

## **1 EFFECT OF CONSTITUTION**

- 1.1 The Company, the Board, the Shareholders and each Director and Shareholder of the Company has the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified by this Constitution.

## **2 INTERPRETATION**

### **Definitions**

- 2.1 In this Constitution including the Schedules unless the context otherwise requires:

"Act" means the Companies Act 1993.

"Advisory Director" includes any person appointed under Clause 21.3(b) but does not include "Directors" as defined hereunder.

"Articles of Association" means the Articles of Association of the Company in effect immediately prior to reregistration of the Company under the Act.

"Associated Person" has the meaning given to it in the Listing Rules.

"Auditor" means the auditor of the Company.

"Bank" has the meaning given to it in the Listing Rules.

"Board" means the Directors who number not less than the required quorum acting together as a Board of Directors.

"Business Day" means a day on which the Exchange is open for trading.

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

"Company" means Power Beat International Limited (PBIL).

"Constitution" means this Constitution as amended from time to time.

"Convert" in respect of a Security, means to convert that Security into, or exchange that Security for, a Security of a different sort, whether at the option of the holder, or of the Company, or otherwise, or to subscribe for or obtain a Security of a different sort pursuant to a right conferred by the first mentioned Security. "Conversion" and "Convertible" have corresponding meanings.

"Convertible Securities" means Securities that are convertible into shares.

"Debt Securities" has the meaning given to it in the Listing Rules.

"Directors" means the directors for the time being of the Company.

"Distribution" has the meaning given to it in the Act.

"Distribution Rights" means:

- (a) a present or future right to participate in the assets of the Company after payment of all liabilities of the Company, other than up to a fixed amount; or
- (b) a present or future right to participate in the income or profits of the Company, other than at a fixed rate or at a rate fixed by reference to a formula or index external to the Company.

"Dividend" has the meaning given to it in the Act.

"Employee" has the meaning given to it in Listing Rule 7.3.6.

"Equity Securities" has the meaning given to it in the Listing Rules which at the date of adoption of this Constitution is a Security:

- (a) which confers a present or future right to participate in the assets of the Company after payment of all liabilities of the Company, other than up to a fixed amount; or
- (b) which confers a present or future right to participate in the income or profits of the Company, other than a fixed rate or at a rate fixed by reference to a formula or index external to the Company; or
- (c) which carries, or will in future carry, a Vote, or a right to participate in the ultimate control of the Company; or
- (d) which may be converted into a security of the nature referred to in (a) to (c);

and includes any other Security which the Exchange in its discretion deems to be an Equity Security.

"Exchange" means the New Zealand Stock Exchange and as the context permits includes any delegate of the Exchange (including the Panel) and any recognized Stock Exchange in respect to the Listing Rules and includes ShareMart.

"Head Licence" means the Deed of Licence entered into between the Company and the Grantor dated 19 August 1989 and includes the amendment dated 22 September 1989 and any subsequent amendments which may be executed between the parties.

"Grantor" means the Licensor of the Head Licence.

"Group" means the Company or its subsidiaries.

"Intellectual Property Rights" means the exclusive technology commercialization rights granted to the Company under the Head License.

"Interest Group" has the meaning given to it in the Act.

"Listing" means in respect of any person, the entering into between the person and the Exchange of a listing agreement, whereby that person agrees to comply with the Listing Rules and the Exchange agrees to administer that person's listing on the Exchange. "Listed" has a corresponding meaning.

"Listing Rules" means the listing rules of the Exchange as the same are in force from time to time and as amended from time to time and includes the Listing Rules of "ShareMart".

"Managing Director" means the Director appointed as such pursuant to clause 23.1.

"Material Transaction" means a transaction whereby the Company:

- (a) purchases or otherwise acquires, gains, leases (lessor or lessee) or sells or otherwise disposes of, assets having an aggregate gross value in excess of 5% of Shareholders' Funds; or
- (b) borrows, lends, pays or receives, money, or incurs an obligation, of an amount in excess of 5% of Shareholders' Funds; or
- (c) enters into any guarantee, indemnity, or similar obligation, or gives any security, for or of obligations which could expose the Company to liability in excess of 5% of Shareholders' Funds; or
- (d) provides or obtains any services (including without limitation the under-writing of Securities or services as an employee) in respect of which the actual gross cost to the Company in any financial year (ignoring any returns or benefits in connection with such services) is likely to exceed an amount equal to 0.5% of Shareholders' Funds.

"Minimum Holding" has the meaning given to it in the Listing Rules.

"Month" means calendar month.

"Option" means an option to acquire a Security.

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

"Panel" has the meaning given to it in the Listing Rules.

"Quote and Quoted" have the meaning given to them in the Listing Rules.

"Recognized Stock Exchange" has the meaning given to it in the Listing Rules.

"Record Date" means the time fixed by the Board for the determination of the Security holders to whom an entitlement, right or obligation relating to Securities shall apply and which shall be 5pm on a Friday if the Friday is a day on which the Exchange is open for trading, or otherwise on the previous day on which the Exchange is open for trading.

"Registered Office" means the registered office for the time being of the Company.

"Related Company" has the meaning given to it in the Act.

"Related Party" means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:

- (a) a Director or officer of the Company or any of its subsidiaries; or
- (b) a substantial security holder (as defined in the Securities Amendment Act 1988) of the Company; or
- (c) an Associated Person of the Company or any of the persons referred to in paragraphs (a) or (b) of this definition; or
- (d) a person in respect of whom there are arrangements intended to result in that person becoming a person described in paragraphs (a), (b) or (c) of this definition, or of whom the attainment of such a status may reasonably be expected,

but excludes a wholly owned subsidiary of the Company which is intended to remain a wholly owned subsidiary.

"Representative" means a person authorized in accordance with paragraph 11 of the First Schedule to act as its representative at a meeting of Shareholders.

"Ruling" means any decision or determination by the Exchange or the Panel as to the meaning or interpretation of the Listing Rules and includes any ruling, waiver or revocation of a waiver given pursuant to Listing Rule 1.4, 1.6 or 1.7.

"Security" means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person and includes:

- (a) any renewal or variation of the terms or conditions of any existing security;
- (b) any option to acquire a Security;
- (c) any right to acquire any Security or benefit of any kind, whether conditional or not, and whether renounceable or not.

"Shareholder" means a person whose name is entered in the Share Register as the holder for the time being of one or more shares in the Company.

"Shareholders' Funds of the Company" means the amount disclosed as equity (whether described as equity, shareholders' funds, or otherwise) by the most recently published group financial statements of the Company and its Subsidiaries. However, if since the date of the most recently published statements there has been a material decline in the consolidated equity of the Company and its Subsidiaries then Shareholders' Funds of the Company shall be determined by reference to the position which would be disclosed if financial statements were prepared at that time.

"Share Register" means the register to be kept pursuant to the Act and includes any division of such register.

"Solvency Test" has the meaning given to it in the Act.

"Special Resolution" means a resolution approved by a majority of 75 percent of the Votes of those Shareholders entitled to vote and voting on the question.

"Subsidiary" means a subsidiary within the meaning of section 5 of the Act (read together with sections 6 to 8 inclusive of that Act).

For the purpose only of clause 19 and the definition of "Shareholders Funds of the Company", "Subsidiary" also includes an entity treated as a subsidiary or in substance subsidiary within the meaning of Statement of Standard Accounting Practice Number 8 issued by the New Zealand Society of Accountants or within the meaning of any financial reporting standard approved in terms of section 27(3) of the Financial Reporting Act 1993 or in accordance with the United States Generally Accepted Accounting Principles.

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

"Vote" has the meaning given to it in the Listing Rules.

### **No Definition**

2.2 Any expression not defined in this Constitution but defined in the Act shall bear the same meaning in this Constitution as in the Act.

### **Singular and Plural**

2.3 In this Constitution, if not inconsistent with the context:

- (a) words importing the singular number also include the plural, and vice versa; and
- (b) words importing persons include firms and corporations and firm includes partnership.

### **Headings**

2.4 Headings shall not affect the interpretation of this Constitution.

### **Reference to Statutes**

2.5 Unless the context otherwise requires, references to a statute, including any term defined in a statute include:

- (a) amendments to that statute; and
- (b) a statute passed in substitution for that statute; and
- (c) regulations passed under that statute or any of its amendments or under a statute passed in substitution for that statute.

### **Reference to Share**

2.6 A reference to a Share means a share in the Company.

### **References to Clause, Paragraph, or Schedule**

2.7 (a) A reference to a clause means a clause in this Constitution.

- (b) A reference to a paragraph means a paragraph within a clause of the Constitution or a paragraph of a schedule to this Constitution.
- (c) A reference to a schedule means a schedule to this Constitution.

### **Reference to Permitted**

- 2.8 A reference to permitted by the Act or permitted by the Listing Rules means not prohibited by the Act or not prohibited by the Listing Rules.

## **3 LISTING RULES**

### **Compliance with Listing Rules**

- 3.1 For so long as the Company is listed on the New Zealand Stock Exchange (NZSE) it will comply with the Listing Rules of the NZSE, provided that where at any time the Company's securities are suspended from trading or quotation for more than 30 days or cease to be listed or quoted by the NZSE, the Company will revert to the provisions of the Act insofar as this Constitution in adopting any of the provisions of the NZSE Listing Rules negate or modify the effect of the Act.

### **Rulings by Exchange**

- 3.2 If the Exchange has granted a Ruling in relation to the Company authorizing any act or omission which in the absence of that Ruling would be in contravention of the Listing Rules or this Constitution, that act or omission shall, unless a contrary intention appears in the Constitution, be deemed to be authorized by the Listing Rules and this Constitution.

### **Validity of Transaction**

- 3.3 (a) A failure to comply with the Listing Rules or with any of clause 19 of this Constitution shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the failure to comply with the Listing Rules or those provisions of the Constitution shall not be entitled to enforce that transaction or contract.
- (b) This clause does not affect the rights of any holder of Securities against the Company or the Directors arising from failure to comply with the Listing Rules or any of clause 19 of this Constitution, or paragraph 6.12 of the First Schedule to this Constitution.

## **4 SHARES**

### **Types of Shares**

- 4.1 Different classes of shares may be issued in the Company and, without limiting the foregoing, shares may:
- (a) be redeemable; or
  - (b) confer preferential rights to distributions of capital or income; or
  - (c) confer special, limited, or conditional voting rights; or
  - (d) not confer voting rights; or
  - (e) have limitations or restrictions on transferability (subject to the Listing Rules).

## **Redeemable Shares**

4.2 The Board may issue shares that are redeemable:

- (a) at the option of the Company; or
- (b) at the option of the holder of the share; or
- (c) on a date determined by the Board;

for a consideration that is:

- (d) determined by the Board; or
- (e) to be calculated in accordance with a formula; or
- (f) required to be fixed by a suitably qualified person who is not associated with or interested in the Company.

## **Convertible Securities**

4.3 The Board may issue Convertible Securities upon such terms and conditions as it thinks fit including the right for the holders of Convertible Securities to participate in the same manner and to the same extent as the holders of the Class into which the Convertible Securities are to be converted in any issue of Securities offered to the holders of such Class.

## **Options**

4.4 The Board may issue options to acquire Securities on such terms and conditions as to price, payment, exercise, or otherwise as shall be determined by the Board at the time when such options are granted. No options may be issued which confer the right on holders to vote other than at meetings of option holders. The power to issue options is subject to the provisions of the Act.

## **5 ISSUE OF SHARES**

### **Generally**

5.1 Subject to the Act and this Constitution, and in particular clause 5.5(a), the Board may issue Shares at any time, to any person, and in any number it thinks fit. The consideration for which such shares are issued may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other Securities.

### **Consent to Issue**

5.2 The issue of a share that:

- (a) increases a liability of a person to the Company; or
- (b) imposes a new liability on a person to the Company,

is void unless that person, or an agent of that person authorized in writing, consents in writing to becoming the holder of the share before it is issued.

