This is the Memorandum of Incorporation which was adopted by Members of the Company on 13 April 2023, as amended on 13 November 2024.

B Snijder

Certified Correct:

Name: Bram Snijder

Capacity: Chairman SALGA NPC

Date of first adoption by members: 13 April 2023

Amendments

1. 13 November 2024

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT, 2008

MEMORANDUM OF INCORPORATION OF

A NON-PROFIT COMPANY WITH MEMBERS

THE SOUTH AFRICAN LITCHI GROWERS' ASSOCIATION NPC

With such registration number as is to be issued by the Commission on its date of incorporation.

(Hereinafter: **"the Company"**)

Shortened Name: **SALGA**

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1. INTERPRETATION

1.1 The headings of the clauses in this MOI are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this MOI nor any clause of this MOI. Unless a contrary intention clearly appears:

1.1.1 words importing;

1.1.2 any gender includes all genders;

1.1.3 the singular includes the plural and vice versa; and

1.1.4 natural persons include created entities (corporate or unincorporated) and the state and *vice versa*;

1.1.5 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.1.6 **"the Act"** or **"Companies Act"** means the Companies Act, No. 71 of 2008;

1.1.7 **"Associate Members"** has the meaning ascribed thereto in the Member Schedule;

1.1.8 **"Auditor"** means the Auditors of the Company from time to time;

1.1.9 **"the Board"** means the Board of Directors of the Company from time to time;

1.1.10 **"Business Day"** means any day, other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

1.1.11 **"Bye-Laws"** means the bye-laws promulgated by the Company (acting through its Board) from time to time, provided the Bye-Laws in existence as at the date of adoption of this MOI are as contained in **Annexure C;**

1.1.12 **"the Commission"** means the Companies and Intellectual Property Commission established by section 185 of the Act;

1.1.13 **"the Commissioner"** means the Commissioner of the South African Revenue Services;

1.1.14 **"Director"** means a member of the Board of the Company, as contemplated in section 66 of the Act, or an alternate Director of the Company, and includes any person occupying the position of a Director by whatever name designated;

1.1.15 **"Electronic Communications and Transactions Act"** means the Electronic

Communications and Transactions Act, No 25 of 2002;

1.1.16 **"Growers"** means Members who are litchi producers;

1.1.17 **"Grower Members"** has the meaning ascribed thereto in the Member Schedule;

1.1.18 **"Honorary Life Members"** has the meaning ascribed thereto in the Member Schedule;

1.1.19 **"the Income Tax Act"** means the Income Tax Act No. 58 of 1962;

1.1.20 **"Member/s"** means a person who holds a membership in, and specified rights in respect of the Company, as contemplated in schedule 1 of the Act read with the provisions of this MOI;

1.1.21 **"Member Schedule"** means the schedule attached hereto as **Annexure A** setting out the different classes of Members;

1.1.22 **"Member in Good Standing"** means a Member who has no outstanding Membership Fees and whose financial obligations (if any) towards the Company are discharged in full;

1.1.23 **"Litchis"** means the fruit of *Litchi chinensis*;

1.1.24 **"Membership Fee"** means the fees payable in such quantity, frequency and on such conditions as determined by the Board in terms of the Bye-Laws from time to time (acting in the sole and absolute discretion), provided however that such determination (upon any revision or amendment being brought about by the Board) shall be published to the Members as soon as reasonably practically possible following such determination. The Membership Fees as at the date of adoption of this MOI are as set out in **Annexure B**

1.1.25 **"MOI"** means the memorandum of incorporation of the Company;

1.1.26 **"Non-Profit Company"** has the meaning ascribed to it in the Act;

1.1.27 **"Production region"** means a geographical region as defined in clause 19.1 ;

1.1.28 **"Public Benefit Activity"** or **"PBA"** means a public benefit activity as contemplated in section 30(1) of the Income Tax Act;

1.1.29 **"the record date"** means the date set by the Board in order to determine which Members are entitled to (a) receive notice of Members' meetings; and (b) decide any matter by written consent or electronic communication as contemplated in section 60 of the Act;

1.1.30 **"the Republic"** means the Republic of South Africa;

1.1.31 **"Rules"** means the rules published by the Board as contemplated in clause 10 of this MOI;

1.1.32 **"Section"** refers to a section in the Companies Act.

1.1.33 Save as otherwise contained herein:

1.1.33.1 a reference to a Section by number refers to the corresponding Section of the Companies Act, 2008 (as amended);

1.1.33.2 words that are defined in the Companies Act, 2008 (as amended) bear the same meaning in this Memorandum of Incorporation as in that Act;

1.1.33.3 if the Act is amended at any time to confer any right or benefit on the Company, then this MOI shall be deemed to have been amended so as to result in the Company enjoying the full benefit of any such benefit to the Act.

1.1.33.4 the headings to the respective clauses are for reference purposes only and shall not be taken into account in the interpretation of the MOI.

1.1.33.5 Unless otherwise indicated herein, where any consent/approval is required for any act to be done by a party (including the Company and its Directors) such consent/approval shall be in writing and signed by that party or his authorised agent (acting on his written authority) whose consent/approval is required.

1.1.33.6 If notice is required or permitted to be given or published to any person, it is sufficient if the notice is transmitted electronically directly to that person in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.

1.1.33.7 If this MOI requires a document to be signed or initialled by or on behalf of:

1.1.33.7.1 a person, that signing or initialling may be effected in any manner provided for in the Electronic Communications and Transactions Act; or

1.1.33.7.2 two or more persons, it is sufficient if:

1.1.33.7.2.1 all of those persons sign a single original of the document, in person or as contemplated above; or

1.1.33.7.2.2 each of those persons signs a separate duplicate original of the document, in person or as contemplated in (h) above, and in such a case, the several signed duplicate originals, when combined, constitute the entire document.

