

**CONSTITUTION OF
PACIFIC EDGE LIMITED**

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Constitution of Pacific Edge Limited

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PART A: INTRODUCTION

1. DEFINITIONS AND INTERPRETATION

1.1 Defined Terms

In this Constitution, unless the context otherwise requires:

"Act" means the Companies Act 1993.

"Alternate Director" means a person appointed by a Director under clause 21 to act in the place of that Director.

"Board" means those Directors who number not less than the required quorum acting together as the board of directors of the Company.

"Company" means Pacific Edge Limited.

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

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

"Distribution Right" means a right in the nature of:
a. a present or future right to participate in the assets of the Company after payment of claims payable under section 313(1) of the Act; or
b. a present or future right to participate in the income or profits of the Company.

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Deleted: "Appraisal Report" has the meaning given to that term by Listing Rule 1.2. ... [4]

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Deleted: "Bank" means a registered bank in terms of the Reserve Bank of New Zealand Act 1989, a bank having recognition comparable to that of a registered bank under the law of Australia, the United States of America, Japan or the United Kingdom, or any other financial institution approved by the Exchange.

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

Deleted: "Class" means a Class of Securities having identical rights, privileges, limitations and conditions and includes or excludes Securities which the Exchange in its discretion deems to be of or not of that Class.

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Deleted: "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 and "Conversion" and "Convertible" have corresponding meanings.

Deleted: "Debt Security" means a Security having any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a charge over any property) and includes a debenture, debenture stock, bond, note or certificate of deposit and any other Security which the Exchange in its sole discretion declares by a Ruling to be a Debt Security but does not include any Security that the Exchange in its sole discretion declares by a Ruling not to be a Debt Security.

Deleted: "Disqualifying" has the meaning set out in Listing Rule 1.1.2. ... [5]

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Deleted: "Distribution" has the meaning given to that term by the Act.

Deleted: "Dividend" has the meaning given to that term by the Act.

Deleted: "Employee" in relation to the Company has the meaning given to that term by Listing Rule 7.3.6.

"Executive Director" means a Director who is also an employee of the Company.

"Independent Director" means a Director who is not an executive officer of the Company and who has no Disqualifying Relationship.

"Listing Rules" means the **"NZX Listing Rules"** of NZX, amended from time to time by NZX.

"NZX" means NZX Limited, its successors and assigns and, as the context permits, includes any duly authorised delegate of NZX.

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

"Personal Representative" means in relation to:

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

Deleted: **"Equity Security"** . means a Security of the Company which: .
- **"Exchange"** . means the NZX. .
Deleted: **"Exchange"** . means the NZX. .

Deleted: **"Interest Group"** . has the meaning given to that term by the Act. .
Deleted: **"Interested"** . in relation to a Director, has the meaning set out in section 139 of the Act. .

Deleted: **"Investment"** . has the meaning given in section 38C of the Securities Act .
"Issuer" . has the meaning given to that term by the Listing Rules. .

Deleted: **"Issuer"** . has the meaning given to that term Listing Rules. .

Deleted: **"Listing"** . has the meaning given in Listing Rule 1.1.2 and the terms "listed" and "list" have a corresponding meaning. .

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Deleted: **"Material"** . means, for the purposes of clause 20, a transaction or .

Deleted: **"Minimum Holding"** . means a parcel or number of Securities as set out in Appendix 2 of the Listing Rules.

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Deleted: **"Offering Document"** . means any relevant Profile or Investment Statement pursuant to which Securities in the Company are either offered or, in the case of a Profile, Listed on the Exchange.

Deleted: **"Option"** . means an option to acquire a Security.

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Deleted: **"Ordinary"** . means a resolution that is approved by a simple majority .

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Deleted: **"Profile"** . means a document complying with Listing Rule 7.1.3.

Deleted: **"Prospectus"** . means a prospectus within the meaning of the Securities Act 1978.

"Representative" means:

- a. person appointed as a proxy under paragraph 6 of the First Schedule;
- b. a Personal Representative; or
- c. a representative appointed by a corporation under paragraph 10 of the First Schedule.

"Share" means a [share](#) issued, or to be issued, by the Company.

"Shareholder" means a person whose name is entered in the [share register of the Company](#) as the holder for the time being of one or more Shares.

"Special Resolution" means a resolution approved by a majority of 75% of the votes of those Shareholders entitled to [vote and voting on the resolution](#).

"in writing" or "written" include any means of reproducing words, figures and symbols in a tangible and visible form.

1.2 Interpretation

In this Constitution, unless the context otherwise requires:

- a. words and expressions defined in the Act or the Listing Rules ([whether or not expressed with an initial capital letter](#)) have the same meaning in this Constitution, except where this Constitution expressly provides otherwise.
- b. the index and clause headings, and descriptions relating to sections of the Act, are included for convenience and must be ignored in interpreting this Constitution;
- c. words importing one gender include the other genders;

Deleted: **"Quotation"** . means, in respect of a Class of Securities, the right to quote bids and offers for that Class of Security on the Exchange and **"Quote"** and **"Quoted"** have corresponding meanings.

Deleted: **"Recognised"** . has the meaning given to that term by Listing Rule 1.1.2. .
 Deleted: **"Record Date"** . has the meaning given to that term in Listing Rule 1.1.2.

Deleted: **"Record Date"** . has the meaning given to Listing Rule 1.1.2.

Deleted: **"Records"** . means the documents required to be kept by the Company under section 189(1) of the Act.

