preceding their application for membership.
- f. **Rights and Obligations of Members.** Each Member shall be entitled to receive notice of, attend and vote at all meetings of the Members of the Corporation, as further set out herein. Members shall have the rights and obligations set out in the Articles, the By-Laws, the Operating Rules and the Code.
- g. **One Class of Membership.** Where an applicant for membership is eligible for membership in more than one (1) class of membership, the applicant must apply for membership in the class that reflects its main area of activities. Under no circumstances can a Member be a member of more than one (1) class of Members.
- h. **Affiliates.** Where an applicant for membership has an Affiliate or Affiliates, only one (1) corporate entity or association may be a Member. Where a corporate entity or association is a Member, each of its Affiliates is bound by the provisions of the Articles, By-Laws, Operating Rules and the Code as though it were a Member and the Member is responsible for compliance

of all Affiliates with such obligations. A Member must submit to the Code Resolution Process in respect to the activities of its Affiliates as though such activities were conducted by the Member itself. A Member may be disciplined, suspended or terminated from the Corporation in the event that its Affiliate(s) are not compliant with the obligations of membership.

2.02 Term of Membership

The term of membership in the Corporation shall be annual and shall be subject to continued qualification as Members and payment of dues where required in accordance with these By-Laws.

2.03 Membership Fees

Membership fees shall be determined by the Board. Members shall be notified in writing of the membership fees at any time payable by them and, if any are not paid by the deadline set by the Board for same, the Members in default shall automatically cease to be Members of the Corporation.

2.04 Membership Transferability

A membership cannot be transferred from a Member to another person or party and may only be transferred from a Member back to the Corporation.

2.05 Communications and Information

Members shall promptly respond to all communication from the Corporation and shall provide the Corporation with such information as it may request from time to time from the Member and its Affiliates in order to ensure that the Member is fulfilling its obligations under the Articles, By-Laws, Operating Rules and the Code, including but not limited to the information set forth in the Operating Rules. For further certainty, nothing herein shall require a Member corporation to provide information that is precluded from disclosure by operation of law or regulation applicable to the Member or an Affiliate.

A Member shall promptly notify the Corporation in writing within thirty (30) days of the occurrence of any of the following events in respect of the Member or its Affiliates:

- a. any change in operating name;
- b. any change in the ownership of its business (except in respect of a publicly traded corporation);
- c. any assignment in bankruptcy, arrangement, proposal, receiving order or other similar arrangement or proposal for the benefit of creditors or arrangement or compromise with creditors under any statute; or
- d. the appointment of a receiver or receiver-manager or trustee to take possession or control of any of the Member's business or property.

SECTION 3

MEMBERSHIP TERMINATION AND DISCIPLINE

3.01 Automatic Termination of Membership

A membership in the Corporation is automatically terminated when:

- a. the Member dies, or, in the case of a Member that is a corporation or partnership, the

- corporation or partnership dissolves;
- b. the Member ceases to carry on the operations of a business for a period of three (3) months, in the sole discretion of the Board to determine;
 - c. a Member fails to comply with or maintain the membership requirements set out in this By-Law;
 - d. the Member resigns in which case such resignation shall be effective on the earlier of the date it is delivered to the Corporation or the effective date in the resignation, whichever is earlier;
 - e. the Member's term of membership expires due to non-payment of membership fees, if any; or
 - f. the Corporation is liquidated or dissolved under the Act.

Subject to the Articles, upon any termination of Membership, the rights of the Member, including any rights in the property of the Corporation, automatically cease to exist.

3.02 Discipline of Members

In the event that discipline of a Member is required, the Board shall have the authority to suspend, discipline or expel any Member from the Corporation on the following grounds:

- a. refusal to comply with the Articles, By-Laws, Operating Rules or the Code;
- b. carrying out any conduct which may be detrimental to the Corporation, as determined by the Board in its sole discretion;
- c. for neglecting or refusing to submit to the Code Resolution Process as may be required by the Operating Rules or Code, or refusing to comply with the results of such process;
- d. for making false or misleading statements, or providing false or misleading information to the Corporation as determined by the Board; or
- e. for any other reason that the Board considers to be reasonable, having regard to the purpose of the Corporation.