1.1.33.8 If a manner of delivery of a document, record, statement or notice is prescribed in terms of this Memorandum of Incorporation for any purpose-

1.1.33.8.1 it is sufficient if the person required to deliver such a document, record, statement or notice does so in a manner that satisfies all of the substantive requirements as prescribed herein; and

1.1.33.8.2 any deviation from the prescribed manner does not invalidate the action taken by the person delivering the document, record, statement or notice, unless the deviation materially reduces the probability that the intended recipient will receive the document, record, statement or notice or is such as would reasonably mislead a person to whom the document, record, statement or notice is, or is to be, delivered.

2. INCORPORATION

2.1. This MOI was adopted by the incorporators of the Company (being three or more persons who are not related to each other), in accordance with section 13(1) and (2) of the Act.

2.2. The Company is incorporated in accordance with, and governed by:

2.2.1. the unalterable provisions of the Act;

2.2.2. the alterable provisions of the Act, but subject to those negations, restrictions, qualifications, limitations, extensions, variations or substitutions set out in this MOI; and

2.2.3. the other provisions of this MOI

3. THE COMPANY AND ITS OBJECTS

3.1. The Company is a Non-Profit company..

3.2. The main objects of the Company include (without limitation):

3.2.1. The collection, collation and distribution of information concerning the production and marketing of Litchis;

3.2.2. To encourage the co-ordination of export and local marketing of Litchis and to assist in the distribution of information to exporters;

3.2.3. To make provision for the necessary quality requirements and the application thereof in conjunction with the relevant statutory bodies;

3.2.4. To make recommendations concerning the handling and distribution of Litchis;

3.2.5. To carrying out research, to have research carried out and to co-ordinate such research concerning the production and marketing of Litchis;

3.2.6. To increase the demand for Litchis locally and overseas by advertising, promoting and such other means as the Board deems fit;

3.2.7. To collect funds by way of Membership Fees, donations, levies imposed on Members' Litchis and such other charges or fees as may be imposed in terms of the MOI and Bye-Laws; and

3.2.8. To act as the official mouthpiece of the Litchi Industry in negotiations with State bodies and organised agriculture.

4. POWERS OF THE COMPANY

4.1. The Company has all the legal powers and capacity of a natural person, except to the extent that the Company, as a juristic person, is incapable of exercising any such power, or having any such capacity or except to the extent that the Company's Memorandum of Incorporation provides otherwise.

4.2. The Company is not subject to any provisions contemplated in Section 15(2) (b) or (c) of the Act.

5. FUNDING OF THE COMPANY

5.1. In order to facilitate the achievement of its objectives, the Company intends to:

5.1.1. collect membership fees, levies and charges from its Members as set out in *inter alia* the Bye-Laws and/or;

5.1.2. accept donations from donors; and/or

5.1.3. raise funds from the general public; and/or

5.1.4. source services, expertise and skills which could assist the Company to achieve its objectives.

6. APPLICATION OF FUNDS

6.1. The Company shall not accept a donation where such donation:

6.1.1. may be recalled by the donor (except in the event of the Company failing to abide by the conditions of the donation); or

6.1.2. is coupled with a condition which will entitle the person making said donation to obtain some direct or indirect benefit from the application of the donation.

6.2. The Company shall apply its funds and resources solely and exclusively for the furtherance and for carrying on the stated objectives listed in clause 3 above, with the understanding that excess funds may be invested to generate income for future use.

6.3. Notwithstanding the provisions of clause 3, the Company may conduct trading or other business activities provided such trading or other business activities form a source of funding for or are related to the objectives listed in clause 3 above or as are consistent with or ancillary to the stated objectives of the Company and further subject to the understanding that the sole or principal purpose of the Company shall never be to conduct a commercial activity merely for the purposes of generating profits.

6.4. The investment of excess funds shall never be done in such manner as amounts to the indirect distribution of profits or an impermissible benefit as contemplated in the Income Tax Act. Surplus funds may be invested in the manner decided by the Board with an institution approved by the Board, who shall act with prudence, integrity and reasonable care.

6.5. Subject to the provisions of clause 6.6 below, the income, profits and assets of the Company, however derived, shall not in any manner whatsoever be distributed to its incorporators, Directors, officers or persons related to any of them (but always subject to such exceptions as the Act and the Income Tax may permit) but must instead be applied to advance the stated objectives of the Company. The Company is however permitted to:

6.5.1. acquire and hold securities issued by a profit company; and

6.5.2. carry on any business, trade or undertaking, directly or indirectly, alone or with any other person, but subject to clause 6.3 above.

6.6. Notwithstanding, the provisions of clause 6.5 above, the Company shall be entitled to:

6.6.1. pay reasonable remuneration for goods delivered to the Company or for services rendered to the Company or at the direction of the Company;

6.6.2. pay a reasonable amount for or to make a reasonable reimbursement for expenses incurred in advancing a stated objective of the Company;

6.6.3. to pay any reasonable amount which is due and payable by the Company to a third party in terms of a *bona fide* agreement between the Company and that third party or another third party;

6.6.4. make payment in respect of any legal obligation that is binding on the Company;

6.6.5. make payment in respect of any rights of that person, to the extent that those rights are administered by the Company in order to advance one of its stated objectives; and

6.6.6. pay reasonable remuneration to employees, office bearers or other persons serving the Company for services actually rendered to the Company.