Deleted: **"Related"** . has the meaning given in section 2 (3) of the Companies Act .
 Deleted: **"Related Party"** . has, for the purposes of clause 20, the meaning given to that term by Listing Rule 9.2.3. .
 Deleted: **"Renounceable"** . in relation to a Right or offer of Securities means a Right or offer that is transferable by any holder for the time being to another person (whether or not an existing holder of any Securities to which the Right or offer relates) .

Deleted: **"Related Party"** . has, for the purposes of the meaning given to that term by Listing Rule 9.2.3. .
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Deleted: **"Renounceable"** . in relation to a Right or Securities means a Right or offer that is transferable by any holder for the time being to another person (whether or not an existing holder of any Securities to which the Right or offer relates) .

Deleted: **"Right"** . means any right to acquire any Security or benefit of any kind, whether conditional or not, and whether Renounceable or not.

Deleted: **"Ruling"** . means any decision or determination by the Exchange as to the meaning or interpretation (... [9])

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Deleted: **"Security"** . means any interest or right to participate in any capital, assets, earnings, royalty (... [10])

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Deleted: **"Share Register"** . means the share register for the Company required to be kept in accordance (... [11])

Deleted: **"Solvency Test"** . has the meaning given to that term by the Act .

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- d. the singular includes the plural and vice versa;
- e. a reference to any legislation includes:
 - i. the statute and any regulations, rules or orders made pursuant to that statute and in existence from time to time; and
 - ii. all amendments, re-enactments and substituted legislation; and
 - iii. any statutory instruments, regulations, rules and orders issued under that legislation;
- f. references to clauses and schedules are references to clauses and schedules in this Constitution, unless stated otherwise. References to paragraphs are references to paragraphs in the Schedules to this Constitution;

g. a reference to a Listing Rule includes all amendments to and substitutions for that Listing Rule; and

h. references to time are New Zealand time.

1.3 Use of electronic means

Where a legal requirement under the Act is reproduced in this Constitution, that legal requirement may be met, for the purposes of this Constitution, by using electronic means in accordance with Part 4 of the Contract and Commercial Law Act 2017 to meet that legal requirement under the Act. In this clause, the term "legal requirement" has the same meaning given to it by section 219(2) of the Contract and Commercial Law Act 2017.

2. APPLICATION OF THE LISTING RULES

2.1 Compliance with Listing Rules

- a. While the Company is Listed, the Company must comply with the Listing Rules subject to any enactment or rule of law, and to any waiver or Ruling. If a provision of this Constitution is inconsistent with the Listing Rules, the Listing Rules prevail.
- b. For so long as the Company is Listed, those provisions of the Listing Rules which are required to be contained or incorporated by reference in this Constitution (and as modified by any waiver or Ruling relevant to the Company), will be deemed to be incorporated in this Constitution and have the same effect as if they were set out in full with any necessary modification.

2.2 Effect of Rulings by the NZX

If the NZX has granted a waiver or Ruling in relation to the Company authorising any act or omission, which in the absence of that waiver or Ruling would be in contravention of the Listing Rules or this Constitution, unless a contrary intention appears in this

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Deleted: <#>Where any modifications made to the Listing Rules by the Exchange would, but for clause 2.1b, require a change in this Constitution, those modifications will be deemed to be incorporated by reference in this Constitution upon the date specified (either as a certain date or the date of expiry of any period of notice) by the Exchange as the date upon which such incorporation by reference is deemed to take effect. .
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Constitution, that act or omission is deemed to be authorised by the Listing Rules and this Constitution.

2.3 Effect of failure to comply with Listing Rules

Failure to comply with the Listing Rules, or with a provision of the Constitution corresponding with a provision of the Listing Rules, 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, provided that:

- a. a party to a transaction or contract who knew of the failure to comply with the Listing Rules or the clauses referred to above, as the case may be, is not entitled to enforce that transaction or contract; and
b. this clause 2.3 shall not limit the rights of Equity Security holders against the Company or the Directors.

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PART B: SHARES AND SHAREHOLDERS

3. RIGHTS ATTACHING TO SHARES

3.1 Classes of Shares

Without limiting the Classes of Shares or securities that may be issued, Shares in the Company may be issued on terms that they:

- a. are convertible into or exchangeable for Shares;
b. are redeemable;
c. confer preferential rights to Distributions and capital or income which may be made subject to the power of the Directors to make Distributions;
d. confer special, limited or conditional voting rights;
e. do not confer voting rights; or
f. have limitations or restrictions on transferability.

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4. ISSUE OF SHARES AND OTHER SECURITIES

4.1 Board Has Power to Issue Shares and Other Securities

Subject to the Listing Rules, the Act and this Constitution, the Board may issue new Shares, Financial Products, or Options to any person and in any number it thinks fit.

4.2 Pre-emptive Rights on Issue

The provisions of section 45 of the Act do not apply to the issue of further Shares.

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4.3 Consolidation and Subdivision of Shares

The Board may:

a. consolidate and divide the Shares or the Shares of any Class in proportion to those Shares or the Shares in that Class; or

b. subdivide the Shares or the Shares of any Class in proportion to those Shares or the Shares in that Class.