In the event that the Board proposes that a Member should be expelled or suspended from membership in the Corporation, the Board shall provide ten (10) days written notice of suspension or removal to the Member and shall provide reasons for the Board's proposed suspension or removal. The Member may make written submissions to the President & Adjudicator in response to the notice, which must be received by the President & Adjudicator within ten (10) days of the date of sending of the notice. In the event that no written submissions are received by the President & Adjudicator, the President & Adjudicator may proceed to notify the Member that the Member is suspended or removed from membership in the Corporation. Where written submissions are received in accordance with this section, the Board will consider such submissions in arriving at a final decision and shall notify the Member concerning such final decision within a further twenty (20) days from the date of receipt of the submissions.

For further certainty, the above does not reflect the Code Resolution Process or the approach to non-compliance with the Code, both of which will be addressed in accordance with the provisions of the Operating Rules and the Code. Notwithstanding the foregoing, as set out

above, this process can be used to discipline, terminate or suspend a Member who refuses to submit to the Code Resolution Process or abide by any determination or order made during the Code Resolution Process.

3.03 Continuing Obligation

A former Member, whether their membership has expired or has been terminated, is expected to continue to submit disputes and participate in the Code Resolution Process in respect of any claims arising out of transactions that occurred prior to the termination of the Member's membership in the Corporation and shall still be bound by the Operating Rules of the Corporation for any such claims. Where a former Member refuses to submit disputes and participate in the Code Resolution Process or withdraws or does not renew their membership in anticipation of a dispute or compliant, the Corporation has the right to publish a notice to its Members and the public in respect of same.

3.04 Fruit and Vegetable Dispute Resolution Corporation

Notwithstanding any other provision of the Articles, By-Laws, Operating Rules or the Code, or of contracts entered into as a result of or in conjunction with membership in the Corporation, any Member who is licensed, or subject to license, under the *Fruit and Vegetable Dispute Resolution Corporation*, shall not be required to submit to the Code Resolution Process with any other Member who is also licensed, or subject to license, under such corporation provided the dispute or controversy is subject to jurisdiction under the *Fruit and Vegetable Dispute Resolution Corporation*.

SECTION 4 **MEETINGS OF MEMBERS**

4.01 Notice of Meeting of Members

Notice of the time and place of a Meeting of Members shall be given to each Member entitled to vote at the meeting by the following means:

- a. by mail, courier or personal delivery to each Member entitled to vote at the meeting, during a period of twenty-one (21) to sixty (60) days before the day on which the meeting is to be held; or
- b. by telephonic, electronic or other communication facility to each Member entitled to vote at the meeting, during a period of twenty-one (21) to thirty-five (35) days before the day on which the meeting is to be held.

Notice of a Meeting of Members shall also be given to each Director and to the public accountant of the Corporation during a period of twenty-one (21) to sixty (60) days before the day on which the meeting is to be held. The Directors may fix a record date for determination of Members entitled to receive notice of any Meeting of Members in accordance with the requirements of Section 161 of the Act. Subject to the Act, a notice of Meeting of the Members provided by the Corporation shall include any Proposal submitted to the Corporation in accordance with the Act.

4.02 Proposals at Annual Meetings

Subject to compliance with the Act, a Member entitled to vote at an Annual Meeting may submit to the Corporation notice of any matter that the Member proposes to raise at the Annual Meeting. Any such Proposal may include nominations for the election of Directors if the Proposal is signed by not less than five percent (5%) of the Members as prescribed by the Regulations under the Act. Subject to the Act and the Proposal satisfying the exceptions and requirements

therein, the Corporation shall include the Proposal in the notice of meeting and if so requested by the Member, shall also include a statement by the Member in support of the Proposal and the name and address of the Member. The Member who submitted the Proposal shall pay the cost of including the Proposal and any statement in the notice of meeting at which the Proposal is to be presented unless otherwise provided by Ordinary Weighted Vote of the Members present at the meeting.