### **Time of Issue**

- 5.3 A share is issued when the name of the Shareholder is entered on the Share Register in respect of that share.

### **Pre-emptive Rights**

- 5.4 The provisions of section 45 of the Act shall not apply.

### **Prohibition on Issue**

- 5.5 The Company shall not issue Equity Securities unless:
- (a) the precise terms and conditions of the specific proposal to issue those Equity Securities have been approved (subject to clause 5.7 and in accordance with the requirements of Listing Rules 6.2.1 and 9.3.1) by separate resolutions (passed by a simple majority of votes) of holders of each Class of Quoted Equity Securities whose rights or entitlements could be affected by the issue, and the issue is completed within the time specified in clause 5.6; or
  - (b) the issue is made in accordance with any of clauses 5.8 to 5.13 (subject to clauses 5.15 and 19.1 if applicable); or
  - (c) the issue is otherwise permitted by the Listing Rules and approved by the Exchange.

### **Time Limit**

- 5.6 An issue authorized by resolution passed pursuant to clause 5.5(a) shall be completed within 6 months after the passing of that resolution.

### **Exception**

- 5.7 A resolution pursuant to clause 5.5(a) of the holders of a Class of Securities shall not be required if:
- (a) the terms of issue of those Securities expressly reserved the right to make the issue of new Equity Securities in question, and specified at least the maximum number, and Class, of new Equity Securities which could be issued, and the time within which they could be issued; or
  - (b) those Securities were issued before 1 September 1994 on terms that the holders of those Securities would not be entitled to vote on a resolution of the nature referred to in clause 5.5(a); or
  - (c) those Securities were issued on terms that the holders of those Securities would vote together with the holders of another Class or Classes of Equity Securities on a resolution of the nature referred to in clause 5.5(a) and the issue is approved by a resolution (passed by a simple majority of votes) of holders of all the relevant Classes voting together.

### **Rights Issues**

- 5.8 The Board may issue Equity Securities if those Equity Securities are offered to holders of existing Equity Securities on a basis which, if the offer were accepted by all such holders, would maintain the existing proportionate rights of each existing holder (relative to other holders of Equity Securities) to Votes and to Distribution Rights provided that every person to whom Equity Securities are offered may decline or accept the offer or may transfer the rights to any person. The provisions of this Constitution relating to transfer of shares shall apply to the transfer of rights with all necessary modifications.

## **Bonus Issues**

- 5.9 The Board may issue Equity Securities if those Equity Securities are issued to holders of existing Equity Securities as fully paid Securities on a basis which maintains the existing proportionate rights of each existing holder (relative to other holders of Equity Securities) to votes and to Distribution Rights.

## **Provisions Relating to Rights and Bonus Issues**

- 5.10 Notwithstanding clause 5.8 and 5.9, the Board shall be entitled:
- (a) to issue any Equity Securities in respect of which an offer is not accepted or which because of fractional entitlements are not otherwise offered, to such persons and in such manner as the Board considers equitable and in the interests of the Company, provided that the price and terms and conditions of the issue of such Equity Securities are not materially more favorable to the persons to whom they are issued than the terms of the original offer; and
  - (b) to offer and issue Equity Securities to the holders of existing Securities in accordance with specific rights attached to those existing Securities to participate in issues of Equity Securities, notwithstanding that the effect may be that existing proportionate rights to Votes and Distribution Rights are not maintained; and
  - (c) to authorize a disproportionate offer to the extent necessary to round up holdings of Equity Securities to a Minimum Holding, or to avoid the creation of holdings which are not Minimum Holdings; and
  - (d) to not offer or issue Equity Securities to holders of existing Equity Securities (including Convertible Securities) the terms of which expressly exclude the right to participate in the relevant offer or issue.

## **Issue Within 10% Limit**

- 5.11 (a) The Board may issue Equity Securities if:
- (i) the issue is not made in whole or in part to any Director, Associated Person of a Director, or Employee; and
  - (ii) the total number of Equity Securities issued, and all other Equity Securities of the same Class issued pursuant to this clause 5.11 and Article 3.3.1(h) of the Articles of Association during the period of 12 months preceding the date of the issue commencing as at the date of adoption of this Constitution will not exceed the aggregate of:
    - (A) 10% of the total number of Equity Securities of that Class on issue at the commencement of that period; and
    - (B) 10% of the number of the Equity Securities of that Class issued during that period pursuant to any of clauses 5.5(a), 5.8, 5.9, 5.10, 5.12 and 5.13 and any of Articles 3.2, 3.3.1 (a), (b), (d) or (g) of the Articles of Association; and
    - (C) any Securities of that Class issued pursuant to this clause 5.11 during that period, the issue of which has been ratified by an Ordinary Resolution of the Company passed in accordance with Listing Rules 6.2.1 and 9.3.1;

less

- (D) 10% of the number of Equity Securities of that Class which have been acquired or redeemed by the Company during that period (other than Equity Securities held as Treasury Stock),
- (b) For the purposes of this clause 5.11, Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert.

### **Employee Share Issues**

- 5.12 (a) The Company may issue Equity Securities if:
- (i) the issue is made to Employees; and
  - (ii) the issue is of a Class of Securities already on issue; and
  - (iii) the total number of Securities issued, and all other Equity Securities of the same Class issued to Employees pursuant to this clause 5.12 and Article 3.3.1(b) of the Articles of Association during the period of 12 months preceding the date of issue does not exceed 2% of the aggregate of:
    - (A) the total of Equity Securities of that Class on issue at the commencement of that period; and
    - (B) the total number of Equity Securities of that Class issued during that period pursuant to any of clause 5.5(a), 5.8, 5.9, 5.10, 5.11 and 5.13 and any of Articles 3.2, 3.3.1(a) and (c) - (h) of the Articles of Association; and
  - (iv) the total number of Securities issued, and all other Equity Securities of the same Class issued to Employees pursuant to this clause 5.12 and Article 3.3.1(b) of the Articles of Association during the period of five years preceding the date of the issue does not exceed 5% of the total number of Equity Securities of that Class on issue immediately preceding the date of the issue.
- (b) For the purposes of this clause 5.12, Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert.
- (c) Unless permitted by the Exchange, Directors and Associated Persons of Directors shall not participate in any such issue unless the scheme for such participation and the precise levels of entitlement for each such person have been previously approved by an Ordinary Resolution of the Company, passed in accordance with Listing Rule 9.3.1.
- (d) For the purposes of this clause 5.12, an issue to a Director, or an Associated Person of a Director, solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which the Director or Associated Person has no beneficial interest, shall be deemed not to be an issue to a Director or Associated Person of a Director, or an issue in which Directors or Associated Persons participate.

### **Other Issues**

- 5.13 The Board may issue Equity Securities in any of the following circumstances:
- (a) The issue is made as consideration in an offer made by the Company or any wholly owned Subsidiary of the Company in accordance with:

- (i) Part 1 of the Companies Amendment Act 1963; or
- (ii) any takeover code approved under section 28 of the Takeovers Act 1993; or
- (iii) provisions of the constitution of another Listed New Zealand issuer which comply with section 4 of the Listing Rules; or
- (iv) any takeover law regime or a jurisdiction other than New Zealand which provides for prior notice, publicity and disclosure which in the opinion of the Exchange is at least as useful to the recipients of the offer as the requirements of one or more of the provisions referred to in paragraph (i), (ii) or (iii);

and that offer is made to all holders (other than the Company and its Related Companies) of Equity Securities in any company or other entity listed on the Exchange or on a Recognized Stock Exchange which is not a company or other entity that is an Associated Person of the Company or of any Director of the Company; or

- (b) The issue is made upon Conversion of any Securities from time to time issued by the Company if the terms of issue of those Securities provided for Conversion to Equity Securities of the kind issued; or
- (c) The issue is made to an existing holder of Equity Securities of the Company in order to bring that holder's holding up to a Minimum Holding; or
- (d) The issue is made pursuant to an arrangement, an amalgamation or a compromise effected pursuant to Part XIII of the Act; or
- (e) The issue is made to satisfy the entitlement of holders of shares who elect pursuant to clause 9.8 to be issued with shares in lieu of Dividend.

### **Treasury Stock**

5.14 The transfer by the Company of Treasury Stock shall for the purposes of clauses 5.5 to 5.13 be deemed to constitute the issue of Equity Securities.

### **Issue Changing Control to Require Resolution**

- 5.15 Notwithstanding clauses 5.8 to 5.13, no issue of Securities shall be made by the Company if:
- (a) there is a significant likelihood that the issue will result in any person or group of Associated Persons materially increasing their ability to exercise, or direct the exercise of (either then or at any future time) effective control of the Company; and
  - (b) that person or group of Associated Persons is entitled before the issue, to exercise, or direct the exercise of, not less than 1% of the total Votes attaching to Securities of the Company;

unless the precise terms and conditions of the issue have been approved by an Ordinary Resolution of the Company passed in accordance with Listing Rule 9.3.1 or the issue is otherwise permitted by the Listing Rules or a Ruling.

## **6 ALTERATION OF SHAREHOLDERS RIGHTS**

### **Procedure for Alteration of Shareholder Rights**

- 6.1 (a) The Company shall comply with the provisions of sections 116 and 117 of the Act in respect of shares of the Company and also comply with those sections in respect of other Equity Securities. For the purposes of this clause, those sections shall be deemed to be modified so that:
- (i) reference to those sections to "shares" shall (subject to subclause (b)) be deemed to be references to all Equity Securities, and references to "shareholders" and "holders of shares" shall be read accordingly.
  - (ii) in respect of Equity Securities which are not shares:
    - (A) references to a special resolution shall be deemed to be references to a resolution approved by a majority of 75% of votes of the holders of those Securities entitled to vote and voting; and
    - (B) references to the Constitution shall be deemed to be references to the document which governs the rights of those Equity Securities.
- (b) The Company shall not be required by this clause 6.1 to comply with sections 116 and 117 of the Act in respect of actions that affect the rights attached to:
- (i) Equity Securities which are not Quoted; or
  - (ii) Equity Securities which are not shares if:
    - (A) those Equity Securities were issued before 30 April 1995; or
    - (B) those Equity Securities were issued on terms which expressly permitted the action in question to be taken without the approval of holders of those Equity Securities, and those terms were clearly disclosed in the Prospectus or Profile (if any) pursuant to which those Equity Securities were offered.

### **Issue of Further Equity Securities**

- 6.2 The issue of further Equity Securities ranking equally with, or in priority to, existing Equity Securities, whether as to voting rights or distributions is expressly permitted by this Constitution and shall not affect the rights to existing Equity Securities.

### **Action not Invalid**

- 6.3 The taking of action by the Company affecting the rights attached to Equity Securities is not invalid by reason only that the action was not approved in accordance with this clause 6.

## **7 CALL ON SHARES**

### **Power to Call**

- 7.1 The Board may from time to time make calls in respect of all moneys unpaid on shares and which are not payable at fixed times. A call may be made payable by installments. A call shall be deemed to have been made at the time when the resolution of the Board making the call was passed. Each Shareholder shall pay the call so made to the Company or person appointed for the purpose and at the times and places appointed by the Board.

### **Revocation or Postponement of Calls**

7.2 Subject to the Listing Rules, a call may be revoked, reduced or postponed as the Board determines.

### **Joint Holders**

7.3 Joint Shareholders shall be jointly and severally liable to pay all calls in respect of shares held by them.

### **Interest**

7.4 Interest on the call shall be payable from the day appointed for payment to the day of actual payment at such rate as may be applicable under the terms of issue or as the Board determines. The Board may waive payment of that interest wholly or in part.

### **Terms of Issue**

7.5 Any sum which by the terms of issue of a share becomes payable on a particular day shall for the purposes of this Constitution be deemed to be a call duly made and payable on that day.