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5. MODIFICATION OF SHAREHOLDER RIGHTS

5.1 Procedure for Modification of Shareholder Rights

The Company shall comply with the provisions of sections 116 and 117 of the Act before taking action affecting the rights attached to any Shares. For the purposes of this clause, those sections shall be deemed to be modified so that:

- a. reference in those sections to "shares" shall (subject to clause 5.2) be deemed to be references to all Equity Securities, and references to "shareholders" shall be read accordingly; and
- b. in respect of Equity Securities which are not Shares:
 - i. 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 Financial Products, entitled to vote and voting; and
 - ii. references to the constitution shall be deemed to be references to the document which governs the rights of those Equity Securities.

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5.2 Exceptions

The Company shall not be required by clause 5.1 to comply with sections 116 and 117 of the Act in respect of actions that affect the rights attached to:

- a. Equity Securities which are not Quoted; or
- b. Equity Securities which are not Shares if 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 Offer Document (if any) pursuant to which those Equity Securities were offered.

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5.3 Issue of Equal Ranking Equity Securities

The issue of further Equity Securities which rank equally with, or in priority to, existing Equity Securities, whether as to voting rights, Distributions or otherwise, is deemed not to be an action affecting the rights attaching to those existing Equity Securities.

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5.4 Cancellation of Unpaid Amounts

The Company shall not cancel, reduce or defer any obligation to pay an unpaid amount on any Equity Security without the authority of an Ordinary Resolution of the Company.

5.5 Actions not invalid

The taking of any action by the Company affecting the rights attached to any Quoted Equity Securities other than Shares shall not be invalid by reason only that the action was not approved in accordance with the provisions of clause 5.1.

6. CALLS ON SHARES

6.1 Board may make Calls

- a. The Board may make such calls as the Board thinks fit on the Shareholders in respect of any moneys unpaid on any Shares held by them which are not by the conditions of issue of those Shares made payable at a fixed time or times.
- b. Shareholders shall comply with the terms of payment set out in the Board resolution.
- c. A call may be revoked, reduced or postponed at any time by the Board.

6.2 Time of Call

A call is deemed to be made when the resolution of the Board authorising the call is passed, unless that resolution provides otherwise.

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6.3 Fixed Instalment Deemed Calls

An amount which by the terms of issue of a Share is payable on issue or at a fixed date is deemed for the purposes of this Constitution to be a call duly made and in respect of which notice and particulars of the call have been given and shall be payable on the date on which the amount is due.

6.4 Notice of Call

- a. At least 21 days notice of call shall be given to the holder of the Shares in respect of which the call is made, specifying the amount, time and place of payment at the time the call is made.
- b. The Company is not required to give notice and particulars of call to a subsequent holder of those Shares.

6.5 Different amounts

The Board may, on the issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

6.6 Liability

The joint holders of a Share are jointly and severally liable to pay all calls in respect of those Shares.

6.7 Interest and Expenses

If a call is not paid by the day appointed for payment, the person from whom the sum is due shall be liable to pay:

- a. all interest on that sum from the date payment was due to the date of actual payment at such rate as the Board may determine;
- b. all expenses which the Company has or may incur by reason of non-payment of the call.

The Board may waive payment of all or part of that interest or expense.

6.8 Proceedings for Recovery of Call

In any proceedings for recovery of a call:

- a. it will be conclusive evidence of the debt if it is proved that:
 - i. the name of the Shareholder sued is entered in the Share Register as the holder, or one of the holders, of the Shares to which the call relates; and
 - ii. either the resolution making the call is entered in the Company's Records and notice of the call has been duly given; or
 - iii. the terms of issue of a Share require the sum to be paid on a certain date; and
- b. it is not necessary to prove the appointment or qualification of any member of the Board which made the call nor any other matter.

6.9 Payment in Advance of Calls

The Company may if it thinks fit, receive from any Shareholder in advance any amount uncalled and unpaid upon any Shares held by that Shareholder and may, until the date on which the amount becomes payable pursuant to a call, pay interest on the amount at such rate as the Board and the Shareholder agree. The Company may at any time repay the amount so advanced.

7. LIEN ON SHARES

7.1 Lien on Shares

The Company has a first and paramount lien upon each Share registered in the name of a Shareholder (whether solely or jointly with others), the proceeds of sale of the Share, and all Distributions made in respect of the Share for:

- a. all unpaid calls owing in respect of the Share and interest owing under clause 6.7 (if any); and
- b. such amount as the Company may be called upon to pay under any legislation in respect of the Share, whether or not the due date for payment has arrived.

7.2 Waiver of Lien

Unless otherwise agreed between the Company and the relevant Shareholder, the registration of a Transfer of a Share shall operate as a waiver of any lien which the Company may have on that Share, except as provided in clause 14.2.

8. FORFEITURE OF SHARES

8.1 Notice Requiring Payment of call

If a Shareholder fails to pay any call or instalment of a call the Company may at any time thereafter by notice to that Shareholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by the Company by reason of such non-payment.

8.2 Contents of Notice

The notice referred to in clause 8.1 shall specify a further date (not earlier than 14 days after the date of service of the notice) on or before which the payment is to be made and shall state that, if payment is not made by the specified date, the Share in respect of which the call or instalment of a call is due, is liable to be forfeited.

8.3 Forfeiture for Non-Payment

If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made, any Share in respect of which the notice has been given may be forfeited by a resolution of the Board. The forfeiture shall include all Dividends declared in respect of the forfeited Share and not paid before the forfeiture.

8.4 Evidence of Forfeiture

A statutory declaration by a Director or any other person authorised by the Board that a Share has been forfeited on a specified date, will be conclusive evidence of that forfeiture.

