

NORTHERN TASMANIA DEVELOPMENT

CORPORATION LIMITED

ACN 616 650 367

MEMBERS AGREEMENT

2020-2023

Based on the 2017 Previous Member's Agreement by Levi and Stacey

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Schedule of Particulars

1. **Date of Agreement** The day of 2020
2. **The Company** Northern Tasmania Development Corporation Limited
also trading as NTDC Limited
("the Company")
3. **Members** As set out in the Schedule of Members in the
Company Constitution
("the Members")
4. **Registered Office** Level 1, 93 York Street
Launceston in Tasmania
5. **Sunset Period** Three (3) years

End of Schedule of Particulars

This Members Agreement is made on the date set out at Item 1 of the Schedule of Particulars.

Between The Company set out at Item 2 of the Schedule of Particulars

And The Members set out at Item 3 of the Schedule of Particulars

Background

- A. The Company is a properly constituted company limited by guarantee.
- B. Historically, the Company had previously existed as a not-for-profit company but was converted to an incorporated association in 2012¹. However, upon the recommendation of Bill Fox & Associates, the shareholders of the Company in its prior form agreed to adopt a recommendation to convert to a company limited by guarantee in 2017.
- C. As at the date of this Agreement, the Members set out at Item 2 of the Schedule of Particulars are:
1. all of the Members of the Company; and
 2. all bound by guarantee to contribute the Guarantee Amount, set out in the Company Constitution, to the Company on a winding up.
- D. The Members have agreed to enter into this Members Agreement (“the Agreement”) to more fully regulate their legal, commercial and business relationships as members of the Company.
- E. The corporate entity of the Company is also joined in to this Agreement in order to take notice of the provisions contained in this Agreement and as far as is permitted by the Corporations Law and Company’s constituent documents, to conduct the affairs and business of the Company as contemplated by the provisions of this Agreement.

Agreement

1. **Definitions and Interpretation**
 - 1.1 Unless there is something in the subject or context inconsistent the following meanings apply in this Agreement:

¹ Bill Fox & Associates, 2016, *Review of Regional Bodies in Northern Tasmania Final Report*, p6.

- (a) "Agreement" means this Members Agreement and all of the Background, Parts, terms, clauses, schedules, annexures, tables or exhibits to it, as amended by the parties from time to time;
- (b) "Assets" means the all of the assets, property (real and personal) and choses in action of the Company;
- (c) "Background" means the part of this Agreement that follows the heading of that name, and enumerated by letters rather than numbers;
- (d) "Confidential Information" means and includes:
 - (i) any information concerning the Company, its methods of operation, strategic direction, marketing and other activities;
 - (ii) financial information concerning the Company and its related activities;
 - (iii) specialised or corporate documentation produced by the Company; and
 - (vi) specialised of corporate documentation produced by entities associated with the Companywhich information, whether in the nature of trade secrets or otherwise, is not in the public domain;
- (e) "Constituent Documents" means:
 - (i) this Agreement;
 - (ii) the Company Constitution of the Company;
 - (iii) any by-laws created by the Company under the Company Constitution; and
 - (iv) any other document deemed to be a Constituent Document by the Company
- (f) "Corporations Law" means the *Corporations Act 2001 (Cth)* as amended from time to time;

- (g) "Director" means, in the case of a natural person or persons, the respective heirs, personal legal representatives and permitted assigns of that person or persons;
- (h) "Division 7" means Division 7 of the *Income Tax Assessment Act 1997* in respect of inter-entity and related-party loans;
- (i) "Intellectual Property" has the following extended meaning:
 - (i) the Company's name and all unregistered trading names used by the Company;
 - (ii) all copyright, moral rights, trademarks (registered and unregistered), designs (registered and unregistered) of the Company;
 - (iii) all of the documents, forms, processes, know-how, systems, of any description of the Company;
 - (iv) all domain names, telephone numbers and email addresses used in the Company; and
 - (v) all hard copy images used in yellow pages and other advertising, if any, of the Company;
- (j) "Member" means:
 - (i) in the case of a natural person or persons, the respective heirs, personal legal representatives and permitted assigns of that person or persons; and;
 - (ii) in the case of a corporation or trust entity, the officers, servants, agents, attorneys and permitted assigns of that entity;
 - (iii) in the case of any other body, however it is constituted, the officers, servants, agents, attorneys and permitted assigns of that body;
- (k) "Company" means, in the case of a corporation, the officers, servants, agents, attorneys and permitted assigns of the Company;
- (l) "Part" means a reference to the relevant Part of this Agreement;

If any other term is used in this Agreement, which is not a defined term, but which is a defined term in the Company Constitution, the meaning of that term in the Company Constitution must be attributed to that term in this Agreement, as if that term was expressly defined, on the same terms, in this Agreement.

- 1.2 Unless there is something in the subject or context that is inconsistent the following provisions apply in this Agreement:
- (a) any covenants implied by law (statutory or otherwise) are not negated but are deemed, to the extent of any inconsistency with the provisions of this Agreement, to be modified (where modification is permitted);
 - (b) where two (2) or more persons are named as a party to this Agreement the terms, covenants, conditions, provisions, stipulations and restrictions contained in this Agreement bind each of them jointly and severally and benefit each of them jointly and severally;
 - (c) if any term, covenant, condition, provision, stipulation or restriction contained in this Agreement is or becomes illegal or unenforceable, then this Agreement must be read and construed as if that term, covenant, condition, provision, stipulation or restriction, as the case may be had been severed and the balance of this Agreement remains in full force and effect;
 - (d) a reference to any document or instrument (and, where applicable, to any of its provisions) is a reference to that document or instrument as amended, novated, supplemented or replaced from time to time
 - (e) a reference to a right includes a benefit, remedy, discretion, authority or power;
 - (f) a reference to the whole of property or a thing includes part of that property or thing unless stated otherwise;
 - (g) a reference to a statute, code or other law includes regulations and other instruments under it, and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the date of the Agreement;
 - (h) where any expression is defined, any other part of speech or grammatical form of that expression has a corresponding meaning;