7. SPECIAL TAX EXEMPTION PROVISION

7.1. It is specifically recorded that:

7.1.1. the funds of the Company will be used solely for the objects for which it has been established;

7.1.2. at least 3 (three) directors shall at all times be unrelated (in terms of section 2 of the Act) to the other directors, and no single director or prescribed officer shall directly or indirectly control the decision-making powers of the Company;

7.1.3. no activity will directly or indirectly promote the economic self-interest of any fiduciary or employee of the Company other than by way of reasonable remuneration;

7.1.4. no funds will be distributed to any person, other than in the course of undertaking the public benefit activities referred to in this MOI;

7.1.5. the activities of the Company are to be carried on in a non-profit manner;

7.1.6. the Company will not be a party to, or knowingly permit, or has knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner;

7.1.7. no resources will be used directly or indirectly to support, advance or oppose any political party;

7.1.8. no remuneration will be paid to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with the Company's objects;

7.1.9. no donation will be accepted which is revocable at the instance of the donor for reasons other than a material failure to confirm to the designated purpose and conditions of such donation, including and misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act: Provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, which has its sole or principle object as the carrying on of any public benefit activity) may not impose any conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation;

7.1.10. The Company may not knowingly and will not knowingly become a party to or permit itself to be used as part of, an impermissible avoidance arrangement as contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act; and

7.1.11. any amendment to this Memorandum of Incorporation will be submitted to the Commissioner of the South African Revenue Services within 20 (twenty) business days of such amendments being adopted.

8. WINDING-UP

8.1. The Company may be voluntarily wound-up, as contemplated in section 80 of the Act, by way of a special resolution of its Members.

8.2. Upon dissolution of the Company (for whatever reason), its net assets must be distributed in the manner set out below determined in accordance with item 1(4)(b) of schedule 1 to the Act in that:

8.2.1. no past or present Member or Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and

8.2.2. the entire net value of the Company must be distributed to one or more:

8.2.2.1. public benefit organisations as approved in section 30 of the Income Tax Act, an institution;

8.2.2.2. any institution, board or body which is exempt from payment of income tax in terms of section 10(1)(cA)(i) of the Income Tax Act, which has its sole or principal object as carrying on a public benefit activity; or

8.2.2.3. any department of state or administration in the national or provincial sphere of government of the Republic as contemplated in section 10(1)(a) or (b) of the Income Tax Act.

9. AMENDMENT OF MOI

9.1. An amendment to the MOI may be proposed by

9.1.1. the Board of the Company; or

9.1.2. Members entitled to exercise at least 10% (ten percent) of the voting rights that may be exercised on such a resolution.

9.2. Such amendment must be adopted at a Members' meeting by voting by way of a show of hands or any other method as contemplated in this MOI.

9.3. The Company must deliver a notice to all Members, as of the record date of the meeting, in the manner prescribed by the Act, not less than 21 (twenty-one) days before the meeting is to begin.

9.4. The Company must publish a notice of any alteration of this MOI by forthwith filing a notice of the alteration with the Commission and the Commissioner for the South African Revenue services.

10. COMPANY RULES

10.1. The Board is authorised to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or in this Memorandum by:

10.1.1. publishing a copy of any Rules or amendments to such Rules made in terms of section 15(3) to 15(5) of the Act by delivering a copy of such Rules or amendments to each Member by ordinary mail or e-mail; and

10.1.2. filing a copy of those Rules with the Commission.

10.2. Any Rules so made shall take effect and become binding in the manner contemplated in section 15(4) of the Act.

10.3. The Board, or any individual authorised by the Board, may alter the Rules, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by publishing a notice of any alteration made by delivering a copy of such amendments to each Member by ordinary mail or e-mail and filing a notice of the alteration with the Commission.

11. APPLICATION OF OPTIONAL PROVISIONS OF THE ACT

11.1. Unless the Company is required by the Act and/or the Regulations to have its financial statements audited every year, the Company elects in terms of Section 34(2), not to comply with the provisions of the whole of Chapter 3 of the Act.

11.2. The Company shall however voluntarily have its financial statements independently reviewed or audited every year.

12. COMPANY SECRETARY

12.1. The Company elects not to appoint a Company Secretary.

13. COMPANY RECORDS

13.1. The financial year end of the Company will be the last day of September in each year.

13.2. Each year, within six months after the end of its financial year the Company must have its annual financial statements prepared and independently reviewed or audited by a registered auditor in accordance with the Financial Reporting Standards applicable to the Company.

13.3. The Company must keep accurate and complete accounting records in English:

13.3.1. so as to fairly represent the state of affairs and business of the Company, and to explain transactions and the financial position of the Company;

13.3.2. as necessary to enable the Company to satisfy its obligations in terms of the Act and any other law regulating the preparation of financial statements; and

13.3.3. including any prescribed accounting records, which must be kept in the prescribed manner and form, such accounting records to comply with the provisions of the Act and the Regulations made in terms of the Act.

13.4. The Company's accounting records must be kept at, or be accessible from, the registered office of the Company.

14. MEMBERS OF THE COMPANY AND THEIR VOTING RIGHTS

14.1. The Company is a Non-Profit Company with (subject to clause 14.2) voting Members.

14.2. Only Grower Members shall have voting rights. No other members shall be entitled to vote or exercising any voting entitlements in relation to Members. For the sake of clarity and avoidance of doubt any reference to "voting" or "votes" insofar as it relates to Members shall not be construed as affording voting rights to categories of Members other than Grower Members.