8.5 Cancellation of Forfeiture

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

8.6 Effect of Forfeiture

The holder of a Share which has been forfeited ceases to be a Shareholder in respect of the forfeited Share, but remains liable to the Company for all money payable in respect of the forfeited Share.

9. SALE OF SHARES SUBJECT TO LIEN OR FORFEITURE

9.1 Power of Sale

The Company may sell, in such manner as the Board thinks fit, any forfeited Share or any Share on which the Company has a lien. No sale may be made unless:

- a. the sum in respect of which a lien exists is due and payable; and
- b. until 14 days have elapsed after a notice which requires payment of the amount owing has been given to the Shareholder entitled to receive notice of meetings of Shareholders in respect of the Share.

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9.2 Application of Proceeds of Sale

If any Shares are forfeited and sold or are sold to enforce a lien, any residue after the satisfaction of unpaid calls, instalments, premiums or other amounts and interest thereon, and expenses, shall be paid to the previous holder, or to the executors, administrators or assigns of the previous holder.

9.3 Sale Procedure

- a. In order to give effect to any sale in the exercise of the powers given to it under clause 9.1 the Board may authorise any person to execute any relevant documentation.
- b. The purchaser will be registered as the Shareholder of the Shares which are transferred, and will not be bound to see to the application of the purchase money.
- c. The purchaser's title to the Shares will not be affected by any irregularity or invalidity in the forfeiture, sale or other disposal of the Shares.
- d. The remedy of any person aggrieved by the sale will be in damages only and against the Company exclusively.
- e. If the certificate for the Shares is not delivered to the Company the Board may issue a new certificate distinguishing it as the Board thinks fit from the certificate not delivered.
- f. The registration of a share transfer in respect of the Shares shall operate as a waiver of the lien by the Company in respect of those Shares, but not as a release of any outstanding liability owed by any previous Shareholder.

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10. DISTRIBUTIONS TO SHAREHOLDERS

10.1 Satisfaction of Solvency Test

The Board, if it is satisfied on reasonable grounds that the Company will, immediately after the Distribution, satisfy the Solvency Test, may subject to section 53 of the Act and this Constitution, authorise a Distribution at a time, and of an amount, and to any Shareholders it determines and otherwise in accordance with the terms of issue.

10.2 Restriction on Certain Distributions

The Board shall not authorise a Dividend:

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

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

10.3 Method of Payment

- a. Any Distribution, interest, or other money payable in cash in respect of Shares may be paid as determined by the Board by automatic payment to a bank account nominated in writing by the Shareholder or by cheque sent through the post to the registered address of the Shareholder, or in the case of joint Shareholders, to the registered address of that one of the joint Shareholders who is first named in the Share Register or to such person and to such bank account or address as the Shareholder or joint Shareholders may in writing direct.
- b. The Company shall not be responsible for any loss arising from any mode of transmission referred to in this clause 10.3. Every such cheque must be made payable to the order of the person to whom it is sent. Any one of two or more joint Shareholders may give effectual receipts for any Dividends, bonuses, or other money payable in respect of Shares held by them as joint Shareholders.

10.4 Shares in Lieu of Dividends

The Board may issue Shares to any Shareholders who have agreed to accept the issue of Shares, wholly or partly, in lieu of a proposed Dividend or proposed future Dividends if:

- a. the right to receive Shares, wholly or partly, in lieu of the proposed Dividend or proposed future Dividends has been offered to all Shareholders of the same Class on the same terms; and
- b. if all Shareholders elected to receive the Shares in lieu of the proposed Dividend, relative voting or Distribution Rights, or both, would be maintained; and
- c. the Shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it; and
- d. the Shares issued to each Shareholder are issued on the same terms and subject to the same rights as the Shares issued to all Shareholders in that Class who agree to receive the Shares; and
- e. the provisions of section 47 of the Act are complied with by the Board.

The Board may vary, suspend or terminate any plan to issue Shares in lieu of Dividends.

10.5 Bonus Issues

The Board may resolve to apply any amount which is available for Distribution either:

- a. in paying up in full Shares or other Financial Products of the Company to be issued credited as fully paid to:
 - i. the Shareholders who would be entitled to that amount if it were distributed by way of Dividend, and in the same proportions; and

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- ii. if applicable, the holders of any other [Financial Products](#) of the Company who are entitled by the terms of issue of such [Financial Products](#) to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some later time, in accordance with their respective entitlements; or

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- b. in paying up any amount which is unpaid on any Shares held by the Shareholders referred to in subclause (a)(i); or

partly in one way and partly in the other.

10.6 Shareholder Discounts

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 of the Company) if:

- 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; and
- b. the Board is satisfied on reasonable grounds that the Company at the time of the offering of the discount scheme or its continuation satisfies the Solvency Test.

10.7 Deduction

The Board may deduct from a Distribution payable to a Shareholder any amount which is due and payable by the Shareholder to the Company on account of:

- a. unpaid calls or otherwise in relation to any Shares held by that Shareholder; 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.

10.8 No Interest

No Distribution bears interest against the Company [unless the applicable terms of issue of Shares expressly provide otherwise](#).

10.9 Unclaimed Distributions

- a. All Distributions unclaimed for 1 year after having been authorised may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. The Company shall not be required to set those monies apart from its other funds or to regard it as being held on trust. All Distributions unclaimed for 5 years after having been declared may be forfeited by the Board for the benefit of the Company.
- b. The Board must, however, annul any such forfeiture and agree to pay a claimant who produces, to the Board's satisfaction, evidence of entitlement to

the amount due to such claimant, unless in the opinion of the Board such payment would embarrass the Company.