- (i) where the word “including” is used, that use does not limit or exclude in any way unless the context requires otherwise
- (j) words importing the singular include the plural and vice versa;
- (k) words importing the masculine gender include the feminine and/or a corporation and vice versa;
- (l) words importing persons include a firm, a body corporate, an unincorporated association or an authority and vice versa;
- (m) headings are inserted for guidance only and are not deemed to form part of the provisions of this Agreement and must not be used for the purpose of construction;
- (n) the first letters of words and expressions defined in this document are indicated by capital letters for convenience and the absence of a capital letter alone does not imply the word or phrase is used with a meaning different from that given by its definition;
- (o) a reference to “dollar” or “\$” is a reference to the lawful currency of Australia;
- (p) a reference to a time or date affecting the performance of an obligation by a party is a reference to the time and date in Tasmania, even though the obligation is to be or may be performed elsewhere;
- (q) where the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which that thing is to be done then that thing must be done on or by the next succeeding business day;
- (r) if a period of time is expressed to be calculated from or after a specified day, that day is not included in the period;
- (s) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement; and
- (t) a reference to a person who is an “associate” of another person is a reference to a person who is an associate of that other person within the meaning of Part 1.2 of Division 2 of the Corporations Law.

2. Acknowledgments

- 2.1 The parties acknowledge that the Background of this Agreement sets out a true, accurate and complete representation of the commercial relationship between the parties and the circumstances surrounding the execution of this Agreement.
- 2.2 Each party separately acknowledges for the benefit of each other party that:
- (a) they have entered into this Agreement after mature consideration, reflection, and exercise of independent judgment;
 - (b) they have read and understood the provisions of this Agreement and that the provisions are just, equitable, fair, reasonable and satisfactory to them;
 - (c) they have entered into this Agreement of their own free will and volition and that no coercion, force, or undue influence has been used in the execution of this Agreement either by the other party or by any other person or persons;
 - (d) they have either obtained independent legal advice, or are aware of their right to do so, and have chosen not to do so; and
 - (e) they have not relied upon any representation or promise in entering into this Agreement except for those expressly stated in this Agreement.
- 2.3 The parties express acknowledge and agree that if there is any inconsistency, discrepancy or conflict that arises in respect of the interpretation or application of any of the Constituent Documents, the order of priority of the documents to the extent of that inconsistency, discrepancy or conflict is as follows:
- (a) the provisions of the Company Constitution take priority over all other subordinate Constituent Documents;
 - (b) the provisions of this Agreement take next priority over all other subsequent subordinate Constituent Documents;
 - (c) the provisions of any by-laws created by the Directors take next priority over all other subsequent subordinate Constituent Documents; and
 - (d) any other document deemed by the parties to be a Constituent Document takes last priority.

2.4 The Board, on behalf of the Company, and the Initial Members acknowledge that Dorset Council is entitled to be admitted as an Initial Member of NTDC Limited, even though Dorset Council is not recorded in the Schedule of Initial Members in the Company Constitution as an Initial Member. If, at any time after the registration of the Company, Dorset Council, resolves to become a Member of NTDC Limited, the Board must admit Dorset Council as a Member. Subject to the terms of the Company Constitution, this Agreement, and any other constituent document of the Company, Dorset Council is deemed to be an Initial Member of the Company and will enjoy all of the rights and privileges of being an Initial Member, albeit from the date that it is registered in the register of Members.

3. Purpose and Objectives

3.1 The parties agree to carry on the Company with the common purpose of achieving the primary objectives set out in clause 3.2.

3.2 The primary objectives of the NTDC Limited, as set out in the Company Constitution are to:

- (a) provide pro-active, engaged and strategic regional economic leadership;
- (b) consolidate an agreed vision for the development, sustainability and prosperity of the geographic region that the Company's Members encompass;
- (c) implement a strategic economic action plan based on the Northern Regional Futures Plan framework or similar; and.
- (d) to provide effective representation and advocacy to State and Federal Government and other stakeholders.

3.3 It is a fundamental principal of NTDC Limited that the Members remain in effective control of the Company for the purposes of achieving the primary objectives for the benefit of the Members.

3.4 The Members expressly acknowledge that the Company is:

- (a) a not-for-profit enterprise, with funding coming principally from annual subscription fees paid by the Members;
- (b) is not, and is not intended to be, a charity, as defined or administered by the Australian Charities and Not-For-Profits Commission; and

- (c) not a tax-exempt entity for the purposes of the *Income Tax Assessment Acts 1936 and 1997*, but it is contemplated that the Company may seek tax-exempt status in the future if that is considered necessary and prudent at the time.

4. Corporate Governance Structure – Appointment of Chair and Directors

4.1 The parties agree that the governance structure of NTDC Limited is as follows:

- (a) The Company has a Board of Directors comprising not less than three (3) and not more than nine (9) Directors (“the Board”) but the parties agree that the optimal size of the Board is seven (7) Directors;
- (b) The Company must appoint an independent Chairperson, who, when appointed, is to be one of the Directors of the Company (“the Chair”);
- (c) In relation to each Member, the elected Mayor for the time being, is automatically that Member’s nominated representative for all purposes of the Company, but any Member may nominate a casual delegate in the absence of the Mayor being unable to attend to the business of the Members and the Company;
- (d) The Board will appoint, from time to time, a competent person to serve the Company, as an employee, in the role of Chief Executive Officer (“CEO”); and
- (e) All other employees of the Company will be appointed and managed by the CEO.

4.2 The parties agree that the person acting as Chair of the Board must be an independent Chair and therefore must hold no other position of profit:

- (a) in or for NTDC Limited (apart from as Chair); or
- (b) in or for any of the Members.

4.3

4.4 The Chair will be appointed, from time to time, by the Board in accordance with the provisions of the Company Constitution, but subject at all times to clause 4.2 of this Agreement, and subject always to the rights of the Members of the Company.