4.03 Annual Meetings

An Annual Meeting shall be held at such time in each year, as the Board may from time to time determine, provided that the Annual Meeting must be held not later than fifteen (15) months after holding the preceding Annual Meeting and no later than six (6) months after the end of the Corporation's preceding fiscal year. The Annual Meeting shall be held for the purpose of considering the financial statements and reports of the Corporation required by the Act to be presented at the meeting, electing Directors, appointing the public accountant and transacting such other business as may properly be brought before the meeting or is required under the Act.

4.04 Special Meetings

The Board may at any time call a Special Meeting for the transaction of any business which may properly be brought before the Members. On written requisition by Members carrying not less than five percent (5%) of the votes that may be cast at a Meeting of Members sought to be held, the Board shall call a Special Meeting, unless the exceptions in the Act are met. If the Directors do not call a meeting within twenty-one (21) days of receiving the requisition, any Member who signed the requisition may call the meeting.

4.05 Special Business

All business transacted at a Special Meeting and all business transacted at an Annual Meeting, except consideration of the financial statements, public accountant's report, election of Directors and re-appointment of the incumbent public accountant, is special business ("**Special Business**"). The notice of any Meeting of Members at which Special Business will be conducted shall (a) set out the Special Business in such detail that a Member can make a reasoned judgement thereon; and (b) contain the text of any Special Resolution or resolution in respect of Special Business to be put before the Members.

4.06 Persons Entitled to be Present at a Meeting of Members

The only persons entitled to be present at a Meeting of Members shall be those entitled to vote at the meeting, the Directors and the public accountant of the Corporation and such other persons who are entitled or required under any provision of the Act, Articles or By-Laws to be present at the meeting. Any other person may be admitted only on the invitation of the chair of the meeting or by Ordinary Weighted Vote.

4.07 Waiving Notice

A Member and any other person entitled to attend a Meeting of Members may in any manner and at any time waive notice of a Meeting of Members, and attendance of any such person at a Meeting of Members is a waiver of notice of the meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

4.08 Chair of the Meeting

In the event that the Chair of the Board and the Vice-Chair(s) of the Board are absent, the

Members who are present and entitled to vote at the meeting shall choose one of the Members or, in the case of a Member that is a corporation, a representative of a Member, present to chair the meeting.

4.09 Quorum

A quorum at any Meeting of the Members (unless a greater number of Members are required to be present by the Act) shall be seven (7) of the Members present at the meeting. If a quorum is present at the opening of a Meeting of Members, the Members present may proceed with the business of the meeting even if a quorum is not present throughout the meeting.

4.10 Votes to Govern

Other than a meeting of the Interim Members, which shall be governed by Section 2.01(a), at any Meeting of Members every question shall, unless otherwise provided by the Articles, By-Laws or by the Act, be determined by Ordinary Weighted Vote. In case of an equality of votes either on a show of hands or on a ballot the question or motion shall fail.

4.11 Participation by Electronic Means

A Meeting of the Members may be held by telephonic or electronic means in accordance with the Act as follows:

- a. Any person entitled to attend a Meeting of Members may participate in the meeting by means of such telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the Corporation makes available such a communication facility and the meeting complies with the requirements in the Act and the Regulations. A person participating in a meeting by such means is deemed to be present at the meeting.
- b. Notwithstanding Section 4.11(a) (a), if the Directors or Members of the Corporation call a Meeting of Members, those Directors or Members, as the case may be, may determine that the meeting be held, in accordance with the Act and the Regulations, entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting.
- c. Any person participating in a Meeting of Members by means of a telephonic, electronic or other communication facility and entitled to vote at such meeting, may vote using the communication facility that the Corporation has made available for that purpose. When a vote is to be taken at a Meeting of Members, the voting may be carried out by means of a telephonic, electronic or other communication facility only if that facility enables the votes to be gathered in a manner that permits their subsequent verification; and permits the tallied votes to be presented to the Corporation without it being possible for the Corporation to identify how each Member voted.