11. ACQUISITION AND REDEMPTION OF COMPANY'S OWN SHARES

11.1 Company may Purchase, Acquire or Redeem its own Shares

Subject to [the Act, the Listing Rules and this Constitution](#), the Company may:

- a. purchase or otherwise acquire Shares or other Equity Securities from one or more Shareholders; and
- b. redeem any redeemable Shares or other Equity Securities; and
- c. hold any Shares or other Equity Securities so purchased, acquired or redeemed.

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12. FINANCIAL ASSISTANCE BY THE COMPANY TO PURCHASE ITS SHARES

12.1 Financial Assistance

The Company may give financial assistance for the purpose of, or in connection with, the acquisition of Equity Securities issued, or to be issued, by the Company only if the giving of that assistance complies with [Act and this Constitution, and is permitted by the Rules](#).

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12.2 Permitted Financial Assistance

The Company may only give financial assistance of the nature referred to in clause 12.1 if:

- 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 by the Company under this subclause during the 12 months preceding the date of giving of the financial assistance does not exceed 5% of the Average Market Capitalisation of the Company ; or
- b. the financial assistance is given to Employees and the amount of the financial assistance, together with the amount of all other financial assistance given by the Company under this subclause b. during the:
 - i. 12 months preceding the date of giving of the financial assistance, does not exceed 2% of the Average Market Capitalisation of the Company; and
 - ii. five years preceding the date of giving of the financial assistance, does not exceed 5% of the Average Market Capitalisation of the Company; and

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the financial assistance is not given to any Director or Associated Person of a Director unless it is 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; or

- c. the financial assistance is offered or given so that all holders of Equity Securities are treated, or given the opportunity to be treated, on the same basis.

12.3 Financial Assistance with Approval of Equity Security Holders

The Company may give financial assistance of the nature referred to in clause 12.1 if the precise terms and conditions of the giving of that financial assistance have been approved by separate resolutions (passed by a simple majority of Votes) of the members of each separate group whose rights or entitlements are materially affected in a similar way by the giving of the financial assistance and the giving of the financial assistance is given within 6 months after the passing of the relevant resolutions.

13. TRANSFER OF SHARES

13.1 Transferability

Subject to any restrictions, contained in this Constitution and to any applicable legislation, a Share is freely transferable.

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13.2 Form of Transfer

A Shareholder may transfer all or any of its Shares in accordance with the Act, by using a wholly or partly electronic system for the transfer of securities which has been approved by any statute or regulations in New Zealand where the transfer takes place in New Zealand.

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13.3 Transfers Executed Overseas

Where an instrument of transfer would have complied with the requirements of the Act if it had been executed in New Zealand, it may nevertheless be registered by the Company if it is executed under the common seal of a corporation as transferor or if the signature of the transferor has been witnessed by a person who has added his or her occupation and address after his or her signature.

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13.4 Other Forms of Transfer

Every instrument of transfer of Shares not falling within the provisions of clauses 13.2 or 13.3 must:

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- a. be signed or executed by or on behalf of the transferor in any manner permitted by law; and
- b. if registration of the transfer imposes any liability on the transferee, the transfer must be signed or executed by or on behalf of the transferee.

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13.5 Delivery to Company

An instrument of transfer, together with the Share certificate (if any) relating to the Shares to be transferred, must be delivered to the Company or to the agent of the Company who maintains the Share Register.

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13.6 Power to Refuse or Delay Registration

The Board may refuse to register a transfer of any Share if:

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- a. the Company has a lien on the Share; or
- b. the instrument of transfer is not accompanied by the relevant Share certificate (if any) and such other evidence as the Board reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Share; or
- c. registration of the transfer (together with 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 the Minimum Holding; or
- d. such action is permitted by any legislation or the Listing Rules.

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provided that the Board resolves to exercise its power under this clause within 30 Business Days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within 5 Business Days of the resolution being passed by the Board.

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13.7 Compulsory Disposal When Holding Less than Minimum Holding

The Company may at any time give notice to a Shareholder holding less than a Minimum Holding that it intends to exercise its rights under this clause to dispose of the Shares unless within three months (or such longer period as the Board may determine) the relevant Shares are disposed of or further Shares are acquired by the Shareholder to bring the relevant holding up to a Minimum Holding. If, after such period, the Shares then registered in the name of the Shareholder are less than the Minimum Holding:

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a. The Company may sell the Shares by means of a transaction on the Main Board (including through a broker acting on the Company's behalf).

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b. To give effect to any sale under clause 13.7a, the Board may authorise the transfer the Shares sold under this clause to a purchaser of the Shares through the Main Board or in some other manner approved by NZX, at the best price reasonably obtainable at the relevant time.

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c. The Shareholder is deemed to have authorised the Board to act on behalf of the Shareholder in relation to the sale of the relevant Shares, and to sign all documents relating to such sale.

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d. The proceeds of sale of any Shares sold under this clause must be applied as follows:

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- i. first, in payment of any reasonable sale expenses;
- ii. second, in satisfaction of any unpaid calls or any other amounts owing to the Company in respect of the Shares, and any interest payable on such amounts; and

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iii. the residue, if any, must be paid to the person who was the shareholder immediately before the sale or his or her executors, administrators or assigns.

e. The purchaser is not bound to see to the application of the purchase money, nor shall the title to the Shares be affected by any irregularity or invalidity in the procedures under this Constitution relating to the sale. The remedy of any person aggrieved by the sale is in damages only and against the Company exclusively.