### **Different Amounts**

7.6 The Board may on the issue of shares differentiate as to the amount of calls to be paid and the time of payment.

### **Calls may be Paid in Advance and Interest may be Paid Thereon**

7.7 The Board may receive from any Shareholder advances of all or part of the money uncalled and unpaid upon any shares held by the Shareholder. The Board may pay interest on the money so advanced at such rate as the Board determines. Distributions shall not be made on uncalled amounts paid in advance.

## **8 LIEN AND FORFEITURE OF SHARES**

### **Lien on Shares**

8.1 The Company shall have a first lien upon the shares registered in the name of each Shareholder (whether solely or jointly) and on the Distributions declared on such shares for:

- (a) unpaid calls and installments and any interest payable on such amounts, in respect of those shares; and
- (b) such amounts as the Company may be called upon by law to pay in respect of those shares, including withholding and other taxes.

### **Sale of Shares**

8.2 (a) The Company, may sell any shares on which it has a lien if;

- (i) a sum in respect of which the lien exists is presently payable; and
- (ii) 14 days notice in writing demanding payment of such sum has been given to the Shareholder.

- (b) To give effect to any such sale a Director may execute a transfer of the shares to the transferee, and may receive the consideration from such transfer.
- (c) Upon registration of such transfer the transferee shall be the Shareholder of such shares discharged from all calls due prior to sale.
- (d) The transferee shall not be bound to see to the application of the purchase money nor shall the transferee's title to the shares be affected by any irregularity or invalidity on the sale.
- (e) The remedy of the former Shareholder, and of any person claiming under or through the former Shareholder, shall be against the Company exclusively and in damages only.
- (f) If shares are sold to enforce a lien the proceeds of sale shall first be applied in payment of all costs and expenses of such sale and any attempted sale and then in satisfaction of unpaid calls installments or other amounts and interest on any such amounts. Any residue shall be paid to the former Shareholder.
- (g) The registration of a transfer of shares shall operate as a waiver of the lien by the Company but not as a release of any outstanding liability owed by any previous Shareholder.

#### **Notice of Liability for Forfeiture**

- 8.3
- (a) If on the day appointed for payment a Shareholder fails to pay any call (which shall include an installment of a call) or any other sum which by the terms of issue of a share becomes payable at a fixed time, on the day appointed for payment the Board may serve a notice on the Shareholder requiring payment together with any interest which may have accrued and any expenses that may have been incurred by the Company by reason of such non-payment.
  - (b) The notice shall specify the relevant share and name a date (not earlier than the expiration of 14 days from the day of the notice) on or before which the payment required by the notice is to be made. The notice shall also state that in the event that payment is not made by the appointed date the share will be liable to be forfeited.

#### **Forfeiture**

- 8.4 If the notice is not complied with the share may be forfeited by a resolution of the Board. Such forfeiture shall include any Distribution declared in respect of the forfeited share and not made before the forfeiture.

#### **Forfeited Share**

- 8.5 A forfeited share may be disposed of in such manner as the Board determines. The Board may annul the forfeiture upon such terms as it determines.

#### **Ceasing to be a Shareholder**

- 8.6 A person whose share has been forfeited shall cease to have any rights in respect of the forfeited share, but shall remain liable to pay to the Company all money which at the date of forfeiture was payable in respect of the share. The Shareholder's liability shall cease when the Company receives payment in full of all such money in respect of the forfeited share.

### **Evidence of Forfeiture**

- 8.7 An entry in the Share Register that a share has been forfeited on a date as stated in the Register shall be conclusive evidence of those facts as against all persons claiming to be entitled to the share.

### **Disposal of Forfeited Share**

- 8.8
- (a) A Director may execute a transfer of forfeited shares in favour of the person to whom the shares are disposed of, and may receive the consideration for such disposal.
  - (b) Upon registration of such transfer the transferee shall be the Shareholder of such shares and shall be discharged from all calls due prior to transfer.
  - (c) The transferee shall not be bound to see to the application of the purchase money nor shall the transferee's title to the shares be affected by any irregularity or invalidity in the forfeiture or disposal.
  - (d) The remedy of the former Shareholder, and of any person claiming under or through the former Shareholder, shall be against the Company exclusively and in damages only.
  - (e) If shares are forfeited and sold the proceeds of sale shall first be applied in payment of all costs and expenses of such sale and any attempted sale and then in satisfaction of unpaid calls, installments or other amounts and interest on any such amounts. Any residue shall be paid to the former Shareholder.

## **9 DISTRIBUTION TO SHAREHOLDERS**

### **Satisfaction of Solvency Test**

- 9.1 The Board, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the Solvency Test, may (subject to clause 9.2) authorize a Distribution at a time, and of an amount, and to any Shareholder it determines and otherwise in accordance with the terms of issue.

### **Restriction on Certain Dividends**

- 9.2
- (a) The Board must not authorize a Dividend:
    - (i) in respect of some but not all the shares in a Class; or
    - (ii) 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,except as provided in clause 9.2(b).
  - (b) All Distributions shall be apportioned and paid proportionately to the amounts paid or credited as paid, other than in advance of calls, on the shares during any portion or portions of the period in respect of which the Distribution is paid. If any share is issued on terms providing that it shall rank for Distribution as from a particular date that share shall rank for Distribution accordingly.

### **Persons to Whom Distribution Payable**

- 9.3 A Distribution shall be payable to the person who is, on the Record Date, the registered holder of the Securities in respect of which the Distribution is made.

### **Method of Payment of Distributions**

- 9.4 Any Distribution payable in cash may be paid by automatic payment to any bank nominated in writing by the holder or by cheque sent through the post directed to the registered address of the holder, or, in the case of joint holders, to the bank nominated by or registered address of that one of the joint holders who is first named on the Share Register or to such person and to such bank account or address as the holder or joint holders may in writing direct. The Company shall not be responsible for any loss arising from any mode of transmission referred to in this clause. Every cheque shall be made payable to the order of the person to whom it is sent.

### **No Interest on Distribution**

- 9.5 No Distribution shall bear interest against the Company.

### **Deductions from Distribution**

- 9.6 The Board may deduct from any Distribution payable to a Shareholder all such money as may be due from that Shareholder to the Company on account of:
- (a) unpaid calls and installments and any interest payable on such amounts, in respect of the shares for which the Distribution is being paid; and
  - (b) such amounts as the Company may be called upon by law to pay in respect of those shares, including withholding and other taxes.

### **Unclaimed Distribution**

- 9.7 (a) A Distribution unclaimed for one year after having become payable may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. The Company shall be entitled to mingle the Distribution with other money of the Company and shall not be required to hold it or regard it as being impressed with any trust.
- (b) A distribution unclaimed for five years after having become payable may at the expiry of such period be forfeited by the Board for the benefit of the Company, provided always that the Board may at any time after such forfeiture annul the same and pay such Distribution to the person producing evidence of entitlement.

### **Shares in Lieu of Dividends**

- 9.8 The Board may establish, operate, vary, suspend, and terminate a plan whereby Shareholders may elect to receive shares in lieu of Dividends on such terms and conditions as the Board determines.

### **Shareholder Discounts**

- 9.9 The Board may resolve that the Company offer Shareholders discounts in respect of some or all of the goods sold or services provided by the Company (including any Subsidiary thereof), subject to the following conditions:

- (a) The Board has previously resolved that the proposed discounts are:
  - (i) fair and reasonable to the Company and to all Shareholders; and
  - (ii) to be available to all Shareholders or all Shareholders of the same Class on the same terms.
- (b) The Board is satisfied on reasonable grounds that the Company at the relevant time satisfies the Solvency Test.

## **10 COMPANY MAY ACQUIRE ITS OWN SHARES**

### **Company May Acquire its Own Shares**

10.1 Subject to Clause 10.2, the Company may purchase or otherwise acquire its own shares in accordance with the Act (including without limitation purchases or offers made pursuant to Sections 59(1) and 60(1)(b)(ii) of the Act).

### **Restriction of Acquisition**

- 10.2 The Company may acquire Equity Securities only if the acquisition:
- (a) is effected by offers made by the Company through the Exchange's order matching market, or through the order matching market or procedures of a Recognized Stock Exchange, and the Company complies with clause 10.3; or
  - (b) is effected in compliance with section 60(1)(a) of the Act (read together with section 60(2) of the Act), and the Company complies with clause 10.3; or
  - (c) is from a Shareholder of shares quoted on the Exchange which are less in number than a Minimum Holding; or
  - (d) is approved in accordance with clause 10.4; or
  - (e) is required by a Shareholder pursuant to sections 110 or 118 of the Act; or
  - (f) is otherwise permitted by the Listing Rules or a Ruling.

### **Prior Notice of Acquisition**

- 10.3
- (a) Before the Company acquires Equity Securities pursuant to clause 10.2(a) or (b) the Company shall give notice to the Exchange if applicable.
  - (b) The notice shall specify:
    - (i) a period of time within which the Company will acquire Equity Securities; and
    - (ii) the Class and maximum number of Equity Securities to be acquired in that period; and
    - (iii) the maximum price at which Equity Securities may be acquired by the Company.
  - (c) The Company may at any time by notice to the Exchange cancel or vary any notice so given.
  - (d) The Company may not at the same time have in force a notice under clause 10.3 to the effect that the Company is to acquire Equity Securities, and a notice under clause 11.2 that the Company is to sell Treasury Stock.

## **Acquisition of Shares with Approval of Holders of Equity Securities**

- 10.4 The Company may acquire Equity Securities if:
- (a) the precise terms and conditions of the specific proposal to acquire those Equity Securities, has been approved by separate resolutions (passed by a simple majority of votes) of holders of each Class of Quoted Equity Securities whose rights or entitlements could be affected by the acquisition, and
  - (b) the acquisition is completed within 12 months after the passing of the resolution.

## **Buybacks of Securities Affecting Control**

- 10.5 Notwithstanding the provisions of this clause 10 no acquisition of Securities shall be made by the Company if:
- (a) there is a significant likelihood that the acquisition will result in any person or group of Associated Persons materially increasing their ability to exercise, or direct the exercise of (either then or at any future time) effective control of the Company; and
  - (b) that person or group of Associated Persons is entitled before the acquisition to exercise, or direct the exercise of, not less than 1% of the total Votes attaching to Securities of the Company;

unless the precise terms and conditions of the acquisition have been approved by an Ordinary resolution passed in accordance with Listing Rule 9.3.1.

## **11 TREASURY STOCK**

### **Company Can Hold Its Own Shares**

- 11.1 The Company is expressly permitted to hold its own shares.

### **Prior Notice of Sale of Treasury Stock**

- 11.2
- (a) Before the Company sells Treasury Stock it shall give notice to the Exchange.
  - (b) The notice shall specify:
    - (i) a period of time within which the Company will sell Treasury Stock; and
    - (ii) the Class and maximum number of Treasury Stock to be sold in that period; and
    - (iii) the minimum price at which Treasury Stock may be sold.
  - (c) The Company may at any time by notice to the Exchange cancel or vary any notice so given.
  - (d) The Company may not at the same time have in force a notice under clause 11.2 that the Company is to sell Treasury Stock and a notice under clause 10.3 that the Company is to acquire Equity Securities.

## **12 REDEMPTION OF SHARES**

### **Power to Redeem**

12.1 Subject to the provisions of this clause 12, the Company may pursuant to its terms of issue, redeem any share which is issued as redeemable.

### **Restriction on Redemption**

- 12.2 The Company may only redeem Equity Securities if:
- (a) those Equity Securities were issued before 1 September 1994 and the Company is bound or entitled to redeem those Equity Securities pursuant to their terms of issue; or
  - (b) those Equity Securities were issued in compliance with clauses 5.5(a), 5.8, 5.9 or 5.10, and the Company is bound or entitled to redeem those Equity Securities pursuant to the terms of their issue; or
  - (c) those Equity Securities are redeemed in compliance with section 69(1)(a) of the Act; or
  - (d) those Equity Securities are Debt Securities which may be Converted into shares of the Company and, before that Conversion, they are redeemed in cash; or
  - (e) the redemption of those Equity Securities is approved in accordance with clause 12.3; or
  - (f) the redemption is otherwise permitted by the Listing Rules or a Ruling.

