

CONSTITUTION

OF

LHD GROUP LIMITED

TABLE OF CONTENTS

	Page No.
1. DEFINITIONS AND INTERPRETATION	3
2. GENERAL.....	5
3. ISSUE OF SHARES	6
4. RIGHTS ATTACHING TO SHARES.....	7
5. ALTERATION OF SHAREHOLDER'S RIGHTS	7
6. ACQUISITION AND REDEMPTION OF SHARES.....	8
7. SHARE CERTIFICATES	8
8. CALLS ON SHARES.....	8
9. FORFEITURE OF SHARES	10
10. LIEN ON SHARES	10
11. SALE OF SHARES SUBJECT TO FORFEITURE OR LIEN	11
12. TRANSFER OF SHARES.....	11
13. TRANSMISSION OF SHARES	13
14. DIVIDENDS	13
15. EXERCISE OF POWERS OF SHAREHOLDERS.....	15
16. MEETINGS OF SHAREHOLDERS	15
17. NOTICE OF MEETINGS OF SHAREHOLDERS.....	16
18. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS.....	17
19. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS	18
20. VOTING AT MEETINGS OF SHAREHOLDERS.....	18
21. RESTRICTIONS ON VOTING	19
22. POLLS	19
23. PROXIES	20
24. CORPORATE REPRESENTATIVE.....	21
25. SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW.....	21

26.	DIRECTORS	22
27.	ALTERNATE DIRECTORS	23
28.	REMUNERATION AND OTHER BENEFITS OF DIRECTORS	23
29.	INDEMNITY AND INSURANCE	24
30.	POWERS OF DIRECTORS	25
31.	INTERESTS OF DIRECTORS	26
32.	PROCEEDINGS OF BOARD	27
33.	METHOD OF CONTRACTING	30
34.	INSPECTION OF RECORDS	30
35.	NOTICES	30
36.	LIQUIDATION	31

CONSTITUTION
OF
LHD GROUP LIMITED

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Constitution, unless the context otherwise requires:

"**Act**" means the Companies Act 1993 and its subsequent amendments.

"**Alternate Director**" means a person appointed by a Director as his or her alternate under section 28.

"**Board**" means Directors who number not less than the required quorum, as set out in this Constitution, acting together as the board of directors of the Company.

"**Business Day**" means a day, other than a Saturday or Sunday on which banks are open for business in Auckland and Wellington.

"**Class**" means a class of Shares having attached to them identical rights, privileges, limitations and conditions.

"**Company**" means LHD Group Limited.

"**Constitution**" means this constitution, as properly altered from time to time.

"**Director**" means a person appointed as a director of the Company in accordance with this Constitution.

"**Independent Director**" means a Director who is not directly associated with the Company other than as a Director, nor has a direct interest in any entity connected to the Shareholders.

"**Interest Group**", in relation to any action or proposal affecting rights attached to Shares, means a group of Shareholders:

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way; and
- (c) who comprise the holders of one or more Classes, except where action is taken in relation to some holders of Shares in a Class and not others, or a proposal expressly distinguishes between some holders of Shares in a Class and other holders of Shares in that Class, in which case the holders of Shares in that Class may fall into two or more interest groups.

"**Interested**", in relation to a Director, has the meaning set out in section 139 of the Act and **Interest** has a corresponding meaning.

"Investee Company" means a company in which the Directors, either as a Board or via an approval panel appointed by the Board to review investment opportunities for the Company, decide to invest the capital of the Company.

"month" means calendar month.

"Ordinary Resolution" means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question.

"person" includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal, local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having a separate legal personality).

"Personal Representative" means in relation to:

- (a) a deceased individual Shareholder, the executor, administrator or trustee of the estate of that Shareholder;
- (b) a bankrupt individual Shareholder, the assignee in bankruptcy of that Shareholder; and
- (c) any other individual Shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed thereunder, and a donee of an enduring power of attorney complying with that Act.

"Representative" means:

- (a) a person appointed as a proxy under section 23;
- (b) a Personal Representative; or
- (c) a representative appointed by a corporation under clause 24.1.

"Share" means a share issued, or to be issued, by the Company.

"Shareholder" means:

- (a) a person whose name is entered in the Share Register as the holder for the time being of one or more Shares; and
- (b) until the person's name is entered in the Share Register, a person who is entitled to have that person's name entered in the Share Register under a registered amalgamation proposal as a shareholder in an amalgamated company.

"Share Register" means the share register for the Company kept in accordance with the Act.

"Share Registrar" means an agent appointed by the Company to maintain the Share Register.

"Special Resolution" means a resolution approved by a majority of 75% or more of the votes of those Shareholders entitled to vote and voting on the question.

"Treasury Stock" means Shares which have been acquired by the Company and are held by the Company as treasury stock in accordance with the Act.

"Working Day" has the meaning set out in section 2 of the Act.

1.2 **Interpretation:** In this Constitution, unless the context otherwise requires:

- (a) the table of contents, headings, and descriptions relating to sections of the Act, are inserted for convenience only and shall be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other gender;
- (d) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
 - (i) that legislation or provision as from time to time amended, re-enacted or substituted;
 - (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- (e) "written" and "in writing" include any means of reproducing words, figures and symbols in a tangible and visible form;
- (f) references to clauses and sections (other than sections of the Act) are references to clauses and sections in this Constitution, unless stated otherwise;
- (g) words and expressions cognate with words or expressions defined in this Constitution have meanings corresponding to those of the defined words and expressions; and
- (h) words and expressions defined or explained in the Act have the same meaning in this Constitution.

2. **GENERAL**

2.1 **Companies Act 1993 and its amendments:** The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified by this Constitution.

3. **ISSUE OF SHARES**

3.1 **Issue of New Shares:** The Board may issue further Shares in the Company (including different Classes of Shares) which:

- (a) rank equally with, or in priority to, existing Shares;
- (b) have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise;
- (c) confer preferential rights to distributions of capital or income;
- (d) confer special, limited or conditional voting rights;
- (e) do not confer voting rights; or
- (f) are redeemable in accordance with section 68 of the Act.

3.2 **Section 45 excluded:** The provisions of sections 45(1) and 45(2) of the Act shall not apply to any issue or proposed issue of shares by the Company.