4.12 Voting of Members

Business arising at any Meeting of Members shall be considered as follows, unless otherwise required by the Act:

- a. votes shall be taken by a show of hands among all Members present and the chair of the meeting, if a Member or entitled to vote on behalf of a Member, shall have a vote;
- b. an abstention shall not be considered a vote cast;

- c. before or after a show of hands has been taken on any question, the chair of the meeting may require, or any Member may demand, a written ballot. A written ballot so required or demanded shall be taken in such manner as the chair of the meeting shall direct;
- d. if there is a tie vote, the chair of the meeting shall require a written ballot, and shall not have a second or casting vote. If there is a tie vote upon written ballot, the motion is lost; and
- e. whenever a vote by show of hands is taken on a question, unless a written ballot is required or demanded, a declaration by the chair of the meeting that a resolution has been carried or lost and an entry to that effect in the minutes shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.

4.13 Absentee Voting by Mailed-In Ballot or Electronic Ballot

A Member entitled to vote at a Meeting of Members may vote by mailed-in ballot or may vote by means of a telephonic, electronic or other communication facility that enable the votes to be gathered in a manner that permits their subsequent verification and permit the tallied votes to be presented to the Corporation without it being possible for the Corporation to identify how each Member voted.

SECTION 5 **DIRECTORS**

5.01 Number of Directors

The Board shall consist of a number of Directors between the minimum of eight (8) and maximum number of fifteen (15) Directors as specified in the Articles. The precise number of Directors on the Board within that range shall be determined from time to time by the Members by Special Weighted Vote. A Special Weighted Vote shall be required to amend this Section 5.01.

5.02 Qualifications of Directors

Each Director shall be an individual who is not less than eighteen (18) years of age. Neither a person who has been declared by a court in Canada or elsewhere to be incapable, nor a person who has the status of a bankrupt, shall be a Director. In order to be eligible to serve as a Director, a person must provide their consent to electronic meetings of the Board.

5.03 Election and Term

- a. The First Board shall remain in office until the first Annual Meeting or when their successors are elected. The Board elected to succeed the First Board shall be the “**First Elected Board**”.
- b. Following the term of the First Board, Directors shall be elected by the Members by Special Weighted Vote at each Annual Meeting at which an election of Directors is required, as follows:
 - i. The Class A Members are entitled to elect two (2) Directors to the Board, each of whom shall be a Class A Member, or, in the case of a Class A Member that is a corporation, an owner or a senior executive employed by such Member;
 - ii. The Class B Members are entitled to elect two (2) Directors to the Board, each of whom shall be a Class B Member, or, in the case of a Member that is a corporation, an owner of a Class B Member or a senior executive employed by a Class B Member

with Annual Sales at the threshold determined by the Board in the fiscal year immediately preceding their election;

- iii. The Class C Members are entitled to elect two (2) Directors to the Board, each of whom shall be a Class C Member, or, in the case of a Member that is a corporation, an owner of a Class C Member or a senior executive employed by a Class C Member with Annual Sales at the threshold determined by the Board in the fiscal year immediately preceding their election;
 - iv. The Class D Members are entitled to elect one (1) Director to the Board, who shall be a Class D Member, or, in the case of a Class D Member that is a corporation, an owner or a senior executive employed by such Member;
 - v. The Class E Members are entitled to elect two (2) Directors to the Board, each of whom shall be a Class E Member, or, in the case of a Member that is a corporation, an owner of a Class E Member or a senior executive employed by a Class E Member with Annual Sales at the threshold determined by the Board in the fiscal year immediately preceding their election;
 - vi. The Class F Members are entitled to elect three (3) Directors to the Board, each of whom shall be a Class F Member, or, in the case of a Member that is a corporation, an owner of a Class F Member or a senior executive employed by a Class F Member with Annual Sales at the threshold determined by the Board in the fiscal year immediately preceding their election.
- c. Directors shall be elected for terms of two (2) years or such other term as may be determined by Special Weighted Vote of the Members.
 - d. A Special Weighted Vote shall be required to amend Sections 5.03 (b), (c) and (d).
 - e. If Directors are not elected at a Meeting of Members, the incumbent Directors shall continue in office until their successors are elected.