### **Redemption with Approval**

- 12.3 The Company may redeem Equity Securities if:
- (a) the precise terms and conditions of the specific proposal to redeem those Equity Securities, has been approved by separate resolutions (passed by a simply majority of votes) of holders of each Class of Quoted Equity Securities whose rights or entitlements could be affected by the redemption, and
  - (b) the redemption is completed within 6 months after the passing of the resolution.

### **Redemption of Securities Affecting Control**

- 12.4 Notwithstanding the provisions of this clause 12, no redemption of Securities shall be made by the Company if:
- (a) there is a significant likelihood that the redemption will result in any person or group of Associated Persons materially increasing their ability to exercise, or direct the exercise of (either then or at any future time) effective control of the Company; and
  - (b) that person or group of Associated Persons is entitled before the redemption to exercise, or direct the exercise of, not less than 1% of the total votes attaching to Securities of the Company;

unless the precise terms and conditions of the redemption have been approved by an Ordinary Resolution passed in accordance with Listing Rule 9.3.1.

## **13 ASSISTANCE BY THE COMPANY IN THE PURCHASE OF ITS OWN SHARES**

### **Financial Assistance**

13.1 Subject to the Act and clause 13.2, the Company may give financial assistance, which includes a loan, a guarantee and the provision of a security, to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the Company, or by its holding company.

### **Restriction on Financial Assistance**

13.2 The Company may only give financial assistance for the purpose of, or in connection with, the acquisition of Equity Securities issued or to be issued by the Company if the giving of that assistance:

- (a) complies with clause 13.3; or
- (b) is approved in accordance with clause 13.4; or
- (c) is otherwise permitted by the Listing Rules or the Exchange.

### **Permitted Financial Assistance**

13.3 The Company may give financial assistance of the nature referred to in clause 13.2 in any of the following circumstances:

- (a) The financial assistance is not given in whole or in part to any Director, Associated Person of a Director or Employee, and the amount of the financial assistance, together with the amount of all other financial assistance given under this subclause (a) by the Company during the shorter of the period of 12 months preceding the date of giving of the financial assistance and the period from which the Company was Listed to the date of giving the financial assistance, does not exceed 5% of the Shareholders Funds of the Company; or
- (b) The financial assistance is given to Employees and:
  - (i) the amount of financial assistance, together with the amount of all other financial assistance given under this subclause (b) by the Company during the shorter of the period of 12 months preceding the date of giving of the financial assistance and the period from which the Company was Listed to the date of giving the financial assistance, does not exceed 2% of the Shareholders' Funds of the Company; and
  - (ii) the amount of the financial assistance, together with the amount of all other financial assistance given under this subclause (b) during the shorter of the period of five years preceding the date of giving of the financial assistance and the period from which the Company was Listed to the date of giving the financial assistance, does not exceed 5% of the Shareholders' Funds of the Company; and
  - (iii) the financial assistance is not given to any Director or Associated Person of a Director provided that financial assistance given to a Director or an Associated Person of a Director solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest, shall be deemed not to be financial assistance given to a Director or Associated Person of a Director; or
- (c) The financial assistance is offered or given so that all holders of Equity Securities of the

Company are treated, or given the opportunity to be treated, on the same basis.

### **Financial Assistance with Approval**

- 13.4 The Company may give financial assistance of the nature referred to in clause 13.2, if:
- (a) the precise terms and conditions of the giving of that financial assistance, has been approved by separate resolutions (passed by a simple majority of Votes) of holders of each Class of Quoted Equity Securities of the Company whose rights or entitlements could be affected by the financial assistance; and
  - (b) the financial assistance is given within 6 months after the passing of the relevant resolution.

## **14 TRANSFER OF SHARES AND OTHER SECURITIES**

### **Power to Divide Share Register**

- 14.1 The Share Register may be divided into two or more registers kept in different places.

### **Shareholder may Transfer Shares**

- 14.2 Any Shareholder may transfer all or any shares held by a form of a transfer complying with clause 14.3, or under a system of transfer approved under section 7 of the Securities Transfer Act 1991.

### **Form of Transfer**

- 14.3
- (a) Every form of transfer to which the provisions of the Securities Transfer Act 1991 apply, must comply with the requirements of the Act. Where an instrument of transfer would have complied with that Act had it been executed in New Zealand, it may nevertheless be registered by the Company if it is duly executed to the satisfaction of the Board.
  - (b) Every form of transfer not falling within the provisions of subclause (a) shall be in any usual or common form or other form which the Board may approve and shall be executed by or on behalf of the transferor to the satisfaction of the Board. If a share is not fully paid up the form of transfer (or a separate transferee's acceptance document in any usual or common form or other form which the Board may approve) shall also be executed by or on behalf of the transferee to the satisfaction of the Board.

### **Transferor Holder Until Transferee Registered**

- 14.4 The transferor shall remain the holder of the share until the name of the transferee is entered in the Register.

### **Power to Refuse or Delay**

- 14.5 The Board may refuse or delay the registration of a transfer of shares:
- (a) If the Company has a lien over the shares; or
  - (b) If registration, together with the registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the proposed transferee holding shares of less than a Minimum Holding; or

- (c) As otherwise permitted by the Listing Rules or a Ruling.

### **Transfer by Operation of Law/Transmission**

- 14.6 Securities in the Company may pass by operation of law but any such transfer shall not affect or prejudice any lien held over the shares or the Board's right to refuse or delay registration of any further transfer of shares.

### **Sale of Less than a Minimum Holding**

- 14.7
- (a) The Board may at any time give three months notice to a Shareholder whose shares are less than a Minimum Holding of the Board's intention to arrange sale of the shares.
  - (b) The notice shall advise the Shareholder that the Shareholder's shares may be sold unless within the period of three months the Shareholder acquires sufficient shares so that the Shareholder's total holding is at least a Minimum Holding.
  - (c) The Directors may arrange for the sale of all the Shareholder's shares if by the end of the three month notice period the Shareholder has not lodged with the Company for registration a transfer or transfers of shares which together with shares already held by the Shareholder will result in at least a Minimum Holding.
  - (d) For the purpose of such sale a Director may execute a transfer of the shares to the transferee, and may receive the consideration from such transfer.
  - (e) The transferee shall not be bound to see to the application of the purchase money nor shall the transferee's title to the shares be affected by any irregularity or invalidity on the sale.
  - (f) The Company may deduct reasonable sale expenses from the proceeds of sale. The net proceeds of sale will be paid to the Shareholder.

### **Transfer of Securities other than Shares**

- 14.8 The provisions of this clause 14 shall also apply to the transfer of Securities other than shares, with any necessary modifications.

## **15 TAKEOVERS - STANDARD NOTICE AND PAUSE PROVISIONS**

### **Definitions**

- 15.1 In clause 15 and 16, unless the context otherwise requires:

"Acquisition Notice" means the notice to be given by a Majority Holder under clause 16.1.

"Affected Group" has the meaning given to it in Listing Rule 4.1.1 which at the date of adoption of this Constitution is:

- (a) in respect of a Restricted Transfer effected otherwise than by trades matched through the Exchange's order matching market each of:
  - (i) the group comprised of persons who are not recipients (disregarding inadvertent non-receipt) of the offer or invitation which would implement the proposed Transfers; and
  - (ii) if the Transfers are not of an equal proportion of all holdings which are offered for disposal, the groups comprised of Transferors whose Transfers represent substantially identical proportionate parts of the holdings offered by them; and

- (ii) the group comprised of persons who are not members of the groups described in (I) and (ii) and who are not the Transferees and other persons whose Relevant Interests would be taken into account in determining whether the Transfer is a Restricted Transfer, but disregarding the proviso to the definition of Restricted Transfer;
- (b) in respect of a Restricted Transfer effected by trades matched through the Exchange's order matching market, the group comprised of those other than:
  - (i) the persons whose control of votes would in aggregate determine whether the Transfer is a Restricted Transfer; and
  - (ii) Insiders.

"Affected Securities" in respect of a Class of Quoted Equity Securities where there is a Majority Holder, means all Securities of that Class.

"Default" means non-compliance with the requirements of clauses 15.3 to 15.9.

"Defaulter" means a person who has a Relevant Interest in Quoted Equity Securities which has been acquired in breach of the requirements of clauses 15.3 to 15.9 (other than a breach committed by the Company or the Board).

"Defaulter's Securities" means in relation to a Defaulter, Quoted Equity Securities in which the Defaulter has a Relevant Interest.

"Differential Offer" means an offer, or invitation to agree on Transfers, which:

- (a) is made to some but not all holders of a Class of Equity Securities; or
- (b) would result in different prices or other terms applying among holders of the same Class of Equity Securities; or
- (c) would result in the Transfer of different proportions of those portions of holdings of Equity Securities of the same Class which are offered for disposal.

"Exchange Transaction" means a transaction involving Transfers effected by trades matched through the Exchange's order matching market, which complies with the requirements of Listing Rule 4.5.5.

"Insider" means:

- (a) Directors or Associated Persons of Directors;
- (b) persons who hold Relevant Information of the Company which has not been disclosed to the market.

"Majority Holder" means a person, or a group of Associated Persons, who holds 90% or more of a Class of Quoted Equity Securities of the Company.

"Minority Veto Provisions" has the meaning given in Listing Rule 4.6.1.

"Notice" means notice to the Exchange in a manner complying with Listing Rule 10.2.3, for release to the market.

"Relevant Group" has the meaning given to it in clause 15.18(b).

"Relevant Information" has the meaning given to it in the Listing Rules.

"Relevant Interest" has the meaning given in sections 5 and 6 of the Securities Amendment Act

1988.

"Remaining Holders" means all holders of Securities of a Class of Quoted Equity Securities other than the Majority Holder.

"Restricted Transfer" has the meaning given to it in Listing Rule 4.1.1 which at the date of adoption of this Constitution is a Transfer which would, alone or with any others comprising part of a scheme or linked series of transactions, result in the control of Votes by any person or group of persons who are Associated Persons of each other, in any Class of Quoted Equity Securities of the Company:

- (a) exceeding 20% of the Votes attached to that Class; or
- (b) above the 20% threshold, increasing by more than 5% in any period of 12 months;

provided that for the purposes of this definition acquisition of interests in Equity Securities of the Company may be disregarded;

- (c) where it is determined by the Exchange that the acquisition was involuntary and occasioned by the action of another party over which the acquiring party had no effective control or influence in the matter; or
- (d) where, and to the extent that, it is determined by the Exchange that the aggregation of holdings among Associated Persons would include holdings of persons who have no practical likelihood of acting in concert, or exercising Votes or otherwise acting in collusion, with each other or any common party.

"Transfer" has the meaning given to it in Listing Rule 4.1.1 which at the date of adoption of this Constitution, in relation to an Equity Security includes sale of that Security, and the grant of rights or interests, whether conditional or not, which are intended to create for the recipient benefits which are substantially equivalent to ownership of that Security (or of an interest in that Security). In particular it includes:

- (a) a transaction whereby one party disposes of, alienates or proposes to dispose of or alienate (temporarily or permanently) any interest or right of title to any Equity Security or in the Votes, dividends or income arising in respect of any Equity Security; or
- (b) any agreement arrangement or understanding in respect of Equity Securities under which the Votes attaching to them may be exercised by a person other than the registered holder, alone or jointly with the registered holder, or with other persons acting in concert, other than by reason of a bona fide appointment of a proxy or other representative for voting purposes under which the appointment may be terminated at will, and the appointor is entitled, if the appointor so wishes, to direct the proxy as to the manner in which Votes are to be cast; or
- (c) any transaction whereby the holder of the Equity Securities enters into a commitment (whether conditional or unconditional) to sell the Equity Securities, or to grant an option over them or any part thereof, or at any future time to grant any of the rights referred to above; or
- (d) the creation of a charge or other security interest enforceable by a right of possession or a power of sale or other disposition which would fall within other parts of this definition of "Transfer", other than the creation of such an interest for bona fide financing purposes; or
- (e) any transaction, agreement or arrangement that has substantially the same effect as (a), (b) or (c) above.