3.3 **Consolidation and subdivision of Shares:** The Board may:

- (a) consolidate and divide the Shares or any Class; and
- (b) subdivide the Shares or any Class,

in each case in proportion to those Shares or the Shares in that Class, as the case may be.

3.4 **Bonus issues:** The Board may resolve to apply any amount which is available for distribution to Shareholders either:

- (a) in paying up in full Shares or other securities of the Company to be issued credited as fully paid to:
 - (i) the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
 - (ii) if applicable, the holders of any other securities of the Company who are entitled by the terms of issue of such securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some later time, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any Shares held by the Shareholders referred to in sub-clause (a)(i),

or partly in one way and partly in the other.

3.5 **Shares in lieu of dividends:** The Board may exercise the right conferred by section 54 of the Act to issue Shares to any Shareholders who have agreed to

accept the issue of Shares, wholly or partly, in lieu of proposed dividends or proposed future dividends.

4. **RIGHTS ATTACHING TO SHARES**

4.1 Subject to the terms of issue of Shares and the rights of Shares which confer special rights, each Share confers on the holder the right to:

- (a) one vote on a poll at a meeting of the Shareholders on any resolution, including any resolution to:
 - (i) appoint or remove a Director or auditor;
 - (ii) adopt a constitution;
 - (iii) alter the Company's constitution;
 - (iv) approve a major transaction;
 - (v) approve an amalgamation of the Company under section 221 of the Act; or
 - (vi) put the Company into liquidation;
- (b) an equal share in dividends authorised by the Board on a per Share basis; and
- (c) an equal share in the distribution of the surplus assets of the Company on a per Share basis.

5. **ALTERATION OF SHAREHOLDER'S RIGHTS**

5.1 **Special Resolution required:** Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this Constitution, the Act, or the terms on which any of the Shares were issued, must be approved by Special Resolution of each Interest Group.

5.2 **Meetings of Interest Groups:** The provisions of this Constitution relating to meetings of Shareholders shall apply to separate meetings of the Shareholders in each Interest Group, except that:

- (a) the necessary quorum shall be a Shareholder or Shareholders or their Representatives holding or representing the holders of not less than one half of the Shares of the relevant Interest Group;
- (b) any Shareholder in the Interest Group present in person or by Representative may demand a poll; and
- (c) if the Board so elects, one meeting may be held of Shareholders constituting more than one Interest Group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of the Shareholders in each Interest Group.

5.3 **Issue of equal ranking Shares:** For the purposes of clause 5.1, the issue of further Shares which rank equally with, or in priority to, any existing Shares, whether as to voting rights, distributions or otherwise, is deemed not to be an action affecting the rights attaching to those existing Shares.

6. ACQUISITION AND REDEMPTION OF SHARES

6.1 **Company may purchase, acquire or redeem Shares:** The Company may purchase or otherwise acquire Shares issued by it from one or more Shareholders, and may redeem any redeemable Shares, in accordance with the provisions of the Act and this Constitution and may, subject to any requirements or restrictions imposed by law, hold any Shares so purchased, acquired or redeemed.

7. SHARE CERTIFICATES

7.1 **Issue of Share certificates:** The Company may issue Share certificates in respect of all or any Shares and must, within 20 working days after receiving an application by a Shareholder, send to that Shareholder a Share certificate, in accordance with section 95 of the Act unless those Shares are able to be transferred under a system authorised or approved under the Securities Transfer Act 1991 that does not require a Share certificate for the transfer of shares, in which case the Company shall not be obliged to send a Share certificate under any such application.

7.2 **Separate certificates for different Classes:** Every certificate shall relate to Shares of one Class only and Shares on which different amounts are paid up shall not be included in the same certificate. Every certificate shall in all other respects comply with the applicable provisions of the Act.

7.3 **Cancellation of Share certificates:** Upon the subdivision or consolidation of any Shares or any change in the amount paid up or credited as paid up on any Shares the Company may by resolution of the Board deem the relevant Share certificates to be cancelled and upon any change in the name of the Company the Company may similarly deem all or any of the Share certificates on issue to be cancelled.

7.4 **Replacement Share certificates:** The Company:

- (a) may issue a replacement certificate for any Share certificate that is worn out or defaced; and
- (b) shall issue a replacement Share certificate for one that has been lost or destroyed,

subject to satisfactory proof of that fact, payment of the reasonable expenses of the Company and, if so required by the Board, an appropriate indemnity being given to the Company.

8. CALLS ON SHARES

8.1 **Board may make calls:** The Board may, from time to time by notice in writing to Shareholders, make such calls as it thinks fit upon the Shareholders in respect of

any amounts unpaid on any Shares held by them which are not made payable at fixed times by the terms of issue of those Shares. A call may be made payable by instalments. The Board may revoke or postpone any call.

- 8.2 **Time of call:** A call is deemed to be made at the time when the resolution of the Board making the call is passed.
- 8.3 **Fixed instalments deemed calls:** An amount which, by the terms of issue of a Share, is payable on allotment or on a fixed date or as an instalment of a call is deemed for the purposes of this Constitution to be a call duly made and payable on the date on which the amount is payable.
- 8.4 **Notice of call:** At least 14 days' notice of any call shall be given to the holder of the Share in respect of which the call is made, specifying the time and place of payment.
- 8.5 **Differential calls:** The Board may, on the issue of Shares, differentiate between the Shareholders as to the amounts of calls to be paid in respect of the Shares and the times of payment of such amounts.
- 8.6 **Manner of payment:** A Shareholder by whom a call is payable shall pay the amount of the call to the Company at the time and place specified by the Board.
- 8.7 **Liability to pay:** Every relevant Shareholder shall be liable (jointly and severally in the case of joint Shareholders) to pay, in accordance with the relevant notice, every call.
- 8.8 **Default interest:** If a call in respect of a Share is not paid on or before the due date, the Shareholder by whom the call is payable shall pay interest on the call from the due date to the date of actual payment at the rate fixed in the notice of call or the terms applicable to the relevant Shares or, if there is no such rate, as the Board determines. The Board may waive payment of interest wholly or in part.
- 8.9 **Evidence:** In any proceedings for the recovery of moneys due in respect of any call a statutory declaration by a Director or any other person authorised by the Board that:
- (a) the name of the Shareholder is entered in the Share Register as the holder (or one of the holders) of the relevant Shares;
 - (b) the resolution making the call is recorded in the records of the Company; and
 - (c) notice of the call was sent to the Shareholder,
- shall be conclusive evidence of the indebtedness of the Shareholder to the Company in respect of the call.
- 8.10 **Payment in advance of calls:** The Company may receive from any Shareholder in advance any amount uncalled and unpaid upon any Shares held by that Shareholder and may, until the date on which the amount becomes payable

pursuant to a call, pay interest on the amount at such rate as the Board and the Shareholder agree.