5.04 Appointment of Directors

Pursuant to the Articles, following the conclusion of the Annual Meeting in each year, by Special Director Vote, the Board may appoint Directors (the “**Appointed Directors**”) to hold office for a term expiring not later than the close of the next Annual Meeting. The number of Appointed Directors shall not exceed one-third (1/3) of the number of Directors elected by the Members at the previous Annual Meeting.

5.05 Appointment of Observer to the Board

The Board may appoint one (1) non-voting observer to the Board for a term of two (2) years to represent federal, provincial and territorial governments. For further certainty, this appointment shall not restrict or preclude the Board from meeting in camera or without such observer present.

5.06 Ceasing to Hold Office

A Director ceases to hold office when the Director dies, resigns, is removed from office by the Members in accordance with Section 5.07 of this By-Law, or no longer fulfils all the qualifications to be a Director set out in Section 5.02 of this By-Law, as determined in the sole discretion of the

Board.

5.07 Removal

The Members may, by Ordinary Resolution passed at a Meeting of Members, remove any Director from office before the expiration of the Director's term and may elect a qualified individual to fill the resulting vacancy for the remainder of the term of the Director so removed, failing which such vacancy may be filled by the Board. For further certainty, where a class of Members has the authority to elect a Director, only that class of Members shall be entitled to remove such Director.

5.08 Filling Vacancies

In accordance with and subject to the Act, a quorum of the Board may fill a vacancy in the Board, except a vacancy resulting from an increase in the number or the minimum or maximum number of Directors, or from a failure of the Members to elect the number of Directors required to be elected at any Meeting of Members. If there is not a quorum of the Board, or if the vacancy has arisen from a failure of the Members to elect the number of Directors required to be elected at any Meeting of Members, the Board shall forthwith call a Special Meeting to fill the vacancy. If the Board fails to call such meeting or if there are no Directors then in office, any Member may call the meeting. A Director appointed or elected to fill a vacancy holds office for the unexpired term of their predecessor.

5.09 Conflict of Interest

In addition to the definition of conflict of interest set out in the Act, for the purposes of the Corporation, a "**conflict of interest**" means a situation where there could exist the perception or risk that the judgment of a Director or Officer, or the fiduciary duty of such individual to the Corporation, could be influenced or appear to be influenced by: their personal interests or the personal interests of their friends, family or business associates; the interests of another entity in which they are involved, interested or to which they owe an obligation; or any interest or relationship that is outside of the corporation, including in respect of disputes pursuant to the Code. Every Director and Officer shall disclose to the Corporation the nature and extent of any conflict of interest that the Director or Officer has in respect of any matter before the Board and, in addition to any requirements of the Act in respect of such conflict, shall not vote on a motion in respect of any subject on which the Director has a conflict.

5.10 Confidentiality

Every Director, Officer, and committee member shall respect the confidentiality of matters brought before the Board or before any committee of the Board and shall not disclose same to any other person unless such disclosure is authorized by the Board.

5.11 Remuneration of Directors

The remuneration of all Directors shall be determined from time to time by resolution of the Board.

SECTION 6 **MEETINGS OF DIRECTORS**

6.01 Calling of Meetings

Meetings of the Board may be called by the Chair, a Vice-Chair of the Board, or any two (2) Directors at any time. If the Corporation has only one (1) Director, that Director may call and constitute a meeting.