A certificate, signed by a Director that records that a power of sale under this clause has arisen and is exercisable by the Company is conclusive evidence of the facts stated in that certificate.

13.8 When Transfer Effective

A transferor remains the holder of the Share until the name of the transferee is entered in the Share Register in respect of the Share.

13.9 Multiple Registers

The Share Register may, by resolution of the Board, be divided into two or more registers, kept in different places.

14. TRANSMISSIONS AND EQUITABLE INTERESTS

14.1 Transmission on death of Shareholder

If a Shareholder dies the survivor, if the deceased was a joint Shareholder, or the Personal Representative, shall be the only persons recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder but nothing in this clause shall release the estate of a deceased joint Shareholder from any liability in respect of any Share or constitute a release of any lien which the Company may have in respect of any Share.

14.2 Rights of Personal Representatives

A Personal Representative of a Shareholder:

- a. is entitled to exercise all rights (including without limitation the rights to receive Distributions, to attend meetings and to vote in person or by Representative), and is subject to all limitations, attached to the Shares held by that Shareholder; and
- b. is entitled to be registered as the holder of those Shares, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative pursuant to this subclause.

14.3 Joint Personal Representatives

Where a Share is subject to the control of two or more persons as Personal Representatives they shall, for the purposes of this Constitution, be deemed to be joint holders of the Share.

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14.4 No Notice of Trusts

No notice of a trust, whether express, implied, or constructive, may be entered on the Share Register.

14.5 No Recognition of Equitable Interests

Except as required by law or by this Constitution, no person shall be recognised by the Company as holding any Share upon trust and the Company shall not be bound by, nor be compelled to recognise (even after notice), any equitable, contingent, future or partial interest in any Share, or any interest in any fraction or part of a Share or (except as provided by this Constitution or by law) any other rights in respect of any Share, except an absolute right of the registered holder to the entire Share.

15. SEPARATE PARCELS OF SHARES

15.1 Separate Parcels

The Share Registrar of the Company, on request by a Shareholder, or proposed transferee, may register a shareholding in separate parcels identified by a distinguishing word, number or other parcel differentiator. Where a Shareholder's shareholding is so registered, the Company may communicate separately with the Shareholder in respect of each parcel, make Distributions and otherwise act, so far as the Directors consider convenient, as if the separate parcels belonged to different Shareholders.

16. SHAREHOLDER REPORTS, INFORMATION AND NOTICES

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16.1 Company Reports and Financial Statements

Shareholders of all Classes shall be entitled to attend general meetings and to receive copies of all notices, reports and financial statements issued generally by the Company to holders of Financial Products carrying Votes.

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16.2 Inspection by Shareholders

No Shareholder who is not also a Director is entitled to inspect any accounting or other Records of the Company except as expressly authorised by law or permitted by the Board. Subject to the provisions of section 216 of the Act the Board may from time to time determine whether, to what extent, at what times and places, and under what conditions, the accounting or other Records of the Company are open to inspection.

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16.3 Method of Service of Notices, Reports and Other Documents

All notices, reports, accounts and other documents required to be sent:

- a. to a Shareholder, shall be sent in the manner provided in section 391 of the Act;
- b. to a holder of any other Equity Security, shall be sent in the same manner, as though that holder were a Shareholder.

16.4 Service of notices overseas

If the holder of a Share or other Equity 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 for that Shareholder shall be posted to that holder at such international address and shall be deemed to have been received by that Shareholder 24 hours after the time of posting.

16.5 Accidental omissions

The failure to send an annual report, notice, or other document to a Shareholder or other Equity Security holder in accordance with the Act or this Constitution does not invalidate the proceedings at a meeting of Shareholders if the failure to do so was accidental.

16.6 Joint Shareholders

A notice may be given by the Company to the joint holders of an Equity Security by giving the notice to the joint holder named first in the register in respect of that Equity Security.

17. MEETINGS OF SHAREHOLDERS

17.1 Annual meetings

The Company shall hold annual meetings of Shareholders in accordance with section 120 of the Act.

17.2 Time and place of annual meeting

Each annual meeting shall be held at such time and place as the Board appoints.

17.3 Special meetings

All meetings of Shareholders, other than annual meetings, shall be called special meetings.

17.4 Calling of special meetings

A special meeting:

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

17.5 Equity Security holders entitled to attend

Equity Security holders of all Classes are entitled to attend meetings of Shareholders.

17.6 Methods of Holding Meetings

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, audio and visual, [or electronic](#) communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

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18. PROCEDURE AT SHAREHOLDER MEETINGS

18.1 The provisions of the First Schedule to this Constitution govern proceedings at meetings of Shareholders.

18.2 The provisions of the First Schedule to this Constitution, with all necessary modifications, govern proceedings at meetings of Interest Groups and Classes.

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PART C: DIRECTORS

19. POWERS OF DIRECTORS

19.1 Management of Company

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

19.2 Exercise of powers by Board

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

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19.3 Delegation of powers

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

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19.4 Appointment of attorney

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

19.5 Ratification by Shareholders

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

20. APPOINTMENT AND REMOVAL OF DIRECTORS

20.1 Number of Directors and Residence

- a. The number of Directors shall not be more than 8.
- b. The Company shall comply with the minimum board composition requirements of the Listing Rules.

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Deleted: At least 2 Directors must be persons who are ordinarily resident in New Zealand. The minimum number of independent Directors shall be two or, if there are eight or more Directors, three or one-third (rounded down to the nearest whole number of Directors) of the total number of Directors, whichever is the greater.