9. FORFEITURE OF SHARES

9.1 **Notice requiring payment of call:** If a Shareholder fails to pay any call or instalment of a call on the due date, the Board may at any time thereafter by written notice to that Shareholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by the Company by reason of such non-payment.

9.2 **Contents of notice:** The notice shall specify a further date (not earlier than 14 days after the date of service of the notice) on or before which the payment is to be made, and shall state that, if payment is not made by the specified date, the Share in respect of which the call or instalment of a call is due, is liable to be forfeited.

9.3 **Forfeiture for non-payment:** If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made, any Share in respect of which the notice has been given may be forfeited by a resolution of the Board to that effect. The forfeiture shall include all dividends declared in respect of the forfeited Share and not paid before the forfeiture.

9.4 **Notice of forfeiture:** When a Share has been forfeited, the Company shall give notice of the resolution to the Shareholder in whose name the Share stood immediately prior to the forfeiture, and shall enter in the Share Register details of the forfeiture.

9.5 **Cancellation of forfeiture:** A forfeiture may be cancelled at any time before the sale of the forfeited Share, on such terms as the Board thinks fit.

9.6 **Effect of forfeiture:** The holder of a Share which has been forfeited ceases to be a Shareholder in respect of the forfeited Share and shall surrender any Share certificate for cancellation, but remains liable to the Company for all money payable in respect of the forfeited Share together with interest thereon.

10. LIEN ON SHARES

10.1 **Lien on Shares:** The Company has a first and paramount lien upon every Share which is not a fully paid Share, the proceeds of sale of the Share, and all distributions made in respect of the Share, for:

(a) all unpaid calls, instalments, or other amounts, and any interest payable on those amounts, relating to that Share; and

(b) any amount which the Company may be called upon to pay under any legislation in respect of the Share, whether or not the due date for payment thereof has arrived.

10.2 **Waiver of lien:** Unless otherwise agreed between the Company and the relevant Shareholder, the registration of a transfer of a Share shall operate as a

waiver of any lien which the Company may have on that Share, except as provided in clause 13.2.

11. **SALE OF SHARES SUBJECT TO FORFEITURE OR LIEN**

11.1 **Company may sell Shares:** The Company may sell any forfeited Share, or any Share on which the Company has a lien, in such manner as the Board thinks fit, but the Company shall not sell any Share:

- (a) unless the amount in respect of which a lien exists is due and payable; and
- (b) until the expiry of 14 days after written notice demanding payment of the amount has been given to the person entitled to receive notice of meetings of Shareholders in respect of the Share.

11.2 **Proceeds of sale:** The net proceeds (after deduction of any expenses) of the sale of a forfeited Share or of any Share sold for the purpose of enforcing a lien shall be applied in or towards satisfaction of any unpaid calls, interest or other amount in respect of which any lien exists (as the case may require). The residue, if any, shall be paid to the holder of the Share at the time of its forfeiture or, in the case of a Share sold for the purpose of enforcing a lien, the holder immediately prior to the sale or, if applicable in either case, to the Personal Representative of the holder.

11.3 **Evidence:** A statutory declaration by a Director that any power of sale has arisen and is exercisable by the Company under this Constitution, or that a Share has been forfeited on the date stated in the certificate, shall be conclusive evidence of those facts.

11.4 **Sale procedure:** For giving effect to any sale after forfeiture of any Share or for enforcing a lien over any Share, the Board may authorise any person to transfer any Share to the purchaser. The purchaser shall be registered as the holder of the Share and shall not be bound to see to the application of the purchase money, and the title of the purchaser shall not be affected by any irregularity or invalidity in relation to the sale.

12. **TRANSFER OF SHARES**

12.1 **Right to transfer:** Subject to any restrictions contained in this Constitution, a Shareholder or Personal Representative may transfer any Share:

- (a) by an instrument of transfer which complies with this Constitution; or
- (b) under a system of transfer approved under section 7 of the Securities Transfer Act 1991 which is applicable to the Company; or
- (c) By way of a sale and purchase through a financial product market if the shares are quoted on such a market.

12.2 **Securities Transfer Act:** A Share which is disposed of in a transaction to which the provisions of the Securities Transfer Act 1991 apply may be transferred in accordance with the provisions of that Act. Where an instrument of transfer

executed by a transferor outside New Zealand would have complied with the provisions of that Act if it had been executed in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Board or the Share Registrar.

12.3 Other forms of transfer: An instrument of transfer of Shares to which the provisions of clause 12.2 are not applicable shall:

- (a) be in any common form or any other form approved by the Board;
- (b) be signed or executed by or on behalf of the transferor; and
- (c) if registration as holder of the Share imposes a liability on the transferee, be signed or executed by or on behalf of the transferee.

12.4 Delivery to Company: An instrument transferring Shares must be delivered to the Company or to the Share Registrar, together with the Share certificate (if any) relating to those Shares. If there is no Share certificate for those Shares or if the Share certificate has been lost, damaged, or destroyed, the transferee shall provide such evidence as the Board or the Share Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.

12.5 Board may refuse to register: Subject to section 84 of the Act (which imposes certain procedural requirements on a board), the Board may refuse to register a transfer of any Share if:

- (a) the Company has a lien on the Share;
- (b) the Share is not fully paid up;
- (c) the transfer is not accompanied by the relevant Share certificate (if any) or the transferor fails to produce such evidence as the Board or the Share Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Share;
- (d) the Board has notice of any agreement by the Shareholder to transfer the Shares only to some specified person or subject to some specified condition;
- (e) The proposed transfer fails to comply with the provisions of any Shareholders Agreement; or
- (f) the transferor has not complied with the provisions of clause 13,

provided that the Board resolves to exercise its power under this clause within 30 Working Days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five Working Days of the resolution being passed by the Board.