4.5 The Members acknowledge that to comply with the Corporations Law, the Company has been incorporated with not less than three (3) Directors, including the Chair.,

4.6 The Members acknowledge that the Directors have been selected in accordance with the principles set out below, and expressly agree that all Directors appointed on or after the date of this Agreement must be appointed by reference to these principles:

- (a) the over-riding intention of the Company is to have a skills-based Board including local government experience;
- (b) selection criteria and the appointment process must be constructed to select potential Directors based on the skills required to implement the primary objectives of the Company, including and especially by reference to implementing the economic action plan based on the Regional Economic Development Strategy;
- (d) selection of Directors must also reflect diversity and the regional spread of geographic, social, cultural, thought and experience.

The Members agree that the selection and appointment of new Directors from time to time may create overlaps in skills and experience and the replacement of one outgoing Director does not necessarily have to be on a like for like basis.

4.7

4.8 Directors of the Company including the Chair are appointed for a term:

- (a) of not less than two (2) years; and
- (b) not more than six (6) years.

The tenure of Directors is at all times subject to the rights of the Members under the Act and the Company Constitution and a Director is entitled to resign at any time.

4.9 Upon the retirement (regardless of cause) of the Chair, the Board must advertise for a replacement independent Chair and the following provisions expressly apply:

- (a) the independent Chair may serve for an additional term if agreed by the Members, otherwise the role will be re-advertised at the end of the three year term.
- (b) the Members agree it is not preferred for the Chair to serve as Chair and/or Director for more than six (6) years.

4.10

4.11 Notwithstanding the preceding provisions, an incumbent Chair is subject to removal by the Members under the Constitution in the same way as all other Directors (clause 8.5).

4.12 Owing to the special nature of the relationship between the Members and the Directors of NTDC Limited, as evidenced by this Members Agreement, it is an essential provision that the Board properly consider any issue that the Members (by simple majority request) put to the Board for consideration at the earliest possible Board meeting and that the Board provides a fulsome report back to Members in relation to that issue following the Board meeting at which it is considered.

5. Role of the Board

5.1 The role of the Board is to govern the Company, rather than to manage it. This includes providing leadership and strategic guidance. The Board is accountable to the Members and the community for the performance of NTDC Limited in the best interest of economic development in the region. The principal functions and responsibilities of the Board include:

- (a) determining, reviewing and maintaining the vision, purpose and values of the Company;
- (b) approving a strategic plan, establishing measurable KPIs, targets and an annual operations plan;
- (c) regularly monitoring performance against the strategic plan and the annual operations plan;
- (d) appointing the CEO and approving the terms and conditions of employment of the CEO;
- (e) monitoring the performance of the CEO and termination of the employment contract of the CEO if necessary;
- (f) ensuring the Company is proactive to opportunities rather than reactionary, whilst focusing on priorities that will deliver successful economic development throughout the region;

- (g) approving annual budgets, setting delegation authorities and monitoring financial performance throughout the year;
- (h) ensuring appropriate internal controls exist and an auditor is appointed as determined by the Local Government Act legislation (or other legislative requirements).
- (i) providing annual reports and any other agreed reporting to key shareholders;
- (j) ensuring that there is an appropriate separation of duties and responsibilities between itself and the CEO/management;
- (k) establishing and determining the powers and functions of subcommittees;
- (l) reviewing the Board's ongoing performance;
- (m) ensuring that the Company complies at all times with all legal responsibilities and compliance requirements that the Company is subject to;
- (n) identify and ensure the appropriate management of risks to the Company and the region as it relates to economic development;
- (o) supporting effective engagement and appropriate communication with Members and shareholders; and
- (p) managing and reviewing business risks associated with the Company.

5.2 The following governance principles outline the strategic function of the Board:

- (a) Principle 1 – the Board plays a key role in approving the vision, purpose and strategies of NTDC Limited. The Board must act in the best interests of the Company and is accountable to the Members as a whole;
- (b) Principle 2 – the Board sets the cultural and ethical tone for the Company. This includes the 'how' of undertaking the work of the Company by being an exemplar of contemporary best practice and collaboration throughout the region;
- (c) Principle 3 – all Directors are responsible to exercise independent judgment and provide independent oversight of management of the Company;

- (d) Principle 4 – the Board should comprise an appropriate number of Directors for the size and scale of the Company, with a relevant and diverse range of skills, expertise, experience and background and who are able to effectively understand the Company’s business and regional context.
- (e) Principle 5 – the Board should have an appropriate system of risk oversight and internal controls put in place;
- (f) Principle 6 – Directors should act diligently on an appropriately informed basis and have access to accurate, relevant and timely information;
- (g) Principle 7 – the Board would normally delegate certain functions to management. Where it does so, there should be a clear statement and understanding as to the functions that have been delegated;
- (h) Principle 8 – the Board is responsible for the appointment of the CEO and the continuing evaluation of the CEO’s performance;
- (i) Principle 9 – the Board should ensure that the Company communicates with Members and other shareholders in a regular and timely manner. The Board and management will respect the rights of Members and will not speak publically against any Member; and
- (j) Principle 10 – the Board’s performance (including the performance of the Chair, the individual Directors and the Board’s subcommittees) needs to be regularly assessed and appropriate actions taken to address any issues identified.

5.3 The following provisions apply to the operations and activities of the Board:

- (a) the Board will meet at least six (6) times per year to discharge the business of the Company, and initially meetings will be held monthly except during the months of December and January in each year;
- (b) Directors are permitted to miss no more than 30% of scheduled meetings in any financial year without the prior consent of the Board;

5.4 All other mechanics as to the operation of the Board are outlined in the Company Constitution.

6. Role and Responsibilities of the Chair

- 6.1 The primary roles of the Chair are to:
- (a) provide pro-active leadership and vision to NTDC Limited;
 - (b) represent the Board and the Company to the Members and to the broader community; and
 - (c) to communicate the Board's position on all relevant matters.
- 6.2 To effectively discharge the primary roles of the Chair, the Chair has the following responsibilities:
- (a) to set the tone for the Board, including the establishment and focus on a common purpose;
 - (b) to ensure that the Directors understand the responsibilities of Directors and that Board and management abide by the delegations of authority as set by the Board;
 - (c) to act as a link between the Board and the CEO/management of the Company;
 - (d) to contribute to development of a strong positive profile for the Company;
 - (e) to counsel and advise Board members where required;
 - (f) to ensure that the performance of the Board, collectively and individually, is reviewed as and when agreed by the Board;
 - (g) to provide political liaison in dealings with all levels of government; and
 - (h) to Act as the spokesperson for the Company where required.
- 6.3 In addition to the responsibilities, the Chair chairs all meetings of the Company and in connection with that function the Chair is responsible to:
- (a) convene Board meetings and general meetings when required;
 - (b) chair:

- (i) Board meetings in a manner which ensures that Board discussions are focused on matters before the Board and result in consensus and commitment to clear and unambiguous Board decisions; and
 - (ii) general meetings in a manner that ensures that the business of the meeting is properly discharged in a reasonable, orderly and timely way;
- (c) settle:
- (i) Board agendas, in liaison with the CEO, to ensure appropriate matters are brought before the Board for information, discussion and decision including matters which Directors may wish to raise; and
 - (ii) notices of meetings to Members
- (d) monitor and review the accuracy of the information presented to the Board and any general meeting;
- (e) obtain further information considered necessary for consideration and decision making on any matter relevant to the Board including obtaining external advice or the making of independent enquiries;
- (f) preside over meetings to ensure equitable participation by Board members;
- (g) ensure that the minutes of Board meetings and general meetings properly reflect the decisions taken at those meetings;
- (h) foster a climate of openness, common purpose and debate at Board meetings where contributions by all Directors are valued; and

If the Chair is not present at a Board meeting or a general meeting, the Board will nominate another independent Director to temporarily undertake this role.

6.4 In effecting the Chair's responsibility to act as a link between the Board and the CEO, the Chair is also responsible to;

- (a) ensure a good working relationship with the CEO by meeting regularly (more frequently than at the monthly Board meetings) and otherwise to be accessible and open to communication;

- (b) to provide high level assistance and support to the CEO when required;
- (c) to provide consultation and mentoring to the CEO where appropriate; and
- (d) to facilitate and supervise CEO performance appraisal process at least annually.

6.5 A director can be appointed as Deputy Chair to undertake the role of Chair in a temporary capacity as required, by a majority vote of Directors.

7. Role and Responsibilities of the Directors

7.1 In line with the duties of the Directors under the Corporations Law, all Directors, including the Chair must:

- (a) act honestly, in good faith and in the best interests of the Company, its Members and the broader community;
- (b) carry out the duties and functions of Directors in a lawful manner;
- (c) ensure that the Company carries out its activities in accordance with the law and the specifically the *Corporations Act 2001*;
- (d) understand the business of the Company and use care and diligence in fulfilling the functions of office and in exercising the powers of office;
- (e) be independent in judgment and actions and take all reasonable steps to be satisfied as to the soundness of all decisions taken by the Board;
- (f) declare all interests that could result in a conflict between personal and Company priorities;
- (g) refrain from making improper use of information acquired as a Director;
- (h) refrain from taking improper advantage of the position of Director;
- (i) exercise a Director's duty of ensuring the Company does not trade whilst insolvent or where a Director suspects it may be insolvent;
- (j) properly and diligently consider all papers for Board meetings prior to each meeting;

- (k) fully inform himself or herself about the financial performance, position, operations and risks of the Company;
- (l) obtain further information considered necessary for consideration and decision making on any matter relevant to the Board including obtaining external advice or the making of independent enquiries; and
- (m) comply with all procedural directives of the Board, whether a standing order or ad hoc.

7.2 It is imperative that Directors avoid all conflicts of interest, whether perceived or otherwise. In order to ensure that a risk of a conflict arising is minimised, the Board places great importance on Directors making clear any existing or potential conflicts of interest. Conflicts of interest include a direct or indirect financial interest, or a conflict of interest, duty or roles such as a duty or obligation to an individual or another Company, where a reasonable person would perceive there to be a potential conflict. To that end:

- (a) if any matter is to be discussed at a meeting of the Board which would involve one or more Directors having a material conflict of interest, then those Directors:
 - (i) must declare that conflict of interest;
 - (ii) must not be present at the meeting whilst the matter is considered, and may not speak to any motion or proposal; and
 - (iii) must not vote on any matter in which those Directors have any material interest, either financial or of interest or duty; and
- (b) Directors must keep the Board advised on an ongoing basis, of any interest that could potentially conflict with those of the Company.

7.3 Directors must, at all times, keep the proceedings of the Board, including papers submitted and presentations made to the Board, confidential and not disclose or release any information obtained by the Director in that context to any person other than:

- (a) Board members;
- (b) except as required by law, the Members; or

(c) as agreed to by the Board.

7.4 Directors are entitled to be provided with information from management that is accurate, sufficient, relevant and timely in order to properly perform their role. Directors are required to liaise with the CEO prior to committing corporation funds for any external information considered necessary for consideration and decision making on any matter relevant to the Board.

7.5 All Directors must, upon initial appointment undertake a thorough induction process, to be administered by the Board in the affairs of the both the Board and the Company as a whole. Prior to attendance at the first Board meeting, new Directors will:

- (a) receive a copy of all of the Constituent Documents and other relevant legal governance documentation;
- (b) current and recent Board and committee minutes;
- (c) contact details for other Directors and key staff;
- (d) the current year's meeting schedule; and
- (e) participate in meetings with the Chair, CEO and relevant committee chairs for a governance familiarisation (the meeting may be held as a group session or with individuals).

7.6 All Directors must commit to ongoing learning and development. This may occur through attending specific conferences relating to key areas of regional specialisation, briefings at board meetings, governance-related forums, mentoring and reading of contemporary journals, articles etc, or through or by any other means that the Board reasonably thinks fit.

8. Delegations of Responsibility – Committees

8.1 The Board may establish committees to assist with the operations of the Board. The Board is entitled to set the terms of reference for any committee of the Board and to specify which Directors are to be members of the Board, including nominating a chair.