14.3. The number of votes which Grower Members are entitled to, shall be calculated with reference to the average amount in levies paid to the Company by such Grower Member in the preceding 3 (three) financial years in the manner set out in the table below, subject to the following qualifications:

14.3.1. Any Grower Member paying less than an average of R10,000 per season in levies over the preceding 3 (three) financial years shall be entitled to pool his levies with one or more Grower Member to collectively obtain one vote for every R10,000 of levies paid (average over past 3 seasons).

14.3.2. The monetary values named in clause 14.3.1 and those contained in the table below shall escalate on the first day of each financial year at of the rate of inflation as determined by the average South African Consumer Price Index (CPI) for the previous calendar year.

AVERAGE LEVY AMOUNT PAID OVER THE PAST 3 FINANCIAL YEARS	**NUMBER OF VOTES**
R0 to R9,999	0
R10,000	1 vote for every R10,000 in levies paid

14.4. In the event of any dispute as to the quantification of levies paid by a Grower Member, the determination by the Board shall be final and binding. Grower Members shall provide all such data reasonably requested by the Company for purposes of enabling the calculation above.

14.5. Notwithstanding anything else herein contained and by way of an overriding provision, only voting Members who are Members in Good Standing shall be entitled to exercise any voting rights in respect of any matter which is to be voted on by Members.

14.6. Members:

14.6.1. must be approved by the majority of the Board following receipt of an application for Membership stating the category of membership and such additional information as the Board may in its sole, absolute and unfettered discretion determine, who may in their sole, absolute and unfettered discretion refuse Membership, without assigning any reasons therefor;

14.6.2. must pay the prescribed Membership fee as determined by the Board and in such manner and format determined by the Board, provided that any Membership fees (at the election of the Board) which are not paid on the due date therefore shall attract interest in accordance with the interest rate specified in the Prescribed Rate of Interest Act 55 of 1975.

14.6.3. Membership in the Company will terminate:

14.6.3.1. upon the expiration of the period of at least 3 (three) months' notice in writing by the Member to the Company of his intention to terminate his Membership;

14.6.3.2. if, at any time, notwithstanding anything contained in this MOI, the Company, by ordinary resolution, elect to remove a Member;

14.6.3.3. where the Board elects to terminate the Membership by way of an ordinary Board resolution;

14.6.3.4. if such Member's estate is surrendered or sequestrated, whether voluntarily or compulsorily;

14.6.3.5. on the death of a Member;

14.6.3.6. where the Board so elects, upon a Member failing to pay Membership Fees upon same becoming due and payable;

14.6.3.7. where a *curator bonis* is appointed to conduct the affairs of a Member; or

14.6.3.8. if such Member commits any act of insolvency or where a Member is deemed unable to pay its debts in terms of any applicable laws.

15. PROXIES

15.1. Any Member may at any time appoint any 1 (one) natural person who is a Member, as a proxy to:

15.1.1. participate in, and speak and vote at, a Members' meeting on behalf of that Member; or

15.1.2. give or withhold written consent on behalf of that Member to a decision contemplated in section 60 of the Act (viz a resolution submitted for consideration to the Members entitled to exercise voting rights in relation to that resolution for “round robin adoption” as opposed to the convention of an “in person” meeting);

15.2. A proxy appointment:

15.2.1. must be in writing, dated and signed by the Member; and

15.2.2. remains valid only for a specific Members’ meeting or specific decisions as contemplated in clause 15.1 above.

15.3. The holder of a proxy or other written authority from a Member may, if so authorised thereby, represent such Member at any meeting of the Company and such holder shall deliver the power of attorney or other written authority (if any), or a copy thereof, to the Company before such holder exercises any rights of the Member at a Members' meeting.

15.4. It is however specifically recorded that no Member shall be entitled to vote on behalf of more than 5 (five) proxies.

16. MEMBERS’ MEETINGS

16.1. In addition to those instances where Members’ meetings are specifically required by the Act, the Company is required to convene:

16.1.1. An annual general meeting within 12 (twelve) months after the expiration of the financial year of the Company; and

16.1.2. whenever not less than 10% (ten percent) of the voting Members demand a Members’ meeting of which such meetings may be held at any time.

16.2. Annual general meetings and other Members’ meetings will be held at such a time and place as the Board appoints, provided such meetings will be held within the Republic.

16.3. The business to be transacted at an annual general meeting shall as a minimum include:

16.3.1. The presentation of:

16.3.1.1. the chairman’s report;

16.3.1.2. the audited or independently reviewed financial statements for the immediately preceding financial year; and

16.3.1.3. Ratification of Area Directors elected in the various Production Regions

16.3.2. Election of directors (to the extent required in the Act or the MOI);

16.3.3. The election and appointment of (to the extent required in the Act or the MOI):

16.3.3.1. an auditor for the ensuing financial year.

16.4. The minimum number of days for the Company to deliver notice in writing of a Members' meeting is in respect of:

16.4.1. the annual general meeting, 14 (fourteen) days;

16.4.2. a meeting called for the passing of a Special Resolution, 15 (fifteen) days; and

16.4.3. any other Members' meeting, ten (10) days

of which the notice must comply with section 62(3) of the Act.

16.5. The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 of the Act, is not limited or restricted by this MOI.

16.6. No Members' meeting may commence, nor may any matter be considered unless a quorum of Members is present. Save as otherwise provided herein, Five (5) Members who are personally present, provided that they are capable of exercising 50% (fifty percent) or more of the voting rights will be a quorum.