12.6 When transfer effective: A transferor of a Share is deemed to remain the holder of the Share until the name of the transferee is entered in the Share Register in respect of the Share. A distribution will be sent to the name shown on the Share

Register on the day of the distribution regardless of whether a transfer has previously been received by the Company, if such transfer has not been processed into the Share Register.

- 12.7 **Company to retain transfer:** If the Company registers an instrument of transfer it shall retain the instrument.
- 12.8 **Multiple registers:** The Share Register may, by resolution of the Board, be divided into two or more registers, which may be kept in different places, and may be kept by one or more Share Registrars.
- 12.9 **Securities other than Shares:** The provisions of this section 12 shall apply, with any necessary modifications, to securities of the Company other than Shares except to the extent (if any) provided otherwise by the terms of issue of such securities or by law.

13. TRANSMISSION OF SHARES

- 13.1 **Transmission on death of Shareholder:** If a Shareholder dies, the survivor, if the deceased was a joint Shareholder, or the Shareholder's Personal Representative, shall be the only persons recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder but nothing in this clause shall release the estate of a deceased joint Shareholder from any liability in respect of any Share or constitute a release of any lien which the Company may have in respect of any Share.
- 13.2 **Rights of Personal Representatives:** A Shareholder's Personal Representative:
- (a) is entitled to exercise all rights (including without limitation the rights to receive distributions, to attend meetings and to vote in person or by Representative), and is subject to all limitations, attached to the Shares held by that Shareholder; and
 - (b) is entitled to be registered as holder of those Shares, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative pursuant to this sub-clause.
- 13.3 **Joint Personal Representatives:** Where a Share is subject to the control of two or more persons as Personal Representatives, they shall, for the purposes of this Constitution, be deemed to be joint holders of the Share.
- 13.4 **Change of trustees:** Shares in the Company standing in the name of the Personal Representative of a deceased Shareholder may be transferred to the new Personal Representative upon any change of Personal Representative of the deceased Shareholder.

14. DIVIDENDS

- 14.1 **Power to authorise:** The Board may, if satisfied on reasonable grounds that the Company will immediately after payment of the dividend satisfy the solvency test, subject to the Act and this Constitution including without limitation clause 14.2, authorise the payment of dividends by the Company at times, and of

amounts, and in such form, as it thinks fit and may do everything which is necessary or expedient to give effect to the payment of such dividends.

14.2 Form of dividend: Subject to the rights of holders of any Shares in a Class, the Board may authorise the payment of dividends in such form as it thinks fit but, except as provided in clause 14.3 or by the terms of any scheme then in operation by the Company for the issue of shares in lieu of dividends as provided by clause 3.6, the Board shall not differentiate between Shareholders as to the form in which dividends are paid without the prior approval of the Shareholders.

14.3 Currency of payment: The Board, if it thinks fit, may differentiate between Shareholders as to the currency in which dividends are to be paid. In exercising its discretion the Board may have regard to the registered address of a Shareholder, the register on which a Shareholder's Shares are registered and such other matters (if any) as the Board considers appropriate. If the Board determines to pay a dividend in a currency other than New Zealand currency, the amount payable shall be converted from New Zealand currency in such manner, at such time, and at such exchange rate, as the Board thinks fit.

14.4 Entitlement to dividends: The Board shall not authorise a dividend:

- (a) in respect of some but not all the Shares in a Class; or
- (b) that is of a greater value per Share in respect of some Shares of a Class than it is in respect of other Shares of that Class,

unless the amount of the dividend in respect of a Share of that Class is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder under this Constitution or under the terms of issue of the Share, but a Shareholder may waive that Shareholder's entitlement to receive a dividend or any part thereof by written notice to the Company signed by or on behalf of the Shareholder.

14.5 Entitlement Date: Dividends and other distributions or payments to Shareholders will be payable to the persons who are registered as Shareholders on an entitlement date fixed by the Board.

14.6 Deduction of money: The Board may deduct from dividends payable to any Shareholder in respect of any Shares any:

- (a) unpaid calls, instalments or other amounts, and any interest payable on such amounts, relating to the specific Shares; and
- (b) amounts the Company may be called upon to pay under any legislation in respect of the specific Shares.

14.7 Method of payment: A dividend payable in cash may be paid in such manner as the Board thinks fit to the entitled Shareholders or, in the case of joint Shareholders, to the Shareholder named first in the Share Register, or to such other person and in such manner as the Shareholder or joint Shareholders may in writing direct. Any one of two or more joint Shareholders may give a receipt for any payment in respect of the Shares held by them as joint Shareholders.

14.8 **No interest on dividends:** The Company is not liable to pay interest in respect of any dividend.

14.9 **Unclaimed dividends:** Dividends or other monetary distributions unclaimed for more than one year after having been authorised, may be used for the benefit of the Company until claimed. All dividends or other monetary distributions unclaimed for more than five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board may nevertheless, at any time after such forfeiture, annul the forfeiture and agree to pay a claimant who produces satisfactory evidence of entitlement. All dividends unclaimed at the final distribution of the Company, shall be distributed pro-rata to other Shareholders.

15. **EXERCISE OF POWERS OF SHAREHOLDERS**

15.1 **Alternative forms of meeting:** A meeting of Shareholders may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) if determined by the Board, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

15.2 **Exercise of power by meeting or written resolution:** A power reserved to the Shareholders by the Act or by this Constitution may be exercised either:

- (a) at a meeting of Shareholders; or
- (b) by a resolution in writing signed in accordance with section 122 of the Act.

15.3 **Powers exercisable by Ordinary Resolution:** Unless otherwise specified in the Act or this Constitution, a power or right of approval reserved to Shareholders may be exercised by an Ordinary Resolution.

16. **MEETINGS OF SHAREHOLDERS**

16.1 **Annual meetings:** The Company shall hold an annual meeting in each calendar year, in addition to any other meetings in that year, not later than:

- (a) 6 months after the balance date of the Company; and
- (b) 15 months after the previous annual meeting.

16.2 **Time and place of annual meeting:** Each annual meeting shall be held at such time and place as the Board appoints.

16.3 **Resolution in lieu of annual meeting:** It is not necessary for the Company to hold an annual meeting if everything required to be done at the meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section 122 of the Act.