8.2 Committees of the Board do not have any delegated authority, but have an advisory capacity. Committees should report regularly to the Board and make recommendations for consideration where appropriate.

8.3 Each committee of the Board must have an approved documented charter which defines its objectives and responsibilities and reporting requirements. Committees may, and are encouraged to, co-opt skilled members from the private, community and local government sectors to assist with the work of the committee.

9. Accountability

9.1 The Board of Directors is accountable to the Members of NTDC Limited at all times. It is important that all Directors foster a relationship of trust and confidence with the Members, in order to properly represent the Members' interests at all times.

9.2 In addition to the material that must be considered at the AGM under the Corporations Law, the Board must supply to the Members the following additional material, as part of the AGM process and must, at the AGM, be prepared to speak to and/or be accountable for:

- (a) an annual report on the performance of the Company over the past relevant period as it relates to the KPIs agreed by the Members at the last AGM;
- (b) any changes to the KPIs as agreed by the Members
- (c) progress reports on all projects being undertaken by the Company at the relevant time; and
- (d) questions raised by any Member at the AGM (or must provide a written response within fourteen (14) days of the AGM if a question is taken on notice).

9.3 Any disputes will be dealt with through the dispute resolution procedures provided in the Company Constitution.

9.4 In the nature of the purpose and function of the Company, the Company will report formally to Members on a semi-annual (twice yearly) basis, based on agreed KPIs and other information of interest. The process for reporting will include:

- (a) a strategic progress update by the Board;
- (b) an operational progress update by the CEO;
- (c) an offer of a formal presentation to Members if requested; and

- (d) one of the semi-annual meetings (twice yearly) with Members will be in the lead up to the Company's annual planning process to ensure Member's feedback is considered in advance of this process.

9.5 In accordance with the Corporations Law, the Company must hold an annual general meeting once every calendar year, within five (5) months after the end of each financial year.

9.6 A majority of Members of the Company may call a Special Meeting of the Company in accordance with the Company Constitution.

9.7 A majority of Members of the Company are entitled to appoint or remove Directors in accordance with the Company Constitution.

10. Director Protection

10.1 The Company will obtain and maintain at all times appropriate levels of Directors and Officers insurance to provide protection from litigation. Directors and Officers insurance will cover the costs of litigation and provide financial protection for Directors and Officers of a Company when those parties are alleged to have breached their respective duties.

10.2 Directors and Officers Insurance is subject to the exclusion of negligent or criminal acts, for example, insolvent trading or acts of fraud or dishonesty will not be covered.

10.3 The Company will do all things reasonably necessary to limit the liability of Directors and other officers of the Company, but the Company does not make any representation, promise or warranty to any Director or officer about the adequacy or sufficiency of these measures.

11. Role and Responsibility of the Company Secretary

11.1 The Company Secretary is responsible for supporting the Board to ensure the Company meets its obligations under the Corporations Law. This specifically includes:

- (a) organising meetings of the Board and Members (this includes the sending out of notices, the preparation of agendas, the compilation and distribution of board papers, the marshalling of proxies, and compilation of minutes);
- (b) ensuring minutes of meetings are recorded in accordance with legal obligations;

- (c) maintain and communicating a Board calendar of upcoming Board meetings and committee meetings;
 - (d) ensuring the review of various Board policies in accordance to a set schedule;
 - (e) ensuring that the Board is provided with all necessary training (i.e. induction training and on-going governance training);
 - (f) lodging the annual forms and reports with ASIC within the specified timeframes;
 - (g) being aware of the procedures of meetings, particularly the relevant provisions of the Company Constitution and other Constituent Documents in relation to quorum requirements, voting procedures, proxy provisions etc. so as to be able to advise the Chair if the need arises;
 - (h) recording declarations of interest or conflicts of interest made by Directors to a Board meeting;
 - (i) organising an annual general meetings and the related documentation;
 - (j) coordination of travel and attendance arrangements of Directors and of reimbursement (in accordance with Board-approved policies) for costs associated with such attendance; and
 - (k) ensuring the Company is complying with all obligations (including the reporting requirements) of any government funding contracts.
- 11.2 For the avoidance of doubt, the Members agree that it is permissible, even prudent, for the Chief Executive Office to be appointed as, and to act as, Company Secretary.
- 12. Role and Responsibility of the CEO**
- 12.1 The position of CEO is a paid employment position of the Company.
- 12.2 The CEO is directly responsible to the Chair, and through the Chair to the Board.
- 12.3 The Members acknowledge and agree that the Board delegates to the CEO all of the necessary powers and authority to manage the business of the Company.
- 12.4 The CEO has operational responsibility to employees in the Company.

- 12.5 The CEO is required to report directly to the Board on the operations of the Company in relation to:
- (a) the execution of the strategy approved by the Board; and
 - (b) the operational and business aspects of the Company.
- 12.6 The CEO is entitled to attend and participate in Board discussions, but the Board may excuse the CEO from any part of the meeting if it elects to do so.
- 12.7 Where appropriate the CEO may act as a spokesperson for Company with the approval of the Chair.
- 12.8 The Board must specify, in writing, the limits of financial authority delegated to the CEO. The Board may consider and set mechanisms for approval for the oversight and monitoring of larger payments, signatories and application of the Company Seal in relation to those transactions.

13. Remuneration

- 13.1 The Chair is entitled to be remunerated for the work done and responsibilities undertaken by the Chair in that role. On and from the date of this Agreement, the Members agree to set the remuneration of the Chair at the rate of \$30,000.00 per annum. That rate will be reviewed to CPI (All groups, Hobart, or an equivalent index) at the end of each financial year.
- 13.2 Directors who are not the Chair, and the Company Secretary (but only if the Company Secretary is not the CEO) are entitled to be paid a notional fee, to be set by the Board, to attend meetings and undertake the duties and responsibilities of the Directors.
- 13.3 All employees of the Company, including the CEO, are entitled to be paid in accordance with the entitlements arising under the FairWork legislation and by reference to prevailing market rates for persons acting in similar positions of employment in similar organisations.
- 13.4 All reasonable expenses of the Chair and the Directors will be met by the Company whilst travelling or undertaking approved business on behalf of the Company.