"Transferor" and "Transferee" have corresponding meanings.

## **Exchange Rulings**

- 15.2 For so long as the Company is Listed on the Exchange, if the Exchange gives any Ruling in respect of the matters dealt with in clauses 15 and 16 that Ruling shall be binding on the Company and all holders of Securities, and shall take effect as if that Ruling were itself incorporated in this Constitution.

## **Notice of Takeover**

- 15.3 Unless otherwise permitted by the Listing Rules or a Ruling (subject to the requirements of clause 15.14) no Restricted Transfer of Quoted Equity Securities shall take place unless:
- (a) a Notice is given, not later than the time specified in clause 15.4, containing the following particulars:
    - (i) the price or consideration, expressed as a range if it is not fixed; and
    - (ii) any conditions of the transaction which are material to the assessment of the price by prospective Transferors of the Equity Securities; and
    - (iii) identification of the Class, and the maximum number of Securities and percentage of the relevant Class, to which the Transfer proposal relates; and
    - (iv) the identity of all persons reasonably expected to acquire Relevant Interests in the Equity Securities as a result of the Transfer proposal; and
    - (v) the number of Equity Securities (expressed in each case as a percentage of the total number in each relevant Class of Securities) which will be held, or in which Relevant Interests will be held, upon completion of the proposed transaction, by each Transferee and Associated Persons of each Transferee; and
    - (vi) the times within which the Transfers are intended to occur; and
    - (vii) how the Transfers are to be effected (for example through the Exchange's order matching market, by widespread direct offer, private treaty etc.);
  - (b) a Notice of any change in, or addition to, the particulars notified under sub-clause(a) is given not later than the time specified in clause 15.5.

## **Time of Initial Notice**

- 15.4 A Notice under clause 15.3(a) must be given:
- (a) if any Transferee under the Transfer in question is an Insider, at least 15 Business Days before the Transferor and the Transferee become bound to effect the Transfer;
  - (b) if no Transferee is an Insider, at least one Business Day if the Restricted Transfer is an Exchange Transaction, and at least three Business Days in any other case, before the Transferor and the Transferee become bound to effect the Transfer.

## **Time of Notice of Change**

- 15.5 A Notice under clause 15.3 (b) must be given:
- (a) if any Transferee under the Transfer in question is an Insider, at least two Business Days before the change takes effect, in the case of a change to price or other consideration, and at least 15 Business Days before the change takes effect, in the case of a change

to any other particulars;

- (b) if no Transferee is an Insider:
  - (i) at least two hours during which the Exchange is open for business if a Restricted Transfer is an Exchange Transaction, and at least one Business Day in any other case, before the change takes effect, in the case of a change to price or other consideration; and
  - (ii) at least one Business Day if the Restricted Transfer is an Exchange Transaction, and at least three Business Days in any other case, before the change takes effect, in the case of a change to any other particulars.

### **Response Requirements**

15.6 If any Quoted Equity Securities are the subject of a Notice given under clause 15.3(a) the Board must:

- (a) give Notice, as soon as can be achieved, and before the expiry of the relevant notice period referred to in clause 15.4, containing the following particulars:
  - (i) whether any Director or Associated Person of a Director is expected by any Director to be a Transferee in the notified transaction; and
  - (ii) whether there is any Relevant Information pertaining to the Company which any Director believes is likely to be available to any Transferee in the proposed transaction, which has not been made generally available to the market; and
  - (iii) whether any Director considers there is any undisclosed Relevant Information which should materially affect the decision of a reasonably informed prospective Transferor in the proposed Transfer and, if so, an indication whether the Director would consider the Transfer to be made more or less desirable to the prospective Transferor by the Relevant Information; and
  - (iv) a statement as to the timing, and expected significance of any further action, investigation, report, or disclosure which the Directors or any of them, intend to make in response to the relevant proposals for Transfers; and
- (b) comply (so far as is applicable) with Listing Rule 4.5.7.

### **General Response Requirement**

15.7 If the Directors of the Company become aware that a Restricted Transfer proposal is more likely than not in the immediate future, the Board must comply (so far as is applicable) with Listing Rule 4.5.7.

### **Appraisal Report**

15.8 If any Transferee under a Restricted Transfer is an Insider, the Board must (unless the requirements of Listing Rule 4.5.9 are met) forthwith upon a Notice being given under clause 15.3(a) in respect of that Restricted Transfer, commission an appraisal report which complies with Listing Rule 4.5.8, and deal with that appraisal report in accordance with the requirements of that Listing Rule.

### **Consequences of Default**

- 15.9 If a person acquires a Relevant Interest in any Quoted Equity Securities in breach of clauses 15.3 to 15.8 (not being a breach committed only by the Company or the Board):
- (a) no vote may be cast in respect of the Defaulter's Securities on a poll (and any vote cast shall be disregarded) while the Default is unremedied;
  - (b) the Defaulter's Securities may be sold by the Company in accordance with clause 15.10 but this power may not be exercised:
    - (i) until one month after the Company has given notice to the Defaulter (and if the Defaulter is not the registered holder of the Defaulter's Securities, to the registered holder) of its intention to exercise this power; and
    - (ii) if, during that month the Defaulter has remedied the Default (if capable of being remedied), or has transferred the Defaulter's Relevant Interest in the Defaulter's Securities to a person who is not a Defaulter.
  - (c) the Company shall have a lien on the Defaulter's Securities for:
    - (i) any costs to the Company of determining whether a person is a Defaulter and exercising powers permitted by clauses 15.9 and 15.10, and
    - (ii) any expenses of any Affected Group acting pursuant to clauses 15.12 and 15.13, which are reimbursed or are to be reimbursed by the Company.

#### **Sale Procedure**

- 15.10 If the power of sale specified in clause 15.9(b) becomes exercisable:
- (a) the Company shall arrange for the sale of the Defaulter's Securities through the Exchange or in some other manner approved by the Exchange; and
  - (b) each holder of Defaulter's Securities shall be deemed to have authorized the Company to act on behalf of that holder in relation to the sale of the relevant Securities, and to execute all documents relating to such sale which may be required to give effect to such sale; and
  - (c) the net proceeds of sale shall be held on trust by the Company for, and paid (after deduction of amounts referred to in subclause (d)) to holders of the relevant Securities on surrender of the certificate (if any) relating to the relevant Securities; and
  - (d) the Company may deduct from the proceeds of sale any costs of sale and any costs to the Company of determining whether a person is a Defaulter and exercising powers permitted by clauses 15.9 and 15.10, and any amounts which the Company may choose to pay to members of any Affected Group acting pursuant to clauses 15.12 and 15.13, in reimbursement of expenses incurred by those members.

#### **Protection of Other Persons**

- 15.11 No purchaser or other person dealing with the Company shall be concerned to inquire whether the power of sale specified in clause 15.9(b) has become properly exercisable, or as to the propriety or regularity of a sale made in purported exercise of that power, or as to the application of the proceeds of sale received by the Company. The receipt of the Company shall be a good discharge to the purchaser for the purchase price, and no question shall be raised as to the title of the purchaser to Securities sold in purported exercise of the power of sale specified in clause 15.9(b).

### **Affected Group**

- 15.12 The Board shall, if so directed by a resolution of an Affected Group (passed by a simple majority of votes), cause the Company to exercise the power referred to in clause 15.9(b) if that power has become exercisable.

### **Meeting of Groups for Resolutions to Enforce Takeover Provisions**

- 15.13 (a) The holders of 5% or more of Securities of an Affected Group may by notice to the Board require the Board to convene a meeting of the Affected Group for the purpose of considering a resolution under clause 15.12.
- (b) Subject to clause 15.16(b) the provisions of the first schedule to this Constitution govern proceedings at a meeting of an Affected Group with any necessary modifications.

### **No Liability**

- 15.14 Neither the Company nor any Director shall have any liability to any Defaulter, any holder of Defaulter's Securities, or any person whom the Board believes to be a Defaulter or holder of Defaulter's Securities, for or in connection with the exercise or purported exercise of the powers specified in clauses 15.9, 15.10 and 15.12.

### **Limitation of Remedies**

- 15.15 (a) The sole remedy of the Company, a holder of Securities, a Director, or any other person, in respect of a breach or alleged breach of clauses 15.3 to 15.8 shall be to exercise, or require the Company or the Board to exercise, the powers referred to in clause 15.9. Without limiting the preceding sentence no person shall be entitled to seek any injunction or other remedy to prevent a transaction alleged to be in breach of clauses 15.3 to 15.8.
- (b) Nothing in this clause 15.15 shall affect the remedies of a holder of Securities against any Director in respect of a breach of clauses 15.3 to 15.8 by that Director.

### **Voting Restrictions**

- 15.16 (a) The Company shall use reasonable endeavours to ascertain for the purposes of clause 15.9(a) whether any Securities are Defaulter's Securities. If any holder of Securities, or the Exchange, alleges that any Securities are Defaulter's Securities, the Board shall properly consider and investigate that allegation.
- (b) The ruling of the chairperson of any meeting as to whether any person is or is not entitled to vote at that meeting pursuant to clause 15.9(a) shall, for the purposes of proceedings at that meeting, be conclusive, and the proceedings of, or any resolution passed at, any meeting shall not be impugned by reason of a breach of clause 15.9(a). This clause 15.16(b) shall not prejudice any action which any person may have against any holder of Securities by reason of that holder having cast a vote at any meeting in breach of clause 15.9(a).

### **Special Resolutions for Amendment of Takeover Provisions**

- 15.17 (a) Subject to clause 15.19 a Special Resolution of each Relevant Group shall be required prior to amendment of this Constitution in any of the following ways:

- (i) the inclusion of minority veto provisions (as defined by Listing Rule 4.6.1); or
  - (ii) the modification of notice and pause provisions (as set out in clauses 15.3 to 15.7) so that those provisions apply only to Restricted Transfers in which the Transferees are Insiders; or
  - (iii) the deletion of minority veto provisions (as defined by Listing Rule 4.6.1); or
  - (iv) the cancellation of any modification to notice and pause provisions so that such provisions apply to all Restricted Transfers.
- (b) For the purpose of clause 15.17(a) a Relevant Group means each of the groups comprising:
- (i) any holder of Securities who:
    - (A) holds, or who is one of a group of Associated Persons who together hold, 10% or more of a Class of Securities; or
    - (B) has, or who is one of a group of Associated Persons who together have, the power (whether contingent or not) to appoint one or more Directors of the Company; or
    - (C) is a person or a member of a class of persons, whom the Exchange in its discretion declares not to be a Member of the Public for the purposes of the Listing Rules.
  - (ii) any holder of Securities who is a Member of the Public (being a holder other than those referred to paragraph (i) above);

in each Class of Quoted Equity Securities of the Company the rights of which are governed by the Constitution.