16.7. If, within 1 (one) hour after the appointed time for a meeting to begin has elapsed and sufficient Members to establish quorum are not present:

16.7.1. for that meeting to begin, the meeting is postponed without motion, vote or further notice, for 14 (fourteen) days; or

16.7.2. for consideration of a particular matter if there is:

16.7.2.1. other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion; or

16.7.2.2. other business on the agenda of the meeting, the meeting is adjourned for 1 (one) week, without motion or vote; and

16.7.2.3. if at an adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the Members present will be quorum.

16.8. Where quorum is established for a meeting to begin or a matter to be considered, the meeting may continue, irrespective of whether or not the quorum is contained.

16.9. The chairman or, failing him, the deputy-chairman of the Directors will be the chairman of each general meeting. If no chairman or deputy-chairman is present and willing to act, the Members present will elect one of the Directors or, if no Director is present and willing to act, a Member, to be chairman of that general meeting.

16.10. The chairman of a general meeting will, if obliged to do so in terms of the Act, and may, in his discretion in any other circumstance, adjourn that general meeting from time to time.

16.11. In the case of an equality of votes, the chairman of the meeting shall be entitled to a second or casting vote.

17. MEMBERS RESOLUTIONS

17.1. For an ordinary resolution to be adopted at the Members' meeting, it must be supported by more than 50% of the Members who voted on the resolution.

17.2. For a special resolution to be adopted at the Members' meeting, it must be supported by at least 67% of the Members who voted on the resolution, of which, such special resolution will be required only relating to matters as contemplated in section 65(11) of the Act as set out in **Annexure D,** A declaration by the chairman that a resolution has been carried by show of hands, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minutes of the meeting, shall be conclusive evidence of the fact. Scrutineers may be appointed by the chairman to count the votes. No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting. Any objection at a meeting as to the admissibility of any vote shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

17.3. At any general meeting a resolution put to vote will be decided on a show of hands if no poll is demanded on or before the declaration of the result of a show of hands.

17.4. A poll may only be demanded by:

17.4.1. the chairman of the meeting; or

17.4.2. At least 5 (five) Members having the right to vote at the general meeting.

17.5. Notwithstanding the provisions above, voting in respect of the following matters will be conducted by way of a closed ballot (as a polled vote):

17.5.1. Any amendment to the Memorandum of Incorporation;

17.5.2. The adoption of any special resolution; and

17.5.3. Any matter, which the Board (acting in its reasonable discretion) is of the view is of significant importance and warrants voting by way of a secret ballot.

17.6. A Member, being a juristic entity, shall be represented at any meeting of Members by a single representative appointed by it, provided such Member shall be required to deliver to the Board reasonable documentary proof of such representative's authority (in such manner and form determined by the Board) no later than 5 (five) business days prior to the meeting.

18. NOTICES OF MEMBERS' MEETINGS

18.1. A notice may be given by the Company to any Member, either personally or by sending it by e-mail, post in a prepaid letter addressed to such Member at his registered address outside the Republic, or at the address, if any, within the Republic supplied by him to the Company for the giving of notices to him.

18.2. A notice of a Members' meeting must be in writing, and must include:

18.2.1. the date, time and place for the meeting, and the record date for the meeting;

18.2.2. the general purpose of the meeting, and any specific purpose contemplated in section 61(3)(a) of the Act, if applicable;

18.2.3. a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that resolution to be adopted;

18.2.4. in the event of an annual general meeting of the Company:

18.2.4.1. the financial statements to be presented or a summarised form thereof; and

18.2.4.2. a reasonably prominent statement that:

18.2.4.2.1. a Member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the Member.

19. DIRECTORS AND OFFICERS

19.1. The Board of the Company must comprise of at least 7 (seven) and a maximum number 15 (fifteen) Directors, provided that if the application of the election process in clause 20.2 results in more than 6 (six) Grower Members being appointed as Directors, the maximum number of Directors shall be increased by the same amount as the number of Grower Member Directors in excess of 6 (six) Directors. The Board of the Company must comprise of at least

19.1.1. A managing director (who need not be representative of a particular Production Region); and

19.1.2. Four (4) directors representing Mpumalanga Province;

19.1.3. Two (2) directors representing Limpopo Province;

19.1.4. One director representing provinces of South Africa other than Mpumalanga Province and Limpopo Province;

19.1.5. Three (3) directors each representing one of the three (3) Grower Members that have contributed the highest amounts in levies over the past three financial years.

19.2. In the event of any dispute arising in relation to the quantification of the levies paid by a Grower member for the purpose envisaged in clause 9.1.5, the determination made by the Board in this regard shall (save for gross and manifest error) be binding.

19.3. In the event of the Board requesting any information and/or documentation for purposes of making a determination in the manner envisaged in clause 19.1.5, such Grower Member shall provide all such information reasonably requested by the Board and render all such reasonable assistance and cooperation as may be required for purposes of enabling the Board to make the determination contemplated in clause 19.1.5 above.

20. APPOINTMENT AND REMOVAL OF DIRECTORS

20.1. Subject to Schedule 1 of the Act and this MOI, Directors are elected:

20.1.1. by the Members of the Company in a Members' meeting; and

20.1.2. for a period of 2 (two) years, provided that a director's period of appointment has expired shall remain eligible for re-appointment in terms of the provisions of this MOI.

20.2. The persons nominated for appointment to the Board must be Grower Members or (where the Grower Member is a juristic person) the representative of such Grower Member.

20.3. The Board may appoint a minimum of 1 (one) and a maximum of 3 (three) additional persons (who are not Members or representatives of Members) as additional directors to the Board **("Independent Directors")**. The Board, in making an election as to the appointment of Independent Directors shall have regard to the need for, marketing, research, sound corporate governance, appropriate skills, experience and expertise required by the Board in discharging their obligations towards the Company.