14. Funding – Subscription Fees from Members

14.1 NTDC Limited relies primarily on its Members to fund the Company sufficiently to achieve its primary objectives. This includes both the:

- (a) execution of the strategic plan from time to time; and
- (b) day to day operations of the Company.

14.2 The Members expressly agree to each pay an annual subscription fee to the Company to be set by the Board in each financial year of operation of the Company, which subscription fee is intended to be paid:

- (a) evenly by reference to the methodology for calculation of the subscription fee amounts for all Members; and
- (b) unevenly, by reference to the actual dollar value amount payable by individual Members, as produced by those calculations.

14.3 The Members agree that the annual subscription fee that each Member is required to contribute to the Company is to be calculated in accordance with the following formula:

$$SF = FC + VC$$

Where:

- (a) SF = the total amount of the Member's Subscription Fee for that year;
- (b) FC = the fixed component (based on the 2019-20 financial year) calculated by application of the following bands calculated based on the population of the municipal area of each Member:

(i)	Population of 0 – 5,000 people	\$4,562.00
(ii)	Population of 5,001 – 10,000 people	\$9,124.00
(iii)	Population of 10,001+ people	\$18,249.00

The FC component is indexed annually to CPI (All groups, Hobart, or an equivalent index); and

- (c) VC = the variable component calculated at a contribution rate of approximately \$2.53 per head of population (figure used in 2019/20) in the municipal area of each Member multiplied by the actual municipal population.

The VC component is also indexed annually to CPI (All groups, Hobart, or an equivalent index).

- 14.4 The CEO will calculate the contribution amounts for the following financial year, to be approved by the Board and must notify the Members of the annual subscription fee amount for the following year not less than three (3) months prior to the end of each financial year.
- 14.5 The Members expressly agree that to remain as a member of NTDC Limited each Member must commit to pay the annual subscription fee amount each year for three (3) consecutive years from the date that the membership commences. At the end of each three (3) year cycle a review will be undertaken in accordance with **clause 20**.
- 14.6 Subject to the approval of the Board, and any conditions or restrictions set by the Board, there is no value limit to the amount of the subscription fee payable in any one year by any one Member, as determined by the calculations set out in this **clause 14**.
- 14.7 The Board may accept applications from other persons or entities to become Members of NTDC Limited in accordance with the Company Constitution. The Board may charge an application fee to new members if the Board elects to do so.
- 14.8 If the Board accepts the application of any new Member, it must only be on condition that the new Member enters into a written deed in a form acceptable to the Board by which the new Member expressly agrees to be bound by the Constituent Documents of the Company.
- 14.9 All of the parties agree that the Company will not obtain, or seek to obtain, any debt funding for any purpose without a unanimous resolution of the Members to that effect.
- 14.10 If any debt funding is obtained by unanimous resolution, each Member agrees to be liable for and guarantee the repayment by the Company of that debt funding in accordance with the proportionate amount of the annual subscription fee paid by that Member as against all of the subscription fees paid by all Members of the Company at the relevant time.
- 14.11 Subject to the passing of an appropriate unanimous resolution, the Company may accept loans from any of the Members, on whatever terms those parties may agree, and if so accepted, the Company must create a credit ledger for that purpose in the Company's books of account.

14.12 Subject to the unanimous consent of all Members, the Company may grant loans to any of the Members, on whatever terms those parties may agree, and if so granted, the Company must create a debit ledger for that purpose in the Company's books of account.

15. Voting

15.1 The voting rights of the Members, in general meeting, are as set out in the Company Constitution.

15.2 Subject always to the Company Constitution, if, for any reason, at any general meeting of the Members, a poll is demanded then each Member and the Board, on behalf of the Company, as the parties to this Agreement expressly acknowledge and agree that each Member will have, and the Board must recognise, one (1) vote per Member for each \$20,000 increment, or part thereof, of subscription fees paid by each Member to the Company in the then current financial year.

15.3 Upon any vote taken by the Company in general meeting, if any Member has not paid that Member's annual subscription fees in full at the time of that meeting, the voting rights of that Member are deemed to be pro-rated, based on the proportion of the subscription fee that has been paid at the relevant time, unless all of the other Members unanimously agree that the unpaid, or partially unpaid, Member's voting rights are not so affected.

16. Performance Expectations

16.1 Each party to this Agreement covenants and agrees to deal with each other party to this Agreement to deal with those other parties in good faith.

16.2 In particular, all parties to this Agreement must:

- (a) by completely honest in all communications to, with or on behalf of the Company and each other;
- (b) provide full disclosure about all material matters that arise from or may affect the Company and that party's involvement in it, including health (physical and mental) and wellbeing issues if relevant;
- (c) display appropriate and professional personal conduct at all times in the Company environment and when representing the Company externally; and

- (d) not make, publish or support any disparaging, defamatory or offensive remark, comment or communication about the Company, the Members, the Directors or officers of the Company, any employee of the Company or any other shareholder on any fact, matter or concern that is within the knowledge or opinion of that party.
- 16.3 Each party must only make use of Confidential Information for the purpose of carrying out the purpose and objectives of NTDC Limited.
- 16.4 No party to this Agreement is permitted to:
 - (a) give or disclose Confidential Information to anyone other person or entity;
 - (b) use any Confidential Information for personal gain or profit; or
 - (c) use any Confidential Information to cause injury, loss or damage to the Company or any other party to this Agreement.
- 16.5 No party to this Agreement is permitted to make any promise, representation or warranty or to give any undertaking to any person, which purports to bind NTDC Limited, which that party is not authorised to make or give.
- 17. Financial Reports**
- 17.1 Notwithstanding the appointment of external accountants, the Company may, in its sole and absolute discretion, elect to undertake routine accounting procedures internally or to engage an external book-keeper for that purpose.
- 17.2 The Company Secretary must cause that proper and sufficient records, reports and financial statements of NTDC Limited, should be prepared in accordance with the relevant accounting standards on a weekly, monthly, quarterly and annual basis as:
 - (a) the Directors may require;
 - (b) the CEO may require for the proper management of the Company from time to time; or
 - (c) as the Corporations Law or other statutes may require.
- 17.3 The Company must comply with the auditing and review procedures of the Corporations Law relevant to the turnover Tier that the Company sits in from time to time.