16.4 **Special meetings:** All meetings of Shareholders, other than annual meetings, shall be called special meetings.

16.5 **Calling of special meetings:** A special meeting:

- (a) may be called by the Board at any time; and
- (b) shall be called by the Board on the written request of Shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting.

17. NOTICE OF MEETINGS OF SHAREHOLDERS

17.1 **Written notice:** Written notice of the time and place of a meeting of Shareholders shall be sent to every Shareholder entitled to receive notice of the meeting and to every Director, and to the auditor of the Company, not less than 10 Working Days before the meeting, but with the consent of all Shareholders entitled to attend and vote at a meeting, it may be convened by such shorter notice and in such manner as those Shareholders agree.

17.2 **Contents of notice:** A notice of meeting shall state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it;
- (b) the text of any Special Resolution to be submitted to the meeting; and
- (c) that a Shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of the Shareholder and that a proxy need not be a Shareholder.

17.3 **Form of resolutions:** So far as reasonably practicable, the resolutions to be proposed at a meeting shall be framed in a way which facilitates the giving of two way voting instructions to proxies.

17.4 **Waiver of notice irregularity:** An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.

17.5 **Accidental omission of notice:** The accidental omission to give notice of a meeting to, or the non-receipt or late receipt of notice of a meeting by, any person entitled to receive notice, does not invalidate the proceedings at the meeting.

17.6 **Notice of adjourned meeting:** If a meeting of Shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clause 17.1.

18. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

18.1 **Requirement for quorum:** Subject to clause 18.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.

Quorum: A quorum for a meeting of Shareholders is a Shareholder or Shareholders present in person or by Representative who between them have the right to cast a majority of the votes to be cast on the business to be transacted at the meeting.

18.2 **Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) in the case of a meeting called by the Board on the written request of Shareholders under section 121(b) of the Act, the meeting is dissolved; and
- (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Board may appoint and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their Representatives present are a quorum.

18.3 **Regulation of procedure:** Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the procedure at meetings of Shareholders.

18.4 **Adjournment of meeting:** The chairperson may (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the relevant meeting.

18.5 **Dissolution of disorderly meeting:** If a meeting becomes so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving any reason therefore, dissolve the meeting.

18.6 **Completion of unfinished business if meeting dissolved:** If a meeting is dissolved by the chairperson pursuant to clause 18.6, the unfinished business of the meeting shall be deemed to have been dealt with as follows:

- (a) in respect of a resolution concerning the approval or authorisation of a dividend; that the Board may, in the exercise of the powers conferred on it by the Act or this Constitution, authorise such dividend; and
- (b) in respect of a resolution concerning the remuneration of the auditors; that the Board be authorised to fix the remuneration of the auditors.

18.7 **Taking of a poll prior to dissolution:** If a meeting is dissolved by the chairperson pursuant to clause 18.6, the chairperson may, as part of that decision, direct that any other item of uncompleted business, which in his or her opinion requires to be voted upon, be put to the vote by a poll, in accordance with clause 22.4, without further discussion whereupon such poll shall be conducted immediately and the meeting deemed dissolved on conclusion of the taking of such poll.

19. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

19.1 **Chairperson:** If the Directors have elected a chairperson of the Board, and he or she is present at a meeting of Shareholders, he or she shall chair the meeting, unless or except to the extent that the chairperson considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting.

19.2 **Directors may appoint chairperson:** If no chairperson of the Board has been elected or if, at any meeting of Shareholders, the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of the meeting, or considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting, the Directors present may elect one of their number to chair the meeting or that part of the meeting which relates to the particular business, as the case may require.

19.3 **Shareholders may appoint chairperson:** If at any meeting of Shareholders no Director is willing to act as chairperson or no Director is present within 15 minutes after the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.

20. VOTING AT MEETINGS OF SHAREHOLDERS

20.1 **Voting at meeting in one place:** In the case of a meeting of Shareholders held under clause 15.1 (a), unless a poll is demanded in accordance with clause 22.1, the chairperson of the meeting shall determine whether voting will be by voice or by show of hands.

20.2 **Voting at audio/visual meeting:** In the case of a meeting of Shareholders held under clause 15.1 (b), unless a poll is demanded in accordance with clause 22.1, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

20.3 **Postal votes:** Unless the Board determines otherwise, Shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that postal voting will be permitted at a meeting, the provisions of clause 7 of the first schedule to the Act (relating to postal votes) shall apply, with such modifications (if any) as the Board thinks fit.

20.4 **Entitlement to vote:** A Shareholder may exercise the right to vote either in person or by Representative.

20.5 **Number of votes:** Subject to any rights or restrictions for the time being attached to any Share:

- (a) where voting is by show of hands or by voice every Shareholder present in person or by Representative has one vote; and
- (b) on a poll every Shareholder present in person or by Representative has:
 - (i) in respect of each fully paid Share held by that Shareholder, one vote; and
 - (ii) in respect of each Share held by that Shareholder which is not fully paid, a proportion of the vote or votes which would be exercisable if that Share were fully paid equivalent to the proportion of the total issue price of that Share which has been paid (disregarding any payment in advance).

20.6 Vote of overseas protected persons: A Shareholder who is not living in New Zealand, and who is of unsound mind or in respect of whom an order has been made by any court having appropriate jurisdiction, may vote in respect of any Shares held by that Shareholder, by his or her committee, manager, curator bonis, or other person of a similar nature appointed by that court, voting in person or by proxy.

20.7 Declaration by chairperson: A declaration by the chairperson of a meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 22.1.

20.8 Joint Shareholders: Where two or more persons are registered as joint Shareholders, the vote of the person named first in the Share Register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

20.9 Validity of Votes: In the case of any dispute as to the admission or rejection of a vote the chairperson shall determine the same and any such determination made in good faith shall be conclusive.

21. RESTRICTIONS ON VOTING

21.1 No vote when amount owing on Share: A Shareholder is not entitled to vote at any meeting of Shareholders (including a meeting of an Interest Group) in respect of any Share if any amount that is due and payable on that Share by the Shareholder to the Company has not been paid when due and such default remains unremedied.

22. POLLS

22.1 Right to demand poll: At a meeting of Shareholders a poll may be demanded by:

- (a) the chairperson; or
- (b) not less than five Shareholders having the right to vote at the meeting; or

- (c) a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or
- (d) a Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Shares that confer that right.