#### **Meetings of Relevant Groups for Amendment of Takeover Positions**

- 15.18 (a) The Board may at any time submit for the consideration of the holders of Securities an amendment of the Constitution in any of the ways referred to in clause 15.17(a).
- (b) The Board shall submit for the consideration of the holders of Securities an amendment of the Constitution in one of the ways referred to in clause 15.17(a) upon request being made to the Board which:
- (i) is in writing, and signed by or on behalf of the holders of Quoted Securities carrying 5 per cent or more of the votes attaching to all Quoted Equity Securities; and
  - (ii) specifies in general terms the amendment to the Constitution which is proposed.
- (c) If the Board wishes, or is required to, submit for consideration an amendment to the Constitution under this clause 15.18, the Board shall:
- (i) cause draft amendments to the Constitution to be prepared and approved by the Exchange; and
  - (ii) cause those amendments to be submitted for approval by Special resolutions of the Relevant Groups, and by such other resolutions as may be necessary to effect an amendment to the Constitution.
- (d) For the purposes of voting Relevant Groups for the purpose of clause 15.17 one meeting may be held of holders constituting both Relevant Groups.

- (e) Prior to the holding of the meeting the Board shall investigate which holders of Securities fall within clause 15.17(b)(i) (i.e. are not Members of the Public) so as to ascertain which holders of Securities fall within which Relevant Groups. The Board's determination in good faith of which holders of Securities fall within which Relevant Group shall be final and neither the Company nor the Board shall be liable for any error.
- (f) Voting at the meeting shall be conducted by way of poll only. In all other respects the provisions of the First Schedule of this Constitution govern proceedings at the meeting with any necessary modifications.

### **Takeover Provisions to Cease to Apply**

15.19 Subject to first obtaining approval of the Exchange to that effect the whole or any part of clauses 15.3 to 15.18 and 16 as determined by the Exchange and subject to such conditions as the Exchange may from time to time impose, shall cease to apply on the coming into force of a takeovers code pursuant to section 28 of the Takeovers Act 1993 (provided however that clauses 15.9 to 15.14, and clause 15.16 shall continue to apply in respect of any default which may have occurred prior to such takeovers code coming into force). If clauses 15.3 to 15.18 cease to apply they shall not be revived by any subsequent revocation of a takeovers code pursuant to section 31 of the Takeovers Act 1993.

## **16 COMPULSORY ACQUISITION PROVISIONS**

### **Acquisition Notice**

- 16.1 A Majority Holder must, within 20 Business Days after becoming a Majority Holder, give an Acquisition Notice to the Remaining Holders, specifying:
- (a) that the Majority Holder holds 90% or more of the Affected Securities; and
  - (b) either:
    - (i) that the Majority Holder intends to acquire all Affected Securities held by the Remaining Holders; or
    - (ii) that any Remaining Holder may require the Majority Holder to acquire the Affected Securities held by that Remaining Holder by giving notice to that effect to the Majority Holder within one month after the date of the Acquisition Notice; and
  - (c) the consideration which the Majority Holder is prepared to provide for Affected Securities.

### **Obligation of Majority Holders**

- 16.2 Upon giving an Acquisition Notice, the Majority Holder shall be entitled and bound:
- (a) if the Acquisition Notice contains the statement in clause 16.1(b)(i) to acquire all Affected Securities held by the Remaining Holders; or
  - (b) if the Acquisition Notice contains the statement in clause 16.1(b)(ii) to acquire all Affected Securities held by the Remaining Holders in respect of which the holder, within one month after the date of the Acquisition Notice, give notice requiring the Majority Holder to acquire.

### **Consideration**

- 16.3 The consideration to be provided for Affected Securities which the Majority Holder is entitled and bound to acquire shall be determined as follows:
- (a) The Acquisition Notice shall specify the consideration which the Majority Holder is prepared to provide. The Majority Holder shall, before giving the Acquisition Notice, provide to the Company and the Exchange a report from an independent appropriately qualified person, previously approved by the Exchange, confirming that that consideration is fair and reasonable to the Remaining Holders.
  - (b) If, within 10 Business Days after the date of the Acquisition Notice, the Majority Holder receives written objections to the consideration specified in the Acquisition Notice from the holders of 10% or more of the Affected Securities held by the Remaining Holders, then the consideration shall be determined in accordance with subclauses (c) and (d). If such objections are not received, the consideration shall be specified in the Acquisition Notice.
  - (c) If objections of the nature referred to in subclause (b) are received by the Majority Holder, the consideration shall be determined by an independent appropriately qualified person previously approved by the Exchange, who shall be a different person from the person referred to in subclause (a). That person shall act as an expert and not as an arbitrator, and shall be directed to provide a decision within 20 Business Days after his or her appointment.
  - (d) If the consideration determined by the person appointed in accordance with subclause (c) is less than, or the same as, the consideration specified in the Acquisition Notice, the fee and expenses of that person shall be borne by the Remaining Holders who made the objections referred to in subclause (b). In this case, the Majority Holder shall deduct that amount from the consideration payable by the Majority Holder to the objectors, in proportion to their holdings (and may, if the consideration is not cash, deduct and sell sufficient of that consideration to produce sufficient cash).
  - (e) If the consideration determined by the person appointed in accordance with subclause (c) is more than the consideration specified in the Acquisition Notice, the fee and expenses of that person shall be borne by the Majority Holder.

#### **Time for Payment**

- 16.4 The Majority Holder shall pay or provide to each holder of Affected Securities which are to be acquired the consideration for those Affected Securities as follows:
- (a) if the relevant Acquisition Notice contains the statement in clause 16.1(b)(i), by the date 10 Business Days after the date of the Acquisition Notice;
  - (b) if the Acquisition Notice contains the statement in clause 16.1(b)(ii), by the date 10 Business Days after receipt by the Majority Holder from the holder of the notice referred to in clause 16.2(b);

provided that if the consideration is required to be determined in terms of clause 16.3(c) it shall be paid or provided 10 Business Days after it has been determined.

#### **Holders not Located**

- 16.5 If any holder of Affected Securities which are to be acquired cannot be located by the Majority Shareholder, the Majority Holder shall pay or provide the consideration due to that holder to the Company. The Company shall hold that consideration upon trust for that holder for a period a five years from the date of its receipt by the Company. If that consideration is not claimed by

that holder within that period, the Company shall return it to the Majority Holder.

### **Procedure**

16.6 Upon payment or provision by the Majority Holder of the consideration for Affected Securities in accordance with clauses 16.4 and 16.5, the Company shall forthwith execute on behalf of all the holders of those Securities transfers of those Securities in favour of the Majority Holder or its nominee, and shall cause the name of the Majority Holder or its nominee to be entered in the relevant register in respect of those Affected Securities. If the Company fails to execute any such transfer, the Majority Holder may do so.

### **Default Consequences**

16.7 If a Majority Holder fails to give an Acquisition Notice when required to do so by this clause 16, or after having become bound to acquire the Affected Securities of Remaining Holders in accordance with the provisions of this clause 16, fails to do so, then the provisions of clauses 15.10 to 15.15 and 15.17 shall apply with the following modifications:

- (a) the Affected Securities held by the Majority Holder shall be deemed to be Defaulter's Securities;
- (b) the failure to comply with this clause 16 shall be deemed to be a Default; and
- (c) the Remaining Holders shall be deemed to be an Affected Group.

### **Limitation of Remedies**

- 16.8
- (a) The sole remedy of the Company, a holder of Securities, a Director, or any other person, in respect of a breach or alleged breach of clauses 16.1 to 16.6 shall be to exercise, or require the Company or the Board to exercise, the powers referred to in clause 15.10. Without limiting the preceding sentence, no person shall be entitled to seek any injunction or other remedy to prevent a transaction alleged to be in breach of clauses 16.1 to 16.6.
  - (b) Nothing in this clause 16.8 shall affect the remedies of a holder of Securities against any Director in respect of a breach of clauses 16.1 to 16.6 by that Director.

## **17 NOTICES AND INFORMATION FOR SHAREHOLDERS**

### **Notices, Reports, Financial Statements**

17.1 Equity Security holders of all Classes shall be entitled to attend meetings of Shareholders and to receive copies of all notices, reports and financial statements issued by the Company to holders of Securities carrying votes.

### **Service of Notices Outside New Zealand**

17.2 If a holder of a Quoted Security has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to that holder at such address and shall be deemed to have been received by that holder 24 hours after the time of the posting.

### **Shareholders may Request Information**

17.3 A Shareholder may at any time make a written request for information held by the Company.

#### **Company can Refuse to Provide Information**

17.4 Without limiting the reasons for which the Company may refuse to provide information, the Company may refuse to provide information requested by a Shareholder:

- (a) If the request for information is frivolous or vexatious; or
- (b) If the disclosure of the information would or would be likely to prejudice the commercial position of the Company or any Related Company; or
- (c) Where the information is not publicly available and it would not be in the best interests of the Company or any Related Company to release the information publicly; or
- (d) Without limiting clause 17.4(b) and 17.4(c), where the information:
  - (i) is not publicly available and would or might assist persons other than the Company or any Related Company without any corresponding advantage accruing to the Company; or
  - (ii) would create a misleading impression unless released together with other information which it would not be in the best interests of the Company or any Related Company to release; or
  - (iii) relates to trading opportunities, trade secrets, secret processes, intellectual property rights or customers of the Company or any Related company; or
  - (iv) if released would involve breach by the Company or any Related company or any legal or equitable obligation, including without limitation any duty of confidentiality or any breach of the Privacy Act 1993; or
- (e) Where the information is not publicly available and it may affect the value of shares in the Company or any Related Company; or
- (f) If the disclosure of the information would, or would be likely to, prejudice the commercial position of a person other than the Company, whether or not that person supplied the information to the Company.

#### **Disclaimer in Relation to Statement of Shareholder Rights**

17.5 A statement given under section 83 of the Act is not evidence of title to the shares or of any of the matters set out in it. The Company shall not be liable to the Shareholder or any other person for any error or omission in the statement.

## **18 MEETINGS OF SHAREHOLDERS**

### **Proceedings at Meetings**

- 18.1
- (a) The provisions of the first schedule govern proceedings at meetings of Shareholders.
  - (b) The provisions of the first schedule govern proceedings at meetings of Interest Groups (with any necessary modifications).

## 19 TRANSACTIONS

### General Restriction

19.1 The Company shall not enter into any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of the Company or assets to be held by the Company:

- (a) which would change the essential nature of the business of the Company; or
- (b) in respect of which the gross value is in excess of 50% of Shareholders' Funds of the Company,

Except where entry into the transaction or series of linked transactions is the subject of the prior approval of an Ordinary Resolution.

### Exception

19.2 Clause 19.1 will not apply to

- (a) any transaction entered into by the Company with a Bank (as defined in the Listing Rules), on arms length terms and in the ordinary course of banking business, as a result of which transaction the Company has recourse to the credit risk of a Bank.
- (b) any transaction entered into by the Company in relation to an intellectual property licensing arrangement.

### Restriction on Material Transactions with Related Parties

19.3 The Company will not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or
- (b) in the case of a guarantee or other transaction of the nature referred to in paragraph (c) of the definition of Material Transaction, a direct or indirect beneficiary of such guarantee or other transaction,

unless that Material Transaction is approved by an Ordinary Resolution.

### Exception

19.4 Clause 19.3 will not apply to:

- (a) any transaction entered into by the Company with a Bank (as defined in the Listing Rules), on arms length terms and in the ordinary course of banking business, as a result of which transaction the Company has recourse to the credit risk of a Bank.
- (b) a transaction between the Company and a wholly owned subsidiary of the Company which is intended to remain a wholly owned subsidiary of the Company; or
- (c) the issue, acquisition or redemption by the Company of Securities of the Company, or the giving by the Company of financial assistance for the purposes of, or in connection with, the purchase of Securities, or the payment of a distribution to holders of Securities, if all holders of Securities of the Class in question are treated in the same way, so that each such holder has an opportunity to receive the same benefit in respect of each

Security held by that holder. For the purposes of this paragraph, the transfer by the Company of Shares held by the Company in itself, will be deemed to constitute an issue of Securities.

### **Conditional Arrangements**

- 19.5 Nothing in this Clause 19 will prevent the Company entering into any agreement or arrangement to do any of the things which that Clause relates if the agreement or arrangement is conditional upon the approval of an Ordinary Resolution and the agreement or arrangement is not completed until that approval is obtained.