6.02 Notice of Meeting

Notice of the time and place for the holding of a meeting of the Board shall be given in the manner provided in Section 8.01 of this By-Law to every Director not less than forty- eight (48) hours before the time when the meeting is to be held. Notice of a meeting shall not be necessary if all of the Directors are present, and none objects to the holding of the meeting, or if those absent have waived notice of or have otherwise signified their consent to the holding of such meeting. Notice of an adjourned meeting is not required if the time and place of the adjourned meeting is announced at the original meeting. Unless the By-Laws otherwise provide, no notice of meeting need specify the purpose or the business to be transacted at the meeting except that a notice of meeting of Directors shall specify any matter referred to in subsection 138(2) of the Act that is to be dealt with at the meeting.

6.03 Regular Meetings

The Board may appoint a day or days in any month or months for regular meetings of the Board at a place and hour to be named. A copy of any resolution of the Board fixing the place and time of such regular meetings of the Board shall be sent to each Director forthwith after being passed, but no other notice shall be required for any such regular meeting except if subsection 136(3) of the Act requires the purpose thereof or the business to be transacted to be specified in the notice.

6.04 Participation at Meeting by Telephone or Electronic Means

If all of the Directors consent, a Director may, in accordance with the Regulations, participate in a Board meeting, by means of a telephonic, electronic or other communications facility that permits all participants to communicate adequately with each other during the meeting. A Director participating in the meeting by such means shall be deemed for the purposes of the Act to have been present at that meeting. A consent pursuant to this section may be given before or after the meeting to which it relates and may be given with respect to all meetings of the Board and committees of the Board.

6.05 Quorum

A majority of the number of Directors then in office constitutes a quorum for any meeting of the Board. For the purpose of determining quorum, a Director may be present in person, or, as authorized under this By-Law, by teleconference and/or by other electronic means.

6.06 Votes to Govern

Unless otherwise set out herein, at all meetings of the Board, every question shall be decided by Ordinary Resolution. For further certainty, the Operating Rules and the Code shall only be amended in accordance with Section 9.03 of this By-Law. A question or motion shall fail in the case of an equality of votes.

6.07 Resolutions in Writing

A resolution in writing, signed by all the Directors entitled to vote on that resolution at a Board meeting, shall be as valid as if it had been passed at a Board meeting. A copy of every such resolution in writing shall be kept with the minutes of the proceedings of the Board or committee of Directors.

6.08 Committees

The Board may from time to time appoint any committee or other advisory body, as it deems necessary or appropriate for such purposes and, subject to the Act, with such powers as the Board shall see fit. The terms of reference and any other requirements relating to committees shall be described in the Operating Rules. Any such committee may formulate its own rules of procedure, subject to such regulations or directions as the Board may from time to time make in accordance with the Operating Rules. Any committee member may be removed by resolution of the Board of Directors.

SECTION 7

OFFICERS

7.01 Appointment

The Board may annually, or more or less often as may be required, designate the offices of the Corporation and specify the duties associated with such offices, appoint the Officers thereto, including a chair or co-chairs of the Board (referred to as the “**Chair**” or “**Co-Chair(s)**”) and two (2) or more Vice- Chairs of the Board (the “**Vice-Chairs**”, each a “**Vice-Chair**”), a secretary and a treasurer of the Board (a “**Secretary**” and a “**Treasurer**” respectively) and such other Officers as it deems appropriate. All Officers must be Directors. In addition, Officers must reside in Canada. Following the term of the First Elected Board, a Director must have served on the Board for a minimum of one (1) year to be eligible to serve as an Officer. A Director may be appointed to any office of the Corporation. Two (2) or more offices may be held by the same person.