22.2 When poll may be demanded: A poll may be demanded either before or immediately after the declaration by the chairperson of the result of the vote in respect of a resolution. The demand for a poll may be withdrawn.

22.3 When poll taken: A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll.

22.4 Poll procedure: A poll shall be taken in such manner as the chairperson directs and the result of the poll is deemed to be a resolution of the meeting at which the poll is demanded.

22.5 Votes: On a poll:

- (a) votes may be given either personally or by Representative;
- (b) votes shall be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting in respect of those Shares; and
- (c) a Shareholder need not cast all the votes to which the Shareholder is entitled and need not exercise in the same way all of the votes which the Shareholder casts.

22.6 Scrutineers: The chairperson of the meeting shall appoint the scrutineers for the purpose of any poll.

22.7 Declaration of result: The chairperson is entitled to declare the result of a poll upon receipt of a certificate from the scrutineers setting out the maximum number of votes that could be cast at the meeting and stating that sufficient votes to determine the result of the resolution have been counted.

23. PROXIES

23.1 Right to appoint: A Shareholder may appoint a proxy to vote on behalf of the Shareholder at a meeting of Shareholders. The proxy is entitled to attend and be heard at the meeting, and to demand or join in demanding a poll, as if the proxy were the Shareholder.

23.2 Notice of appointment: A proxy shall be appointed by written notice signed by the appointing Shareholder and the notice shall state whether the appointment is for a particular meeting or for a specified term. The notice shall (so far as the subject matter and form of the resolutions to be proposed at the relevant

meeting reasonably permit) provide for two way voting on all resolutions, enabling the appointor to instruct the proxy as to the casting of the vote.

- 23.3 **Proxy form to be sent with notice of meeting:** The Company shall send a form of notice of appointment of proxy to every Shareholder entitled to attend and vote at a meeting, with the notice convening the meeting.
- 23.4 **Proxy form must not name proxy:** The Company shall not issue any form of notice of appointment with a proxy named in it, either by name or by reference to an office which that proxy holds, but the Company may indicate in a footnote that certain persons or officers are willing to act as a proxy if a Shareholder desires to appoint them or any of them.
- 23.5 **Production of notice:** No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at its registered office, or by the Share Registrar at such address as is specified for that purpose in the form of notice of appointment or in the notice convening the meeting, not later than 2 Business Days before the start of the meeting.
- 23.6 **Validity of proxy vote:** A vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, or the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Share in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Company at its registered office, or by the Share Registrar, before the commencement of the meeting or adjourned meeting for which the proxy is appointed.

24. **CORPORATE REPRESENTATIVE**

- 24.1 **Appointment of representative:** A corporation which is a Shareholder may appoint a Representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy. A corporate Representative shall have the same rights and powers as if the Representative were a proxy.

25. **SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW**

- 25.1 **Shareholder proposals:** A Shareholder may give written notice to the Board of a matter which the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The provisions of clause 9 of the first schedule to the Act apply to any notice given pursuant to this clause.
- 25.2 **Management review by Shareholders:** The chairperson of a meeting of Shareholders shall allow a reasonable opportunity for Shareholders at the meeting to question, discuss, or comment on the management of the Company. The Shareholders may pass a resolution relating to the management of the Company at that meeting but no such resolution is binding on the Board.

26. DIRECTORS

- 26.1 **Number of Directors and Special Rights of appointment:** The number of Directors shall not at any time be more than 7 nor less than 3 and subject to these limitations the number of Directors to hold office shall be fixed from time to time by the Board. A shareholder owning more than 20% shall have the right to nominate and from time to time remove and replace one (1) member of the Board. All nominees must be unanimously approved by all shareholders, such approval shall not be arbitrarily or unreasonably withheld.
- 26.2 **Appointment by Shareholders:** Subject to clause 26.1 and clause 26.3, a person may be appointed and removed from office as a Director at any time by an Ordinary Resolution.
- 26.3 **Appointment by Board:** Subject to clause 26.1, the Board may at any time appoint a person to be a Director. A Director so appointed holds office only until the next annual meeting of the Company but is eligible for re-election at that meeting.
- 26.4 **Existing Directors to continue:** The persons holding office as Directors on the date of adoption of this Constitution continue in office and are deemed to have been appointed as Directors pursuant to this Constitution.
- 26.5 **Restriction on appointment of several Directors by single resolution:** A single resolution for the appointment of two or more persons as Directors shall not be moved unless a separate resolution that it be so moved has first been passed by the meeting without any vote being cast against it but nothing in this clause prevents the election of two or more Directors by ballot or poll.
- 26.6 **Vacation of office:** A Director ceases to be a Director if he or she:
- (a) is removed from office pursuant to this Constitution or the Act;
 - (b) dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988;
 - (c) resigns by written notice delivered to the Company at its address for service (such notice to be effective at the time when it is so received unless a later time is specified in the notice);
 - (d) becomes disqualified from being a Director pursuant to section 151 of the Act;
 - (e) becomes bankrupt or makes an arrangement or composition with his or her creditors generally; or
 - (f) has for more than six months been absent without approval of the Board from all meetings of the Board held during that period.

27. **ALTERNATE DIRECTORS**

27.1 **Power to appoint:** A Director may from time to time by written notice to the Company appoint any person, who is not already a Director and who is approved by a majority of the other Directors, to be that Director's alternate. No Director may appoint a deputy or agent except by way of appointment of an Alternate Director under this section 28.

27.2 **Rights of Alternate Director:** Unless otherwise specified by the terms of his or her appointment, an Alternate Director:

- (a) is entitled, in the absence or unavailability of the Director who appointed him or her (the "Appointor"), to exercise the same rights, powers and privileges (other than the power to appoint an Alternate Director) as the Appointor;
- (b) when acting as an Alternate Director is subject to the same duties and obligations as the Appointor; and
- (c) is not entitled to be given notice of a meeting of the Directors unless the Appointor has given written notice to the Company requesting that notice be given to the Alternate Director.

27.3 **Remuneration and expenses:** An Alternate Director is not entitled to any remuneration from the Company in his or her capacity as an Alternate Director but is entitled to be reimbursed by the Company for all expenses incurred in attending meetings of the Directors and in the discharge of his or her duties, to the same extent as if he or she were a Director.