20.2 Appointment

Subject to 20.1, a person who is not disqualified under the Act may be appointed as a Director at any time by:

- a. an Ordinary Resolution; or
- b. by the Board under clause 20.1 and in accordance with the Listing Rules.

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20.3 Existing Directors to continue

The persons holding office as Directors at the date of this Constitution continue in office and are deemed to have been appointed as Directors pursuant to this Constitution.

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Deleted: A Director so appointed holds office only until the next annual meeting of the Company but is eligible for re-election at the meeting.

20.4 Nomination of Directors

- a. No person (other than a Director retiring at the meeting) shall be elected as a Director at an annual meeting of Shareholders unless that person has been nominated by a Shareholder entitled to attend and vote at the meeting.
- b. The closing date for nominations shall not be more than two months before the date of the annual meeting at which the election is to take place. The Company shall make an announcement to the market of the closing date for

Director nominations and contact details for making nominations no less than 10 Business Days before the closing date for Director nominations.

- c. Notice of every valid 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 as part of the notice of the meeting.

20.5 Restriction on appointment of several Directors by single resolution

Each resolution of the holders of Equity Securities to appoint a Director must be for the appointment of one Director only. Nothing in this clause prevents the election of two or more Directors by ballot or poll.

20.6 Rotation of Directors

A retiring Director continues to hold office:
a. until he or she is re-elected; or

b. if he or she is not re-elected, or does not offer himself or herself up for re-election, until the end of the annual meeting or any adjournment of that meeting.

20.7 Rotation requirements

Each Director shall retire from office when required to do so by the Listing Rules, but subject to the Listing Rules, shall be eligible for re-election (including at any meeting at which the Director retires).

20.8 Vacation of Office

A Director ceases to be a Director if he or she:

- a. is removed from office by an Ordinary Resolution or in accordance with the Act or this Constitution; or
- b. dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988; or
- c. resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice); or
- d. retires from office; or
- e. becomes disqualified from being a Director pursuant to the Act; or
- f. becomes bankrupt or makes an arrangement or composition with his or her creditors generally; or
- g. is an Executive Director and ceases for any reason to be in the salaried employment of the Company or any of its subsidiaries unless the Board decides otherwise; or

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b. . a Director who is retiring pursuant to clause 22.2b shall not be liable to retire by rotation at the meeting if they have offered themselves for re-election and shall not be taken in to account in calculating the number of Directors to retire; .

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h. has for more than six months been absent without the approval of the Board from meetings of the Board held during that period, unless the Board decides otherwise.

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20.9 Appointment by Board

The Board may appoint any person to be a Director either to fill a casual vacancy or as an additional Director. Any Director appointed under this clause 20.9 will cease to hold office at the commencement of the next annual meeting of the Company.

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21. ALTERNATE DIRECTORS

21.1 Appointment

A Director may from time to time by written notice to the Company appoint any person, who is not already a Director to be that Director's alternate. No Director may appoint an Alternate Director for him or her without the consent of a majority of the other Directors. That appointment may be revoked by a majority of his or her Co-Directors or by the Director having appointed the alternate. No Director may appoint a deputy or agent except by way of appointment of an Alternate Director under this clause 21.

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21.2 Rights of Alternate Director

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

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

d. is entitled to be Indemnified by the Company to the same extent as if he or she were a Director.

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21.3 Remuneration and expenses

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

21.4 Cessation of appointment

An Alternate Director ceases to be an Alternate Director:

- a. if the Appointer ceases to be a Director, or revokes the appointment by written notice to the Company; or

- b. on the occurrence of any event that would disqualify the Alternate Director if he or she were a Director; or
- c. if a majority of the other Directors resolve to revoke the Alternate Director's appointment.

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22. DIRECTOR EXPENSES

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

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23. INDEMNITY AND INSURANCE

23.1 Indemnity of Directors

Subject to clause [23.3](#), every Director shall be Indemnified by the Company:

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

23.2 Other Indemnities

Subject to clause [23.3](#), the Company may, with the prior approval of the Board, Indemnify a director of a related company, or an Employee of the Company or a related company:

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

23.3 Exceptions

An Indemnity conferred by clause [23.1b](#), or given pursuant to clause [23.2b](#), shall not apply in respect of:

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

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23.4 Insurance

The Company may, with the prior approval of the Board, Effect Insurance for a Director or Employee of the Company or a director or Employee of a related company, in respect of:

- a. liability, not being criminal liability, for any act or omission by him or her in such capacity; or
- b. costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability; or
- c. costs incurred by him or her in defending any criminal proceedings in which he or she is acquitted.

23.5 Definitions

Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 23.

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24. PROCEEDINGS OF THE BOARD

24.1 The provisions of the Second Schedule to this Constitution govern the proceedings of the Board. The third schedule to the Act does not apply to the Company.

PART D: GENERAL

25. METHOD OF CONTRACTING

25.1 Deeds

An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:

- a. two or more Directors; or
- b. a Director, or other person or persons authorised to do so by the Board whose signature or signatures must be witnessed; or
- c. one or more attorneys appointed by the Company in accordance with section 181 of the Act.

25.2 Other written contracts

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

25.3 Other obligations

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

26. ACCOUNTS

26.1 Accounts to be Kept

The Directors shall cause proper books of account to be kept in which shall be kept full true and complete accounts of the affairs and transactions of the Company. The books of account shall be kept at the registered office of the Company, or, subject to the Act, at such other place or places as the Directors shall think fit, and shall always be open to the inspection of any of the Directors.