### **Application to Group**

- 19.6 Reference to the Company in this Clause 19 will, where the context permits, be extended to the Group.

## **20 POWERS OF THE BOARD**

### **Management by Board**

- 20.1 (a) The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.
- (b) The Board has all the powers necessary for managing and for directing and supervising the management of the business and affairs of the Company.
- (c) The Board may delegate its powers in accordance with the Act.

### **Company Name**

- 20.2 A Director may, with the approval of the Board, apply to change the name of the Company.

## **21 APPOINTMENT AND REMOVAL OF DIRECTORS**

### **Number of Directors**

- 21.1 (a) The number of Directors (not including Advisory Directors) shall not be less than three and not more than eight. At least three Directors shall be ordinarily resident in New Zealand. Directors appointed under Clause 21.3(b) shall not be counted in the total number as indicated above.
- (b) The Directors may act notwithstanding any vacancy in their body, but if and for so long as the number of Directors is reduced below three, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a meeting of Shareholders, but for no other purpose.

### **Election of Directors**

- 21.2 (a) Directors may be appointed by Ordinary Resolution or by the Board under clause 21.3.
- (b) No person (other than a Director retiring at the meeting) shall be elected as a Director at a meeting of Shareholders unless that person has been nominated by a Shareholder entitled to attend and vote at the meeting.
- (c) The opening date for nominations, shall be not later than three months, and the closing date for nominations shall not be earlier than two months, before the date of the meeting

at which the election is to take place.

- (d) Notice of every nomination received by the Company before the closing date for nominations shall be given by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting.
- (e) No resolution to appoint or elect a Director (including a resolution to re-elect any Director under clause 21.3) shall be put to holders of shares unless:
  - (i) the resolution is for the appointment of one Director; or
  - (ii) the resolution is a single resolution for the appointment of two or more Directors, and a separate resolution that it be so voted on has first been passed without a vote being cast against it.
- (f) Nothing in subclause (e) prevents the election of two or more Directors by ballot or poll.

### **Board May Appoint Directors and Advisors**

- 21.3
- (a) The Board may at any time appoint additional Directors.
  - (b) The Board may at any time appoint one or more persons to be an Advisory Director.
  - (c) The Board may appoint one or more Directors to represent any shareholder or group of shareholders who individually hold 5% or less of a Class of Securities.
  - (d) Any person who is appointed as a Director, not being an Advisory Director, by the Board, shall retire from office at the next annual meeting of the Company, but shall be eligible for re-election at that meeting.
  - (e) Advisory Directors as appointed by the Board are to hold office at the discretion of the Board and under such terms and conditions as may be specified by the Board.

### **Rotation**

- 21.4
- (a) Subject to subclause (b) at least one third of the Directors, or if their number is not a multiple of three, then the number nearest to one third, shall retire from office at each annual meeting, but shall be eligible for re-election at that meeting. Those to retire shall be those who have been longest in office since their last election (whether pursuant to this Constitution or the previous Articles of Association of the Company). As between persons who became Directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
  - (b) The following Directors shall be exempt from the obligation to retire pursuant to subclause 21.4(a):
    - (i) Directors appointed by the Board, who are subject to re-election pursuant to clause 21.3; and
    - (ii) one executive Director; and
    - (iii) any Director who is obliged to retire under clause 21.6.
  - (c) The executive Director referred to in clause 21.4(b)(ii) shall be included in the number of Directors upon which the calculation in clause 21.4(a) is based. The Directors referred to in clauses 21.4(b)(i) and 21.4(b)(iii) shall be excluded from that number.

### **Removal of Directors**

- 21.5 (a) A Director may be removed from office by Ordinary Resolution.
- (b) The office of Director is vacated if the person holding that office:
- (i) resigns; or
  - (ii) is removed from office in accordance with the Act or subclause (a); or
  - (iii) becomes disqualified from being a Director pursuant to the Act; or
  - (iv) dies; or
  - (v) is absent from meetings of the Board for more than 6 months without the Board's permission, and the Board resolves that the office be vacated.

### **Retirement of Directors**

- 21.6 (a) Each Director who has attained the age of 72 or more at the time of the annual meeting in any year shall retire at such annual meeting.
- (b) Such a retiring Director shall be eligible for re-election for the period until the next annual meeting at which time this clause 21.6 shall apply again.

## **22 ALTERNATE DIRECTORS**

### **Appointment**

- 22.1 (a) Any Director may by notice in writing to the Company appoint a person, not being a Director, to be the alternate of that Director.
- (b) No Director may appoint another person to act as alternate Director for him or her, except with the consent of a majority of the other Directors.
- (c) No Director shall appoint a deputy or agent otherwise than by way of appointment of an alternate.

### **Powers**

- 22.2 Each alternate shall:
- (a) be entitled to receive a notice of meetings of Directors; and
  - (b) during the absence of the appointing Director, be entitled to attend and vote at meetings of Directors and be counted in the quorum at such meetings; and
  - (c) have all the rights, powers, duties and authorities of the appointing Director except that:
    - (i) the alternate shall not be entitled to appoint an alternate; and
    - (ii) the alternate shall not be entitled to be remunerated otherwise than out of the remuneration of the appointing Director.

### **No Agency**

- 22.3 An alternate shall not be deemed to be the agent of the appointing Director, and shall alone be responsible to the Company for his or her own acts and defaults.

### **Cessation of Appointment**

- 22.4 (a) A Director may at any time by notice to the Company revoke the appointment of his or her alternate.
- (b) If a Director shall cease to be a Director, the appointment of that Director's alternate shall thereupon cease.
- (c) The appointment of an alternate may be revoked by a majority of the Directors other than the appointing Director.

## **23 MANAGING DIRECTOR**

### **Appointment of Managing Director**

- 23.1 (a) The Board may from time to time appoint one or more Directors to the office of Managing Director for such period not exceeding 5 years and on such remuneration and terms as the Board determines.
- (b) The Board may entrust to and confer upon a Managing Director any of the powers exercisable by it upon such terms and conditions and with such restrictions as it may determine, either collateral with or to the exclusion of its own powers, and may from time to time revoke, withdraw, alter or vary all or any of those powers.

### **Termination of Appointment**

- 23.2 (a) A Managing Director's appointment shall terminate if he or she ceases to be a Director.
- (b) A Managing Director's appointment may at any time be revoked by the Board.

### **No Claim to Office by Managing Director**

- 23.3 A Managing Director who is removed from that office shall have no right or claim to continue in office and the only remedy against the Company, if any, shall be damages.

### **Appointment and Management of Staff**

- 23.4 The management of staff of the Company (including the negotiation of any terms of employment and the termination of the employment of any staff member) shall be the direct responsibility of the Managing Director provided that the Grantor shall have final and absolute discretion as to the terms of employment of any staff member (including, at the direction of the Grantor, their termination) and their assigned duties within the Company.

## **24 PROCEEDINGS OF THE BOARD**

### **Proceedings Governed by Second Schedule**

- 24.1 The provisions of the second schedule to this Constitution govern the proceedings of the Board. The Third Schedule to the Act shall not apply to the Company.

## **25 REMUNERATION OF DIRECTORS**

### **Fixing Remuneration**

- 25.1 (a) No remuneration shall be paid to a Director, except in the case of a Managing Director, in his or her capacity as a Director unless that remuneration has been authorized by an Ordinary Resolution.

- (b) Each such Resolution shall express Directors' remuneration as either:
  - (i) a monetary sum per annum payable to all Directors taken together (which shall be distributed as the Board determines); or
  - (ii) a monetary sum per annum payable to any person who from time to time hold office as a Director.
- (c) If remuneration is expressed in accordance with paragraph (i) of subclause (b), then in the event of any increase in the total number of Directors holding office, the Board may, without the authorization of an Ordinary Resolution, increase the total remuneration by such amount as is necessary to enable the Company to pay to the additional Director or Directors remuneration not exceeding the average amount then being paid to each of the other non-executive Directors (other than the chairperson).
- (d) No resolution which increases the amount fixed pursuant to a previous resolution shall be passed at a meeting of Shareholders unless notice of the amount of increase has been given in the notice of meeting.
- (e) Nothing in this clause 25.1 shall affect the remuneration of executive Directors in their capacity as executives.

### **Expenses**

- 25.2 The Directors shall be entitled to be paid reasonable traveling, accommodation and other expenses incurred in relation to the management of the Company.

### **Payments Upon Cessation of Office**

- 25.3 (a) The Company may make a payment to a Director or former Director, or 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, only if:
- (i) the total amount of the payment (or the base for the pension) does not exceed the total remuneration of the Director in his or her capacity as a Director in any three years chosen by the Company; or
  - (ii) the payment is authorized by an Ordinary Resolution of the Company passed in accordance with Listing Rule 9.3.1
- (b) Nothing in this clause 25.3 shall affect any amount payable 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 subsidy related thereto) made by a Director to a superannuation scheme.

## **26 INDEMNITY AND INSURANCE**

### **Indemnity to Maximum Extent Permitted by Law**

- 26.1 The Company shall indemnify every director and employee of the Company and every wholly owned Subsidiary (and may indemnify any director or employee of a Related Company) in respect of:
- (a) Any costs incurred by him or her in any proceeding:
    - (i) that relates to liability for any act or omission in his or her capacity as a director or employee; and

- (ii) in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued;
- (b)
  - (i) Liability to any person other than the Company or a related Company for any act or omission in his or her capacity as a director or employee; and
  - (ii) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability,

not being criminal liability or liability in respect of a breach, in the case of a director, of the duty specified in Section 131 of the Act or, in the case of an employee, of any fiduciary duty owed to the Company or Related Company.

### **Insurance Against Liability**

26.2 The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a Related Company in respect of:

- (a) Liability, not being criminal liability, for any act or omission in any director's or employee's capacity as director or employee;
- (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability;
- (c) Costs incurred by that director or employee in defending any criminal proceedings in which he or she is acquitted.

### **Definitions**

26.3 For the purpose of this clause 26 the words "director", "effect insurance", "employee", "indemnify" and "indemnity" shall have the meaning given to them in section 162(9) of the Act.

## **27 INTELLECTUAL PROPERTY RIGHTS**

### **Use of Best Endeavours**

27.1 The Company shall at all times use its best endeavours to honour the contractual obligations created by the Head Licence.

### **Maximization of Returns**

27.2 The Company shall use its best endeavours and all available resources to maximize the commercial benefits accruing to the Company by virtue of the technology rights granted under the Head Licence.

### **Grantor's Right of Veto**

27.3 The commercial operations of the Company under the terms of the Head licence shall at all times be subject to the express approval of the Grantor who retains the right to specify the direction the Company's operations should take, including the nature of and parties to any agreements entered into by the Company.

## **FIRST SCHEDULE**

### **Proceedings at Meetings of Shareholders**

#### **1 Chairperson**

- 1.1 If the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at the meeting of Shareholders, he or she must chair the meeting.
- 1.2 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 of the time appointed for the commencement of the meeting or is unwilling to act the Directors present may choose one of their number to be chairperson of the meeting.
- 1.3 If no Director is present within 15 minutes of the time appointed for commencement of the meeting, or no Director is willing to act as chairperson, the Shareholders present may choose one of their number to be chairperson of the meeting.

#### **2 Notice of Meetings**

- 2.1 Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting and to every Director and the Auditor not less than 10 working days before the meeting.
- 2.2 The notice must 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; and
  - (b) the text of any special resolution to be submitted to the meeting.
- 2.3 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.
- 2.4 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at a meeting.

#### **3 Methods of Holding Meetings**

- 3.1 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) 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.