20.4. A Member conducting business in more than one Production Region may only exercise the rights contemplated above in relation to a single Production Region with the understanding that the Member concerned shall be entitled to exercise an election in relation to the Production Region in respect of which he choses to exercise his rights. Upon making such election (where applicable), the Member's entire Litchi production (across all Production Regions) shall be taken into account.

20.5. The Company may remove any Director by ordinary resolution once special notice has been given and the Director has been given a reasonable opportunity to make a presentation as contemplated in section 71(2) of the Act.

20.6. The office of any Director will be vacated if the Director:

20.6.1. Becomes disqualified in terms of the Act

20.6.2. is removed by an ordinary resolution of the Members who nominated him for appointment;

20.6.3. is declared mentally unfit;

20.6.4. dies;

20.6.5. resigns by notice in writing to the Company; or

20.6.6. absents himself from meetings of Directors on 3 (three) consecutive occasions without the leave of the other Directors, and they resolve that his office will be vacated.

21. AUTHORITY OF BOARD DIRECTORS

21.1. The authority of the Board to manage and direct business and affairs of the Company, as set out in section 66(1) of the Act, is unlimited.

22. REMUNERATION OF DIRECTORS

22.1. The remuneration payable to Directors, if any, for services rendered as directors, shall be approved by way of special resolution in accordance with the provisions of section 66 of the Act, but having regard to the provisions of clause 7 of the MOI.

22.2. The Board may pay any director who serves on any committee or who devotes special attention to the business of the Company, or otherwise, performs services, which in the opinion of the Board are outside the scope of the ordinary duties of a director, such extra remuneration as they may determine and provided such remuneration has been approved by a special resolution of the Members in accordance with the provisions of section 66 of the Act, but having regard to the provisions of clause 7 of the MOI.

23. BOARD MEETINGS

23.1. The Board may meet for the despatch of business, adjourn or otherwise regulate its meetings, as the Directors think fit. They may determine what notice must be given of their meetings and the means of giving that notice, provided that any such prior determination may be varied to the extent necessitated by the circumstances and reasons for the Directors' meeting in question.

23.2. The authority of the Company's Board to consider a matter other than at a meeting, as contemplated in section 74 of the Act, is not limited or restricted by this MOI.

23.3. The right of the Board to requisition a meeting at any time, as set out in section 73(1) of the Act, may be exercised by any one of the Directors.

23.4. The quorum for all board meetings will be 50% (fifty percent).

23.5. All resolutions of the Board shall be decided by a majority vote.

23.6. A director unable to attend any meeting of the Board may authorise any other director to vote for him at that meeting.

23.7. In the event of an equality of votes the chairman will have a second or casting vote.

23.8. If, within thirty (30) minutes after the appointed time for a meeting to begin has elapsed and sufficient Directors to establish quorum are not present:

23.8.1. for that meeting to begin, the meeting is postponed without motion, vote or further notice, for 1 (one) week; or

23.8.2. for consideration of a particular matter if there is:

23.8.2.1. other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion; or

23.8.2.2. other business on the agenda of the meeting, the meeting is adjourned for 1 (one) week, without motion or vote; and

23.8.2.3. if at an adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the Directors present will be quorum.

23.9. Where quorum is established for a meeting to begin or a matter to be considered, the meeting may continue, or the matter may be considered regardless of whether or not 50% (fifty percent) of the voting Directors attending the meeting remain present.

24. COMMITTEES OF THE BOARD

24.1. The authority of the Board to appoint committees of Directors, and to delegate to any such committee any of the authority of the Board, and to include in any such committee persons who are not Directors, is not limited or restricted by this MOI.

24.2. The authority of any committee appointed by the Board shall be determined by the Board resolution establishing such committee.

24.3. The Board may from time to time appoint an individual to the office of Chief Executive Officer for such a period and generally on such terms as they may think fit.

24.4. The Board may from time to time entrust to and confer upon the managing director or a Chief Executive Officer for the time being such of the powers vested in the Board as the Board may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as the Board may deem expedient; and the Board may confer such powers either collateral or to the exclusion of, and in substitution for, all or any of the powers of the Board, and may from time to time revoke or vary all or any of such powers.

25. INDEMNIFICATION OF DIRECTORS

25.1. The authority of the Board to:

25.1.1. advance expenses to a Director, or indemnify a Director, in respect of

25.1.1.1. the defence of legal proceedings, as set out in section 78(3) of the Act;

25.1.1.2. indemnify a Director in respect of liability, as set out in section 78(5) of the Act; and

25.1.1.3. purchase insurance to protect the Company, or a Director, as set out in section 78(6) of the Act

is not limited or restricted by this Memorandum.

26. CHAIRMAN

26.1. The chairman and vice chairman (who will serve as such for both Board and Members' Meetings) must be elected by the Board for a period of 2 (two) years, following the annual general meeting. Such elected chairman and vice chairman shall (for purposes of clause 19) not be deemed to be representative of any particular Production Region and to the extent that their election results in non-compliance with the provisions of clause 19.1.1, the Company shall forthwith procure the taking of such steps as may be required to procure that the composition of the Board complies with the requirements of clause 19.1.1 (viz applicable Production Region representation).

26.2. In the interests of continuity of leadership (and subject to the provisions of the Act and clause 26.3 below), the vice chairman should be elected with the view that the vice chairman will become chairman at the end of the current chairman's term of office. The past chairman (i.e the chairman whose period of office has expired) shall be required to serve on the board for the same period as the newly elected Chairman (subject to the provisions of the Act and clause 26.3 below).