27.4 **Cessation of appointment:** An Alternate Director ceases to be an Alternate Director:

- (a) if the Appointor ceases to be a Director, or revokes the appointment by written notice to the Company;
- (b) on the occurrence of any event which, if the Alternate Director were a Director, would disqualify the Alternate Director from being a Director; or
- (c) if a majority of the other Directors resolve to revoke the Alternate Director's appointment.

28. **REMUNERATION AND OTHER BENEFITS OF DIRECTORS**

28.1 **Power to authorise:** Subject to clause 28.3, the Board may exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section.

28.2 **Payment of expenses:** Each Director is entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in connection with the Company's business.

28.3 **Retirement benefits:** The Company may not make any payment to a Director or former Director, or to his or her dependents, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director. Nothing in this clause shall adversely affect any amount paid or benefit given to an executive Director upon or in connection with the termination of his or her employment with the Company or the payment of any amount attributable to the contribution (or any normal subsidy related thereto) made by a Director to a superannuation scheme.

29. INDEMNITY AND INSURANCE

29.1 **Indemnity of Directors:** Subject to clause 29.3, every Director shall be indemnified by the Company:

- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission in his or her capacity as a Director and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
- (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in his or her capacity as a Director and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.

29.2 **Other indemnities:** Subject to clause 29.3, every director of a related company, or an employee of the Company or a related company shall be indemnified by the Company:

- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission by him or her in such capacity and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
- (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in such capacity, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.

29.3 **Exceptions:** An indemnity conferred by clause 29.1(b) or clause 29.2(b), shall not apply in respect of:

- (a) any criminal liability;
- (b) in the case of an employee of the Company or a related company, any liability in respect of a breach of any fiduciary duty owed to the Company or related company; or
- (c) in the case of a Director or a director of a related company, any liability in respect of a breach of the duty specified in section 131 of the Act.

29.4 **Insurance:** The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company or a director or employee of a related company, in respect of:

- (a) liability, not being criminal liability, for any act or omission by him or her in such capacity;
- (b) costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by him or her in defending any criminal proceedings:
 - (i) that have been brought against the Director or employee of the Company or director or employee of a related company in relation to any act or omission in such capacity; and
 - (ii) in which he or she is acquitted.

29.5 **Definitions:** In this section 29:

- (a) "Director" includes a former Director and "director" includes a former director; and
- (b) other words given extended meanings in section 162(9) of the Act have those extended meanings.

30. **POWERS OF DIRECTORS**

30.1 **Management of Company:** The business and affairs of the Company shall be managed by, or under the direction or supervision of the Board.

30.2 **Exercise of powers by Board:** The Board may exercise all the powers of the Company which are not required, either by the Act or this Constitution, to be exercised by the Shareholders.

30.3 **Delegation of powers:** The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the second schedule to the Act.

30.4 **Appointment of attorney:** The Company may exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

30.5 **Ratification by Shareholders:** Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholders, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

31. INTERESTS OF DIRECTORS

31.1 **Disclosure of Interests:** A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of clause 31.2.

31.2 **Personal involvement of Directors:** Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and section 199(2) of the Act (prohibiting a director from acting as auditor of a company), a Director may:

- (a) contract with the Company in any capacity;
- (b) be a party to any transaction with the Company;
- (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
- (d) become a director or other officer of, or otherwise Interested in, any company promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise; and
- (e) retain any remuneration, profit or benefits in relation to any of the foregoing,

and no contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director's Interest.

31.3 Interested Directors may vote

A Director who is Interested in a transaction entered into, or to be entered into, by the Company may:

- (a) vote on any matter relating to the transaction;
- (b) attend a meeting of the Board at which any matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum;
- (c) sign a document relating to the transaction on behalf of the Company; and
- (d) do any other thing in his or her capacity as a Director in relation to the transaction,

as if the Director were not Interested in the transaction.

32. PROCEEDINGS OF BOARD

32.1 **Third schedule of Act not to apply:** The provisions of the third schedule to the Act (relating to proceedings of a board) do not apply to the Company, except to the extent expressly incorporated in this Constitution.

32.2 **Alternative forms of meeting:** A meeting of the Board may be held either:

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by a conference between Directors some or all of whom are in different places, provided that each Director who participates is able:
 - (i) to hear each of the other participating Directors addressing the meeting; and
 - (ii) if he or she so wishes, to address each of the other participating Directors simultaneously, whether directly, by conference telephone or by another form of communications equipment (whether in use when this Constitution is adopted or developed subsequently) or by a combination of such methods.

Where two or more Directors participate from New Zealand in a meeting held in this way, the meeting shall be deemed to take place in New Zealand at the place agreed between such Directors. Where one Director participates from New Zealand in a meeting held in this way, the meeting shall be deemed to take place at the place from where that Director participates. Where no Director participates from New Zealand in a meeting held in this way, the meeting shall be deemed to take place at the place where the chairman of the meeting participates.

Any Director may, by prior notice to a senior officer of the Company, indicate that he or she wishes to participate in the meeting in the abovementioned manner in which event the Director shall procure that an appropriate conference facility is arranged. A Director participating in this way is deemed to be present in person at the meeting and shall be counted in the quorum and entitled to vote to the extent otherwise allowed by this Constitution.

32.3 **Procedure:** Except as provided in this Constitution, the Board may regulate its own procedure.

32.4 **Notice of meeting:** The following provisions apply in relation to meetings of the Board (except where otherwise agreed by all Directors in relation to any particular meeting or meetings or as provided in clause 32.5):

- (a) Not less than two Business Days' notice of a meeting of the Board shall be sent to each Director in all circumstances, unless:
 - (i) the Director waives that right; or

- (ii) the issue which is to be the subject of the meeting is, in the reasonable opinion of a majority of the Directors, a matter of urgency, in which event such notice as is practicable in the circumstances shall be still sought to be given to each such Director.
- (b) Notice to a Director of a meeting of the Board may be:
 - (i) given to the Director in person by telephone or other oral communication;
 - (ii) delivered to the Director;
 - (iii) posted to the address given by the Director to the Company for such purpose;
 - (iv) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
 - (v) sent by another form of communications equipment in accordance with any request made by the Director from time to time for such purpose.
- (c) A notice of meeting shall specify the date, time and place of the meeting and, in the case of a meeting by means of conference telephone or by another form of communications equipment, the manner in which each Director may participate in the proceedings of the meeting.
- (d) A notice of meeting given to a Director pursuant to this clause is deemed to be given:
 - (i) in the case of oral communication, at the time of notification;
 - (ii) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
 - (iii) in the case of posting, at the time of receipt which in the absence of proof to the contrary shall be considered to be three days after it is posted;
 - (iv) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director; and
 - (v) in the case of another form of communications equipment, at the time of transmission.