## **4 Quorum**

- 4.1 Subject to paragraph 4.3 no business may be transacted at a meeting of Shareholders if a quorum is not present.
- 4.2 A quorum for a meeting of Shareholders is present if five Shareholders are present in person or by proxy or by Representative, or if Shareholders or their proxies or their Representatives are present who are between them able to exercise 5 per cent or more of the votes to be cast on the business to be transacted by the Company.
- 4.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) In the case of a meeting called under section 121(b) of the Act, the meeting shall be 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 Directors may appoint and, if at the adjourned meeting, a quorum is not present within 15 minutes after the time appointed for the meeting, the Shareholders or their proxies present are a quorum.

## **5 Adjournment**

- 5.1 A meeting of Shareholders or any business being considered or remaining to be considered at which a quorum is present may be adjourned if:
- (a) the chairperson of the meeting in his or her sole discretion so determines; or
  - (b) the chairperson of the meeting is directed by the meeting (in which case the meeting shall be adjourned).
- 5.2 No business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. 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.
- 5.3 Without limiting paragraph 5.1, a meeting of Shareholders or any business being considered or remaining to be considered may be adjourned indefinitely, if the meeting becomes so disorderly or protracted that in the opinion of the chairperson in his/her sole discretion the business of the meeting cannot be conducted in a proper and orderly manner.
- 5.4 If any meeting is adjourned pursuant to paragraph 5.1 or 5.3, then with respect to any unfinished business of such meeting:
- (a) a resolution not voted upon concerning the remuneration of the Auditors will be deemed to have been withdrawn and a resolution authorizing the Board to fix the remuneration of the Auditors will be deemed to have been passed; and
  - (b) the chairperson may direct that any other item of business uncompleted at the original meeting (of which notice was given in the notice convening the original meeting), and which, in his or her opinion, requires to be voted upon, be put to the vote on a poll without further discussion.

## **6 Voting**

- 6.1 In the case of a meeting of Shareholders held under paragraph 3.1(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:
- (a) voting by voice; or
  - (b) voting by show of hands.
- 6.2 In the case of a meeting of Shareholders held under paragraph 3.1(b), unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- 6.3 Subject to the terms of issue of any share, and to paragraphs 6.12 to 6.15, each Shareholder present in person or by proxy or Representative shall have one vote on a vote by voices or by show of hands.
- 6.4 Subject to the terms of issue of any share, and to paragraphs 6.12 to 6.15, a share confers the right to one vote on a poll at a meeting of Shareholders.
- 6.5 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with paragraph 6.6.
- 6.6 At a meeting of Shareholders a poll may be demanded by:
- (a) Not less than five Shareholders having the right to vote at the meeting; or
  - (b) A Shareholder or Shareholders representing not less than 10 per cent of the total voting rights of all Shareholders having the right to vote at the meeting; or
  - (c) A Shareholder or Shareholders holding shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 per cent of the total amount paid up on all shares that confer that right.
- 6.7 A proxy notice appointing a proxy confers authority to demand or join in demanding a poll. A demand by a proxy has the same effect as a demand by the Shareholder appointing the proxy.
- 6.8 A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.
- 6.9 The poll shall be taken at the time and in the manner determined by the chairperson of the meeting. Any other business may be proceeded with pending the taking of the poll.
- 6.10 If a poll is taken:
- (a) votes must be counted according to the votes attached to the shares of each Shareholder present in person or by postal vote or by proxy or by Representative and voting;
  - (b) the scrutineers shall be the Auditor unless the Auditor is unable or unwilling to act or unless the chairperson directs to the contrary in which case the scrutineers shall be appointed by the chairperson;
  - (c) the chairperson of the meeting shall finally determine in good faith the admission or rejection of any vote;
  - (d) the chairperson may declare the result of a poll when its outcome is known regardless of whether all votes have been counted;
  - (e) the chairperson may declare the result of the poll at or after the meeting.

- 6.11 The chairperson of the meeting is entitled to a second and casting vote.
- 6.12 Notwithstanding anything to the contrary in the Act or this Constitution, a person is not entitled to cast a vote on a resolution where that person is disqualified from voting by the Listing Rules.
- 6.13 Paragraph 6.12 shall not prevent a person who:
- (a) is disqualified from voting under paragraph 6.12 and
  - (b) has been appointed as a proxy or Representative by another person (who is not disqualified from voting)
- from voting in respect of the Securities held by that other person in accordance with the express instructions of that other person.
- 6.14 Without prejudice to any remedy (other than those which take legal effect against the Company) which any holder of Securities may have against any disqualified person who casts a vote at a meeting in breach of paragraph 6.12, no resolution of, or proceeding at, that meeting shall be impugned on the basis of a breach of paragraph 6.12. Any objection by a holder of Securities to the accuracy or completeness of any list of holders of Securities who are disqualified from voting on a resolution pursuant to paragraph 6.12 shall be disregarded by the Company and the chairperson of the relevant meeting if it is notified to the Company later than one full Business Day before the time fixed for commencement of the meeting.
- 6.15 Where there are shares of the same Class, some of which are fully paid and some of which are not fully paid, each share which is not fully paid shall carry only a proportion of the vote which would be exercisable if the share were fully paid, equivalent to the portion of the total issue price of that share which has been paid (disregarding any payment in advance).

## **7 Proxies**

- 7.1 A Shareholder may exercise the right to vote either by being present in person or by proxy.
- 7.2 A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.
- 7.3 A proxy must be appointed by notice in writing signed by the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.
- 7.4 So far as is reasonably practicable, resolutions shall be framed in a manner which facilitates two way voting instructions for proxy holders.
- 7.5 A proxy notice shall be sent with every notice of a meeting of the Company and
- (a) shall (so far as the subject-matter and form of the resolution reasonably permits) provide for two-way voting on all resolutions, enabling the Shareholder to instruct the proxy as to the casting of the vote; and
  - (b) shall not be sent with any name of office filled in as a proxy holder (though the proxy may include a footnote to the effect that certain officers of the Company or other persons are willing to act as proxy if the Shareholder wishes to appoint them).
- 7.6 No proxy is effective in relation to a meeting unless the proxy notice is received at the place nominated in the notice of meeting not later than 48 hours before the start of the meeting.

7.7 A proxy is effective in relation to a meeting notwithstanding the previous:

- (a) death of the principal, or
- (b) insanity of the principal, or
- (c) revocation of the proxy, or
- (d) transfer of the shares in respect of which the proxy is given;

unless notice in writing of any such matter has been produced to the satisfaction of the chairperson before the start of the meeting at which the proxy is to be used.

## **8 Postal Votes**

8.1 Shareholders may exercise the right to vote at a meeting by casting a postal vote in accordance with the procedures relating to postal voting as set out in the First Schedule to the Act, subject to any other provisions specified by the Board.

## **9 Minutes**

9.1 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.

9.2 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

## **10 Shareholder Proposals**

10.1 A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.

10.2 If the notice is received by the Board not less than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

10.3 If the notice is received by the Board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

10.4 If the notice is received by the Board less than 5 working days before the last day on which the notice of the relevant meeting of Shareholders is required to be given by the Board, the Board may, if practicable, and at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

10.5 The Board must give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1,000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.

10.6 The Board is not required to include in or with the notice given by the Board a statement prepared by a Shareholder which the Directors consider to be defamatory, frivolous or vexatious.

10.7 Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

**11 Corporations may Act by Representatives**

11.1 A body corporate 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.

**12 Votes of Joint Holders**

12.1 Where two or more persons are registered as the holder of a share, 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.

**13 Other Proceedings**

13.1 Except as provided in this schedule the chairperson of a meeting of Shareholders may regulate the procedure at that meeting.

## **SECOND SCHEDULE**

### **Proceedings of the Board**

#### **1 Chairperson and Deputy Chairperson**

- 1.1 The Directors may elect a Chairperson and if they so determine a Deputy Chairperson.

#### **2 Notice of Meeting**

- 2.1 A Director or, if requested by a Director to do so, an Employee of the Company approved by the Board for this purpose, may convene a meeting of the Board.
- 2.2 Written notice of a meeting of the Board must be given to every Director or his or her alternate. The notice must include the date, time, and place of the meeting and the matters to be discussed. Said Notice must give 72 hours minimum notice.
- 2.3 An irregularity in the giving of notice of a meeting is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

#### **3 Methods of Holding Meetings**

- 3.1 A meeting of the Board, which must be held in New Zealand, 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 means of telephone communication pursuant to paragraph 3.2.
- 3.2 The contemporaneous linking together by telephone of a number of the Directors not less than the quorum, whether or not any one or more of the Directors is out of New Zealand, shall be deemed to constitute a meeting of the Directors. The following conditions shall be met in relation to a telephone meeting.
- (a) All the Directors entitled to receive notice of a meeting of the Directors (including any alternate Directors) shall at their option be linked by telephone for the purposes of such meeting; and
  - (b) If all reasonable efforts are made to contact a Director or alternate Director to give notice of a meeting, and the Director or alternate Director cannot be contacted Notice of the meeting shall be deemed to have been given; and
  - (c) Each of the Directors taking part in the meeting by telephone must be able to hear each of the other Directors taking part at the commencement of the meeting; and
  - (d) At the commencement of the meeting and at or about the closure of the meeting each Director must acknowledge his presence for the purpose of the meeting of the Directors to all the other Directors taking part; and

- (e) A Director may not leave the meeting by disconnecting his or her telephone unless he or she has previously obtained the express consent of the chairperson of the meeting. A Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless he or she has previously obtained the express consent of the chairperson to leave the meeting; and
- (f) A minute of the proceedings at such meeting by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting; and
- (g) For the purposes of this clause "telephone" shall include television or any other audio and visual device which permits instantaneous communications.

#### **4 Quorum**

- 4.1 Unless otherwise determined by the Directors, a quorum for a meeting of the Board is three of the Directors.
- 4.2 Subject to Clause 21.1(b) no business shall be transacted at a meeting of the Directors if a quorum is not present.
- 4.3 A Director shall not be counted in the quorum for the purpose of consideration of a matter in which the Director is interested (as defined in section 139 of the Act) unless the matter is one in respect of which Directors are expressly required by the Act to sign a certificate.
- 4.4 If a notice of a meeting of the Board has been properly given under paragraph 2 of this schedule and a quorum is not present within 30 minutes after the time appointed for the meeting any Director may by not less than 3 days notice to every Director convene a further meeting of the Board. If at that further meeting a quorum is not present within 30 minutes after the time appointed for the meeting any Director present is a quorum.

#### **5 Voting**

- 5.1 Subject to paragraph 5.2 every Director, excluding an Advisory Director, has one vote.
- 5.2 A Director shall not vote in respect of a matter in which the Director is interested (as defined in section 139 of the Act) unless the matter is one in respect of which Directors are expressly required by the Act to sign a certificate.
- 5.3 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 the resolution are in favour of it.
- 5.4 In the case of an equality of votes the chairperson shall have a second and casting vote except in cases where two Directors form a quorum and only two Directors are present.
- 5.5 Any Director who abstains from voting shall not be deemed to have voted for or against the proposal or issue being voted on, and accordingly shall not be required to sign any director's certificates required under the Act.

#### **6 Minutes**

- 6.1 The Board shall ensure that minutes are kept of all proceedings at meetings of the Board.
- 6.2 Minutes that have been signed correct by the chairperson of the meeting, or by the chairperson of the next meeting, are prima facie evidence of the proceedings.

6.3 A copy of any written resolution under paragraph 7 shall be entered in the minute book of Board proceedings.

## **7 Written Resolution**

7.1 A resolution in writing, signed or assented to by a majority of the Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

7.2 A resolution in writing may consist of one or more documents in like form, each signed by one or more Directors and a copy, facsimile transmission or other electronic reproduction of any such document signed or assented to by one or more Directors shall be conclusive evidence of the execution of the original document by those Directors.

## **8 Committees**

8.1 The proceedings of committees of Directors shall be governed by this schedule with all necessary modifications.

## **9 Other Proceedings**

9.1 Except as provided in this schedule, the Board may regulate its own procedure.