18. Intellectual and Industrial Property

18.1 Each party agrees and covenants with each other party, as a separate agreement and covenant that that party will keep confidential and preserve all Intellectual Property of NTDC Limited at all times confidential.

18.2 Each party agrees and covenants with each other party that that party will pass to the Company for use by the Company as the Company sees fit, free of charge, details of:

- (a) all of the technology know-how and research results relevant to the Company that are from time to time in that party's possession or knowledge and which that party is not restrained by obligations to others from passing to the Company;
- (b) all of the technology know-how and research results relevant to the Company that are developed, discovered or invented by that party from time to time;

provided that the Company gives to the relevant party each time an appropriate covenant to keep confidential those aspects of the technology know-how or research results which are confidential and the parties agree to cause the Company to give those covenants.

19. Restrictive Covenant

19.1 Upon:

- (a) the cessation as a Director by a Director for any reason;
- (b) the cessation of membership by a Member, for any reason

the provisions of confidentiality and protection of intellectual property continue to apply to that Director or Member indefinitely and do not merge on the resignation or cancellation of membership.

19.2 The CEO must ensure that appropriate restrictive covenants are contained in each and every employment agreement for employees of NTDC Limited.

20. Sunset Provisions - Review

20.1 Each party agrees to commit to participation in NTDC Limited, and to the terms of this Agreement for the Sunset Period set out in **Item 5** of the Schedule of Particulars, which period commences from the date of this Agreement.

20.2 The parties agree that not less than three (3) months prior to the end of the Sunset Period, the Board will undertake a comprehensive review of the strategic purposes and operations of the Company for the purposes of recommending to the Members whether to:

- (a) continue the operation of Company in its then current form;
- (b) change the operation of the Company as the parties may then agree;
- (c) continue with the then current Members;
- (d) change the then current Members;
- (e) re-set the Sunset Period;
- (f) make any other required amendments, changes and modifications to:
 - (i) this Agreement; and
 - (ii) the operations of the Company; and
- (g) wind up the Company; and/or
- (h) deal with any other relevant matter at that time.

20.3 In conducting that review, the Board may have recourse to any relevant material, matter or issue in making its recommendation to the Members.

20.4 Upon the receipt of a recommendation arising from a review, the Members must pass a Special Resolution to either:

- (a) adopt the recommendation of the Board; or
- (b) to take some other course of action.

20.5 After and as a consequence of a review under this clause 20, no Member is bound, nor can be compelled, to remain and continue as a Member and if a Member elects to cease being a Member, the shares of that Member are deemed to be forfeited.

20.6 Every Member that elects to continue as a Member of the Company expressly agrees to commit to a further three (3) year funding cycle, subject to all relevant CPI adjustments for the new period, and the Board must record a resolution to that effect.

21. Dispute Resolution

21. The parties agree to adopt and be bound by the dispute resolution procedures set out in the Company Constitution.

22. Default

22.1 If any party breaches that party's obligations under this Agreement, and does not remedy that breach to the satisfaction of the other parties after receiving not less than one (1) month's notice to do so, that party is in default of this Agreement.

22.2 A party is also in default of this Agreement if any of the following occurs in relation to that party:

- (a) the party, being a natural person:
 - (i) commits any act of bankruptcy;
 - (ii) enters, or proposes to enter, into any arrangement, composition or compromise with creditors;
 - (iii) is convicted of any offence in any jurisdiction that carries any term of imprisonment;
 - (iv) is convicted of any offence of dishonesty;
 - (v) is convicted of any offence in relation to the Company or any other party to this Agreement; or
 - (vi) fails to attend to that Party's responsibilities under this Agreement for a period of more than thirty (30) days for no explainable reason; or
- (b) the party, being a company or trust or other body corporate:
 - (i) commits any act of insolvency;
 - (ii) enters, or proposes to enter, into any arrangement, composition or compromise with creditors; or

- (iii) has a Director or trustee who is convicted of any offence under clause 22.2(a)(iii), (iv) or (v).

22.3 A party, being a natural person, is deemed to be in default of this Agreement if any of the following occurs to that party:

- (a) two competent medical practitioners declare that the party is of an unsound mind;
- (b) some other event beyond the control of the party causes that party to lose legal capacity; or
- (c) the party cannot be found for a period of more than ninety (90) days.

23. Disciplinary Proceedings

23.1 The parties agree to adopt and be bound by the disciplinary procedures set out in the Company Constitution.

24. Winding Up

24.1 The parties agree to adopt and be bound by the winding up procedures set out in the Company Constitution.

24.2 The Members have requested Directors ensure that 3 months of operating funds are maintained in Company reserves to ensure that all liabilities can be met if a decision is made to wind up the Company. 24.3 Upon a winding up of the Company, the following process must be followed, in the order set out below, after liquidation of all assets:

- (a) as much notice as possible of the winding up must be given to any employees of the Company who are not parties to this Agreement;
- (b) all employee entitlements must be paid out as the first priority, including to any party to this Agreement, who is a natural person, who is also a bona fide employee of the Company in receipt of salary or wages, and superannuation;
- (c) all secured creditors must be paid out, but excluding any loan accounts in favour of parties to this Agreement;
- (d) all unsecured creditors must be paid out, but excluding any loan accounts in favour of parties to this Agreement;

- (e) all unpaid present entitlements;
- (f) all loan accounts must be paid out, subject to any set-off or adjustment for loans made to that party or to a related party of that party; and
- (g) the balance of net assets of the Company must be distributed in accordance with the winding up provisions of the Company Constitution.

24.4 The Members expressly acknowledge and agree that no Member can receive any payment of capital, distribution of assets or other benefit from the Company on a winding up.