7.02 Duties of Officers. Unless otherwise specified by the Board which may, subject to the Act modify, restrict or supplement such duties and powers, the offices of the Corporation, if designated and if Officers are appointed, shall have the following duties and powers associated with their positions:

- a. The Chair shall facilitate highly effective Board performance and ensure the Corporation fulfils its mandate and responsibilities. The Chair shall, when present, preside at all meetings of the Board and of the Members. The Chair will conduct all aspects of the role of Chair with the application of governance best practices. The Chair shall have such other duties as the Board may determine. The Board may appoint Co-Chairs at its discretion and may divide the duties of the Chair between such Co-Chairs.
- b. The Vice-Chair or Vice-Chairs shall carry out the Chair's duties where the Chair is unable or refuses to Act. Where there is more than one (1) Vice-Chair in office, in the absence of the Chair the Board shall determine which of the Chair's responsibilities shall be performed by each Vice-Chair. The Vice-Chair(s) will provide support and assistance to the Chair in carrying out their responsibilities. The Vice-Chair(s) shall have such other duties as the Chair or Board may determine.
- c. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation; receive and give receipts for moneys due and payable to the Corporation from any source whatsoever, and deposit all such moneys in the name of the Corporation in such banks, trust companies or other depositories as shall be selected by the Board. The Treasurer shall have such other duties as the Chair or Board may determine.
- d. The Secretary shall keep the minutes of the Meetings of the Members and of the meetings of the Board, in one or more books provided for that purpose; see that all notices are duly given to the Members and Directors in accordance with the provisions of the By-Laws, or as required

by law, be custodian of the corporate seal and of the records of the Corporation, and see that the seal is affixed to all documents requiring the same; keep a register of the post office address of each Member and Director, which address shall be furnished to the Secretary by each such Member and Director; and make any and all reports as may from time to time be required of the Corporation. The Secretary shall have such other duties as the Chair or Board may determine.

7.03 Removal of Officers

Officers shall be subject to removal by the Board at any time, with or without cause.

7.04 Vacancies

Each Officer shall continue in office until the earlier of:

- a. that Officer's resignation, which resignation shall be effective at the time the written resignation is received by the Secretary or at the time specified in the resignation, whichever is later;
- b. the appointment of their successor in office;
- c. that Officer ceasing to be a Director or a Member, if such is a necessary qualification of appointment;
- d. that Officer's removal by the Board;
- e. that Officer's inability to carry out their duties; or
- f. that Officer's death.

If the office of any Officer of the Corporation shall be or become vacant, the Directors may, by resolution, appoint a person to fill such vacancy.

SECTION 8
NOTICES

8.01 Method of Giving Notices

Any notice (which term includes any communication or document) to be given (which term includes sent, delivered or served) pursuant to the Act, the Articles, the By-Laws or otherwise to a Member, Director, Officer or member of a committee of the Board or to the public accountant shall be sufficiently given:

- a. if delivered personally to the person to whom it is to be given or if delivered to such person's address as shown in the records of the Corporation or in the case of notice to a Director to the latest address as shown in the last notice that was sent by the Corporation in accordance with Sections 128 or 134 of the Act and received by the Director; or
- b. if mailed to such person at such person's recorded address by prepaid ordinary or air mail; or

- c. if sent to such person by telephonic, electronic or other communication facility at such person's recorded address for that purpose; or
- d. if provided in the form of an electronic document in accordance with Part 17 of the Act.

A notice so delivered shall be deemed to have been given when it is delivered personally or to the recorded address as aforesaid; a notice so mailed shall be deemed to have been given when deposited in a post office or public letter box; and a notice so sent by any means of transmitted or recorded communication shall be deemed to have been given when dispatched or delivered to the appropriate recipient company or agency or its representative for dispatch. The Secretary may change or cause to be changed the recorded address of any Member, Director, Officer, public accountant or member of a committee of the Board in accordance with any information believed by the Secretary to be reliable. The declaration by the Secretary that notice has been given pursuant to this by-law shall be sufficient and conclusive evidence of the giving of such notice. The signature of any Director or Officer of the Corporation to any notice or other document to be given by the Corporation may be written, stamped, type-written or printed or partly written, stamped, type-written or printed.

8.02 Computation of Time

If a given number of days' notice or notice extending over a period is required to be given under the By-Laws, the day of service, posting or other delivery of the notice shall not, unless it is otherwise provided, be counted in such number of days or other period.