26.3. The chairman and vice chairman may be removed and replaced at any time by way of a resolution of the Board. The chairman or vice chairman contemplated to be removed in terms of a resolution of the Board shall not be entitled to exercise a vote in respect of such resolution.

26.4. The chairman shall, following his appointment, immediately resign from any political or other position, which in the opinion of the Board, could have an adverse effect on the execution of his/her duties as office-bearer of the Company. In addition the Chairman shall not make him/herself available or accept appointment for any public political position during his term of office.

26.5. Should a permanent vacancy arise in respect of the office of chairman, the vice chairman shall fill this vacancy until such time as the Board elects a new Chairman.

27. DETERMINATION OF DISPUTES

27.1. Any dispute arising out of or in connection with the MOI, or the Rules, except where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction, must be determined in terms of this clause.

27.2. If a dispute arises, the party who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved between the parties to that dispute within 14 (fourteen) days of such notice, either of the parties may refer the dispute for determination in terms of clause 27.3.

27.3. If a party exercises his right in terms of clause 27.2 to refer the dispute for determination, such dispute shall be referred to:

27.3.1. a practising senior counsel of not less than 10 (ten) years' standing, if the parties agree that the dispute in question is a legal one; or

27.3.2. a practising chartered accountant of not less than 10 (ten) years' standing if the parties agree that the dispute in question is an accounting one; or

27.3.3. If the parties cannot agree:

27.3.3.1. on the person referred to in clauses 27.3.1 to 27.3.2; or

27.3.3.2. whether or not the dispute falls within the framework of clauses 27.3.1 to 27.3.2;

within 14 (fourteen) days after such dispute has arisen and in regard to which any of the parties has notified the other, either of the parties may refer the matter to the Arbitration foundation of Southern Africa to resolve the issue.

27.4. Any person (the expert) agreed upon by the parties to the dispute or nominated as aforesaid shall in all respects act as an expert and not as an arbitrator.

27.5. Subject to clause 25.6 the expert shall be bound to follow the general substantive principles of South African Law.

27.6. The expert shall be vested with the entire discretion as to the procedure and manner to be followed in arriving at his decision, including the giving and receipt of evidence.

27.7. The parties shall use their best endeavours to procure that the decision of the expert shall be given within 21 (twenty -one) days or so soon thereafter as possible, after it has been demanded.

27.8. The expert's decision shall be final and binding on all the parties to the dispute and shall be carried into effect and may be made an order of any competent court at the instance of any of the parties at his cost.

27.9. The provisions of this clause:

27.9.1. constitutes the irrevocable consent by the parties to any proceedings in terms thereto and none of the parties shall be entitled to withdraw therefrom or claim that in any such proceedings that it is not bound by such provisions; and

27.9.2. severable from the rest of these clauses and shall remain in effect even if this MOI is terminated for any reason whatsoever.

ANNEXURE A MEMBER SCHEDULE

GROWER MEMBERS
Any person or entity engaging, in a proprietary capacity, in the commercial production of litchis
ASSOCIATE MEMBERS
Any person or entity that receives litchis from growers for the purpose of preparing and packing for sale such litchis; and includes persons or entities that buy litchis from growers and / or act as agents for the sale of litchis, and act as agents or contractors for litchi processing.
AFFILIATE MEMBERS
Persons or entities that have an interest in the litchi industry, including but not limited to: litchi nurseries, agricultural advisors, wholesalers, retailers, equipment suppliers, researchers and educators or any persons who in the sole discretion of the Board should be afforded Membership. Affiliate Members may also include persons who are situated, resident or domiciled outside of South Africa.
HONORARY LIFE MEMBERS
Persons appointed by the Board (acting in their sole and absolute discretion) in recognition of special or extraordinary services rendered to the litchi industry.
SPECIAL MEMBERS
Any person who, in the discretion of the Board (acting in their sole and absolute discretion), merits membership by virtue of special qualifications or experience, of value to the Litchi industry.
<u>INTERNATIONAL MEMBERS</u>
Any person or entity situated, resident or domiciled outside of South Africa

ANNEXURE B – MEMBERSHIP FEES AND LEVIES AS AT DATE OF ADOPTION OF MOI

	Fees and levies excluding VAT
Grower Members	
Joining fee	R 1 000
Annual fee	R50 /ha or part thereof planted to litchis
Export levy	32 c/kg on litchis exported
National Fresh Produce Markets Levy	32 c/kg on litchis sold on the National Fresh Produce Markets
Direct Sales	32 c/kg on litchis sold into the formal sector including, but not limited to, retailers and wholesalers.
Processing levy	2% of the price paid to the grower for litchis sold for processing
Bakkie market levy	2% of the price paid to the grower for litchis sold into the informal market
Associate Members	
Joining fee	R 1 000
Annual fee	R 1 500
Affiliate Members	
Joining fee	R 1 000
Annual fee	R 1 500
Honorary life members	
Joining fee	none
Annual fee	none
International Members	
Joining fee	
Annual fee	
Special Members	
Joining fee	none
Annual fee	none

BYE-LAWS OF THE SOUTH AFRICAN LITCHI GROWERS' ASSOCIATION

1. ENTRANCE FEES AND SUBSCRIPTIONS:

The entrance fees and annual subscriptions shall be, in respect of:-

1.1 Existing Grower Members – members who are paying levies and are currently growing litchis, shall be liable for annual subscription at R50/ha.

1.2 New Grower Members – any prospective new grower wishing to join the Association shall be liable for an initial joining fee of R1000.00 (ONE THOUSAND RAND). Such new members will be required to pay levies as agreed at a general meeting.