32.5 Director may convene meeting: Without limiting the provisions of clauses 32.3 or 32.4, a Director has the right at any time to convene a meeting of the Board, or to require a senior officer of the Company to convene a meeting of the Board, at the registered office of the Company or at the place where the meetings of the Board for the time being are customarily held, by giving not less

than seven days' written notice signed by or on behalf of the Director to each of the other Directors stating the date, time and place of the meeting and the matters to be discussed.

- 32.6 **Waiver of notice irregularity:** An irregularity in the giving of notice of a meeting is waived if each of the Directors either attends the meeting without protest as to the irregularity or agrees (whether before, during, or after the meeting) to the waiver.
- 32.7 **Quorum:** A quorum for a meeting of the Board may be fixed by the Directors from time to time, and unless so fixed shall be three Directors of which one shall be an Independent Director (if there is an Independent Director). No business may be transacted at a meeting of Directors if a quorum is not present.
- 32.8 **Insufficient number of Directors:** The Directors may act notwithstanding any vacancy in their body, but if and so long as the number of Directors holding office is less than the minimum number fixed by clause 26.1, the continuing Directors may act only for the purpose of increasing the number of Directors to that number or of summoning a meeting of the Shareholders.
- 32.9 **Election of chairperson:** The Directors may from time to time elect a chairperson and (if they think fit) a deputy chairperson, of their meetings, and determine the period for which they respectively are to hold office. The chairperson, or failing the chairperson the deputy chairperson (if any), shall preside at all meetings of the Directors but if no such chairperson or deputy chairperson is elected, or if at any meeting the chairperson or deputy chairperson is not present within 15 minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairperson of the meeting.
- 32.10 **Voting:** Every Director has one vote. The chairperson shall not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent, or if a majority of the votes cast on it are in favour of the resolution. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from or votes against, or expressly abstains from voting on, the resolution at the meeting.
- 32.11 **Resolutions in writing:** A resolution in writing, signed or assented to by all Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form, each signed or assented to by one or more Directors. A copy of any such resolution must be entered in or kept with the records of Board proceedings.
- 32.12 **Committees:** A committee of Directors shall, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.
- 32.13 **Validity of Acts:** All acts done by any meeting of the Board or of a committee of Directors or by any person acting as a Director are valid notwithstanding:

- (a) any defect in the appointment of any Director or person acting as a Director;
- (b) that they or any of them were disqualified; or
- (c) any irregularity in a notice of meeting.

32.14 **Minutes:** The Board shall ensure that minutes are kept of all proceedings at meetings of the Shareholders and of the Board and its committees. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

33. **METHOD OF CONTRACTING**

33.1 **Deeds:** A deed which is to be entered into by the Company may be signed on behalf of the Company by:

- (a) two or more Directors;
- (b) any Director, together with any other person authorised by the Board whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Company.

33.2 **Other written contracts:** An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.

33.3 **Other obligations:** Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

34. **INSPECTION OF RECORDS**

34.1 **Inspection by Directors:** Subject to section 191(2) of the Act (which relates to the power of a court to limit inspection), all accounting and other records of the Company shall be open to the inspection of any Director.

34.2 **Inspection by Shareholders:** No Shareholder who is not also a Director is entitled to inspect any accounting or other records of the Company except as expressly authorised by law or permitted by the Board. Subject to the provisions of section 216 of the Act (which permits inspection of certain records by Shareholders) the Board may from time to time determine whether, to what extent, at what times and places, and under what conditions, the accounting or other records of the Company or any of them are open to the inspection of Shareholders (who are not also Directors).

35. **NOTICES**

35.1 **Method of service:** All notices, reports, accounts and other documents required to be sent to a Shareholder, shall be sent in the manner provided in section 391

of the Act. Notices to any other person shall be sent in the same manner as if that person were a Shareholder.

- 35.2 **Joint Shareholders:** A notice may be given by the Company to the joint holders of a Share by giving the notice to the joint holder named first in the Share Register in respect of the Share.
- 35.3 **Shareholder deceased or bankrupt:** If the holder of a Share dies or is adjudicated bankrupt, notice may be given in any manner in which notice might have been given if the death or bankruptcy had not occurred, or by giving notice in the manner provided in section 391 of the Act to the Personal Representative of the holder at the address supplied to the Company for that purpose.
- 35.4 **Waiver by Shareholders:** Subject to section 210 of the Act (which requires financial statements to be sent to Shareholders who elect not to receive annual reports), a Shareholder may from time to time, by written notice to the Company, waive the right to receive all or any documents from the Company and may at any time thereafter revoke the waiver in the same manner. While any waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.

36. LIQUIDATION

- 36.1 **Distribution of Surplus:** Subject to the rights of any Shareholders and to clauses 36.2 and 36.3, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed among the Shareholders in proportion to their Shareholding. If any Shareholder's Shares are not fully paid up, the liquidator of the Company may require those Shares to be fully paid up before the Shareholder receives any distribution of the surplus assets of the Company in respect of those Shares.
- 36.2 **Distribution in Kind:** With the approval of the Shareholders by Ordinary Resolution, the liquidator of the Company may divide amongst the Shareholders in kind the whole or any part of the assets of the Company (whether or not they are of the same kind) and for that purpose the liquidator may:
- (a) attribute values to assets as the liquidator considers appropriate; and
 - (b) determine how the division will be carried out as between the Shareholders or different Classes of Shareholders.
- 36.3 **Trusts:** With the approval of the Shareholders by Ordinary Resolution, the liquidator may vest the whole or any part of any surplus assets of the Company in trustees upon trust for the benefit of Shareholders. The liquidator may determine the terms of the trust.