8.03 Undelivered Notices

If any notice given to a Member is returned on two (2) consecutive occasions because such Member cannot be found, the Corporation shall not be required to give any further notices to such Member until such Member informs the Corporation in writing of their new address.

8.04 Omissions and Errors

The accidental omission to give any notice to any Member, Director, Officer, member of a committee of the Board or public accountant, or the non-receipt of any notice by any such person or any error in any notice not affecting its substance shall not invalidate any action taken at any meeting to which the notice pertained or otherwise founded on such notice.

8.05 Waiver of Notice

Any Member, Director, Officer, member of a committee of the Board or public accountant may waive or abridge the time for any notice required to be given to such person, and such waiver or abridgement, whether given before or after the meeting or other event of which notice is required to be given shall cure any default in the giving or in the time of such notice, as the case may be. Any such waiver or abridgement shall be in writing except a waiver of notice of a meeting of Members or of the Board or of a committee of the Board, which may be given in any manner.

SECTION 9 **AMENDMENT OF CORPORATE DOCUMENTS**

9.01 Amendment of Articles

Prior to the first Annual Meeting, any amendments to the Articles must be unanimously approved by the Interim Members. At or following the first Annual Meeting, in addition to the approvals required by the Act, all amendments to the Articles must be approved by Special Weighted Vote. Any amendment to the Articles is effective on the date shown in the certificate of amendment issued by Corporations Canada. Following the first Annual Meeting, a Special Weighted Vote shall be required to amend this Section 9.01.

9.02 Amendment By-Laws.

Prior to the first Annual Meeting, any amendments to the By-Laws must be unanimously approved by the Interim Members. At or following the first Annual Meeting, in addition to the approvals required by the Act and except as may be otherwise set out herein, all amendments to the By-Laws must be approved by Ordinary Weighted Vote prior to implementation of same. Any amendment to the By-Laws is effective on the date of approval of same by the Members or the date identified for implementation of the amendment in the resolution approving same.

9.03 Amendment of Code.

- a. The term “**Member Approval Date**” means the earlier of the third Annual Meeting or a date to be determined by the Board after which amendments to the Code will require approval of the Members as set out herein. For further certainty, if the Board sets the Member Approval Date such date must be no later than the third Annual Meeting.
- b. The first version of the Code will be approved by the Board and the Interim Members prior to the first Annual Meeting, each by unanimous vote.
- c. Following the first Annual Meeting and prior to the Member Approval Date, the Code may only be amended by a Special Director Vote.
- d. Following the Member Approval Date, the Code may only be amended with approval of the Board and the Members, as follows:
 - i. by resolution of the Board by Special Director Vote; and
 - ii. by resolution of the Members by Member Code Vote.
- e. Any amendment to the Code is not effective until it has received the approval(s) set out above and is thereafter effective on the date of final approval of same or the date identified for implementation of the amendment in the resolution approving same.
- f. Following the Member Approval Date, any changes to this Section 9.03 must be approved by Member Code Vote. Prior to the Member Approval Date, any changes to this Section 9.03 must be approved by special director vote.

SECTION 10 **PARAMOUNTCY**

Pending a French translation of these By-Laws being approved by the Board and Members in accordance with the Act and this By-Law, the English version of this By-Law shall be paramount in the event of any discrepancy or inconsistency between the English and French versions of this By-Law. On approval of the French translation of the By-Laws by the Members, the English and French versions shall be equally valid and neither

shall be paramount.

SECTION 11
EFFECTIVE DATE

11.01 Effective Date

This By-Law shall be effective when approved by the Members.

[signature follows immediately]

CERTIFIED to be By-Law No. 1 of the Corporation, as approved by the Directors of the Corporation by resolution on the _____ and by the Members of the Corporation by resolution on the _____.

DATED as of the _____ day of _____, 20__.

Name: _____

Title: _____

Name: _____

Title: _____