1.3 New and Existing Affiliate Members and Associate Members will be liable for an annual subscription of R1500.00 (ONE THOUSAND FIVE HUNDRED RAND). Persons or entities applying for membership for the first time will be liable of for an initial joining fee of R1000 (ONE THOUSAND RAND) in addition to the annual subscription fee of R1500.

1.4 Special Members and Honorary Life Members shall not be required to pay a joining fee or a subscription fee;

1.5 Joining fees and annual subscription fees may be revised by the Board from time to time provided that changes in annual subscription fees shall only take effect from the commencement of the next financial year of the Company;

1.6 Joining fees and subscriptions shall become payable on approval of membership and thereafter within 30 (THIRTY) days of the commencement of the financial year of the Company;

1.7 Any member intending to resign shall notify the Chairman in writing before the date on which such subscription become due and failing which shall be liable to pay one half of the annual subscription.

2. LEVIES

Grower Members shall be liable to pay to the Company a levy on the following sales:

2.1 **Export Sales**: 32 c/kg exported
2.2 **Sales on National Fresh Produce Markets**: 32 c/ kg
2.3 **Direct sales** (i.e. sales directly into the formal sector e.g. retailers): 32 c/kg
2.4 **Processing Sales:** 2% of the price paid to the grower by the processor
2.5 **"Bakkie" sales (i.e. sales into the informal sector):** 2% of the price paid by the vendor to the grower.

2.6. All levies payable, shall unless recovered directly by the Company, be payable to the Company within 45 (FORTY FIVE) days of payment being received by the member.

2.7 The Company may call on members to produce such documentation or evidence as it may deem necessary to support the sales of Litchis by members;

3. APPLICATION FOR MEMBERSHIP:

3.1 Prospective members shall complete and sign an application form, pay the prescribed application and subscription fees. The application will then be presented to the Board for approval. Approval of membership is at the sole discretion of the Board.

3.2 A signed application form for membership shall constitute an acknowledgement by the member that he agrees to be bound by the Memorandum of Incorporation and Rules and Regulations of the Company.

4. SUSPENSION AND / OR EXPULSION OF MEMBERS:

4.1 Any member who breaches any of the provisions of the Memorandum of Incorporation or these Bye-Laws may have his membership of the Company suspended for such period as the Board of Directors may deem fit or be expelled from the Association and have his name removed from the register of members.

4.2 Any member whose membership is suspended or who is expelled and has had his name removed from the register of members and is a member of the Board of Directors shall automatically on the date of such suspension or expulsion, cease to be a member of the Board of Directors.

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ANNEXURE D – LIST OF MATTERS REQUIRING A SPECIAL RESOLUTION

COMPANIES ACT, 2008	
16(1)(c) read with 16(5)	Amending the MOI which may take the form of a new MOI in substitution for the existing MOI or by alterations to the MOI by (i) changing the name of the Company; (ii) deleting, altering or replacing any of its provisions; (iii) inserting any new provisions into the MOI; or (iv) making any combination of the alterations contemplated in (i), (ii), (iii) or (iv)
18(1)(b)	Ratifying a consolidated revision of the MOI
20(2) read with 20(3)	Ratifying an action by the Company or the directors outside the authority of the MOI
36(2)	Changes to the authorisation and classification of Shares, the numbers of authorised Shares of each class and the preferences, rights, limitations and other terms associated with each class of shares as set out in the MOI
41(1)	Issue of shares or securities convertible into shares, or a grant of options contemplated in section 42 or a grant of any other rights exercisable for securities to (i) Directors/future Directors, prescribed officers/future Prescribed Officers; (ii) persons Related/Inter-related to the Company or to a Director or Prescribed Officer of the Company; or (iii) nominee of a person contemplated in (i) or (ii)
41(3)	Issue of shares, securities convertible into shares or rights exercisable for shares in a transaction, or a series of integrated transactions, if the voting power of the class of shares that are issued or issuable as a result of the transaction or series of integrated transactions will be equal to or exceed 30% (thirty percent) of the voting power of all the shares of that class held by shareholders immediately before the transaction or series of transactions
44(3)	Financial assistance by way of a loan, guarantee, the provision of security or otherwise to any person for the purpose of, or in connection with, the subscription of any option, or any securities, issued or to be issued by the Company or a Related or Inter-related Company, or for the purchase of any securities of the Company or a Related or Inter-related Company
45(3)(a)(ii)	Financial Assistance to a Director or Prescribed Officer of the Company or of a Related or Inter-related Company or corporation, or to a member of a Related or Inter-related corporation, or to a person related to any such Company, corporation, director, prescribed officer or member
47(1)	The issue of shares as Capitalisation Shares
65(11)(a)	Amending the Company's MOI to the extent required by section 16(1)(c)
65(11)(b)	Approving the voluntary winding-up of the Company, as contemplated in section 80(1)
65(11)(c)	Approving any proposed fundamental transaction, to the extent required by Part A of Chapter 5 of the Companies Act, 2008
65(12)	Any other matter as required in terms of the MOI not contemplated in section 65(11)
66(9)	Save as set out in the MOI, remuneration to Directors for their service as Directors
80(1)	Voluntary winding up the Company (if solvent)
81(1)	Winding up of the Company by court order (if solvent)

112(2)	Disposal of whole or greater part of Company's assets or undertaking in accordance with section 115
115(2)	A fundamental transaction - disposal of, or giving effect to an agreement or series of agreements to dispose of, all of the greater part of the Company's assets or undertaking, implementing an amalgamation or a merger, or implementing a scheme of arrangement