25. Notices

25.1 A notice or other communication in connection with this Agreement is to be in writing and:

- (a) may be given by the relevant party or its lawyer; and
- (b) must be:
 - (i) left at the address set out or referred to in the Details; or
 - (ii) sent by prepaid post to the address set out or referred to on the Details;
 - (iii) sent by fax to the fax number set out or referred to in the Details; or
 - (iv) sent by email to the last known email address of the relevant party or lawyer.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that postal address or fax number.

25.2 Notices take effect from the time they are received unless a later time is specified in the notice.

25.3 If a notice is sent by post, it is taken to be received two (2) days after posting (or seven (7) days after posting if sent to or from a place outside Australia).

25.4 If a notice is sent by fax, it is taken to be received at the time shown in the transaction report as the time that the whole of the fax was sent.

- 25.5 If a notice is sent by email it is taken to be delivered at the time it is sent, but only if the sender of the email notice has obtained a delivery receipt for that email.
- 26.5 For the avoidance of doubt, every Member is entitled to receive separate notice of every general meeting of the Company.
- 26. Additional Provisions**
- 26.1 Each of the parties to this Agreement will sign and execute any further documents and do any deeds, acts and things as the other party reasonably requires for effecting the intention of the parties under this Agreement. However, this obligation does not extend to incurring a liability:
- (a) to pay any money, or to provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any government agency, unless a provision of this Agreement expressly requires otherwise; or
 - (b) to commence any legal action against any person, to procure that the thing is done or happens.
- 26.2 This Agreement constitutes the entire agreement between the parties about the subject matter of this Agreement. It supersedes and extinguishes all prior agreements, understandings, representations, warranties, covenants or agreements previously given or made between the parties about the subject matter.
- 26.3 This Agreement may be executed by the parties in two or more counterparts, each of which is deemed to be an original, but all of which together constitute one and the same instrument.
- 26.4 The parties must execute and exchange original signed counterparts of this Agreement unless there is a specific provision in the Agreement that permits the exchange of counterparts by facsimile or scanned email copy.
- 26.5 This Agreement must not be amended, modified or supplemented except by a written instrument signed on behalf of the respective parties.
- 26.6 Any clause, covenant or condition in this Agreement that requires a party to do something after completion does not merge on completion and that party is obliged to

perform the obligation within the time allowed for doing so. A failure to perform an obligation of this nature is a breach of the Agreement retrospectively and gives rise to a claim for injury, loss and damage to the party with the benefit of the performance of the obligation.

- 26.7** No waiver by any party of any default in the strict and literal performance or compliance with any other provision, condition or requirement of this Agreement is deemed to be a waiver of the strict and literal performance of or compliance with any other provision, condition or requirement in this Agreement nor be a waiver of or in any manner release any other party from strict compliance with any provision, condition or requirement in the future nor will any delay or omission of any party to exercise any right under this Agreement in any manner impair the exercise of any right accruing to it after completion.
- 26.8** A provision of or a right created under this Agreement may not be:
- (a) waived except in writing, signed by the party with the benefit of that provision or right; or
 - (b) varied except in writing signed by the Parties.
- 26.9** The obligations of the parties under this Agreement are subject to the express condition that whenever a party is required to perform or do any act or thing, the performance of that obligation is not required if it is rendered reasonably or practically impossible by reason of any riot, civil commotion, strike, lockout, act of God, act of the public enemy, priority, allocation, rationing or the regulation or prohibition of the use of any material, heat, fuel, hours of work or award, of the party.
- 26.10** Each party warrants and represents to the other party that the signing or performance under this Agreement does not conflict with or result in a breach of its constitution, any writ, order, judgement, law, rule or regulation which is binding upon the party.
- 26.11** Any party who executes this Agreement on behalf of a party under a Power of Attorney warrants that he or she has no notice of the revocation of that Power or of any fact or circumstance that might affect his or her authority to execute this Agreement under that Power.

- 26.12 The rights, powers and remedies under the Agreement are in addition to and do not replace or limit any other rights, powers or remedies provided by law independently of the Agreement.
- 26.13 Where a party is required to give a consent, that party may give that consent conditionally, unconditionally or withhold it without giving reasons, unless expressly stated otherwise.
- 26.14 Whether or not any of the transactions contemplated by this Agreement are completed the parties must pay their own fees, costs and expenses of and incidental to the negotiation, preparation and execution of this Agreement, including the fees and disbursements of its lawyers and accountants.
- 26.15 Where any party is entitled to take enforcement or recovery action against another party, that party is entitled to recover its fees, costs and expense of and incidental to the enforcement action from the other party.
- 26.16 This Agreement is governed by and construed in accordance with the law of Tasmania and the Commonwealth of Australia and each of the parties submit to the jurisdiction of the Courts of the State of Tasmania and the Courts of the Commonwealth of Australia.

End of Operative Part

Execution

Company

Signed for and on behalf of
**Northern Tasmania Development Corporation
Limited**
ACN 616 650 367
by its authorised officers under
S127 of the *Corporations Act 2001*

Director

Director/Secretary

Members

The Common Seal of
Break O'Day Council
was affixed in the presence *affix Seal here*
the authorised officers of the Council

Member

General Manager

The Common Seal of
Flinders Council
was affixed in the presence *affix Seal here*
the authorised officers of the Council

Member

General Manager

The Common Seal of
George Town Council
was affixed in the presence *affix Seal here*
the authorised officers of the Council

Member

General Manager

The Common Seal of
City of Launceston
was affixed in the presence *affix Seal here*
the authorised officers of the Council

Member

General Manager

The Common Seal of
Meander Valley Council
was affixed in the presence
the authorised officers of the Council

affix Seal here

Member

General Manager

The Common Seal of
Northern Midlands Council
was affixed in the presence
the authorised officers of the Council

affix Seal here

Member

General Manager

The Common Seal of
West Tamar Council
was affixed in the presence
the authorised officers of the Council

affix Seal here

Member

General Manager

Annexures

- A. Certificate of Incorporation
- B. SAI Global Company Extract
- C. Company Constitution