26.2 Appointment of Auditors

Auditors shall be appointed and their duties regulated in accordance with the Act.

27. LIQUIDATION

27.1 Distribution of assets

If the Company is liquidated the liquidator may, with the approval of Shareholders by Special Resolution and any other sanction required by the Act:

- a. divide among the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose fix such value as the liquidator deems fair in respect of

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any property to be so divided, and may determine how the division shall be carried out as between Shareholders or between different Classes; and

- b. vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.

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FIRST SCHEDULE

PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

1. CHAIRPERSON

1.1 Chairperson to be Chairperson of the Board

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

1.2 Appointment by Directors

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 the chairperson considers it not proper or desirable to act as chairperson for all or any part of the meeting, the Directors present may elect one of their number to chair the meeting or that part of the meeting that the chairperson has indicated he or she does not wish to chair.

1.3 Appointment by Shareholders

If at any meeting no Director is willing to act as chairperson, or if no Director is present within 15 minutes of the time appointed for holding the meeting, the Shareholders present must choose one of their number to be chairperson of the meeting.

2. NOTICE OF MEETINGS

2.1 Notice in writing

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 to the auditor of the Company not less than 10 Business Days before the meeting, but with the consent of all Shareholders entitled to attend and vote at a meeting, it may be convened by such shorter notice and in such manner as those Shareholders agree.

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2.2 Contents of notice

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 judgement in relation to it;
- b. the text of any Special Resolution to be submitted to the meeting;
- c. that a Shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of the Shareholder and that a proxy need not be a Shareholder.

So far as is reasonably practicable, resolutions shall be formed in a manner which facilitates two way voting instructions for proxy holders.

2.3 Irregularities in notice

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 Accidental omission to give notice

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

3. PROCEEDINGS AT MEETINGS

3.1 Adjournment By Chairperson

The chairperson may, and if so directed by the meeting must, adjourn the meeting from time to time and from place to place, but no business can be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. Except as so provided, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

3.2 Adjournment or dissolution of meeting if disorderly

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

3.3 Completion of unfinished business if meeting dissolved

If any meeting is dissolved by the chairperson pursuant to paragraph 3.2 of this Schedule, the unfinished business of the meeting shall be dealt with as follows:

- a. in respect of any resolution concerning the approval or authorisation of a Distribution, the Board may, in the exercise of the powers conferred on it by the Act or this Constitution, authorise such Distribution;
- b. in respect of any resolution concerning the remuneration of the auditors, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the auditors;
- c. the chairperson may direct that any other item of business which is uncompleted which, in his or her opinion requires to be voted upon, be put to the vote by a poll without further discussion, in accordance with paragraph 5.12 of this Schedule.

3.4 Other Proceedings

Except as provided in this Schedule, and subject to the Constitution of the Company, the chairperson may regulate the meetings of Shareholders.

4. QUORUM

4.1 Necessity for quorum

Subject to paragraph 4.3 of this Schedule, no business may be transacted at a meeting of Shareholders if a quorum is not present.

4.2 Numbers for quorum

A quorum for a meeting of Shareholders is 5 Shareholders having the right to vote at the meeting, present in person or by proxy or by Representative.

5. VOTING

5.1 Number of votes

Subject to paragraphs 12.1 and 12.2 of this Schedule and to any rights or restrictions for the time being attached to any Class of Shares:

- a. where voting is by show of hands or by voice every Shareholder present in person or by Representative has one vote;
- b. on a poll every Shareholder present in person or by Representative has:
 - i. in respect of each fully paid ordinary Share held by that Shareholder, one vote;

- ii. in respect of each Share held by that Shareholder which is not fully paid, a proportion of the vote or votes which would be exercisable if that Share were fully paid equivalent to the proportion of the total issue price of that Share which has been paid (disregarding any payment in advance).

5.2 Voting method

In the case of a meeting of Shareholders held under clause 17.6a 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.

5.3 Voting method - audio, audio/visual

In the case of a meeting of Shareholders held under clause 17.6b, unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

5.4 Evidence that resolution carried

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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 5.5 of this Schedule.

5.5 Who may demand poll

At a meeting of Shareholders a poll may be demanded by:

- a. not less than 5 Shareholders having the right to vote at the meeting; or
- b. a Shareholder or Shareholders representing not less than 10 percent of the total voting rights of all Shareholders having the right to vote at the meeting; or
- c. by 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 percent of the total amount paid up on all Shares that confer that right.

5.6 When poll may be demanded

A poll may be demanded either before or after the vote is taken on a resolution.

5.7 Counting of votes

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 proxy or 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.

5.8 Equality of votes

In the case of an equality of votes, whether voting is by voice or show of hands or poll, the chairperson of the meeting is entitled to a second or casting vote.

5.9 Proxy holder may demand poll

For the purposes of this paragraph 5, the instrument appointing a proxy to vote at a meeting of a Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.

5.10 Voting entitlement

Subject to any rights or restrictions for the time being attached to any Class of Shares, every Shareholder present in person or by proxy and voting by voice or on a show of hands has one vote.

5.11 Chairperson may demand poll

The chairperson may demand a poll on a resolution, either before or after a vote on such resolution, by voice or on show of hands.

5.12 Withdrawal of demand

The demand for a poll may be withdrawn.

5.13 Poll to be taken as chairperson directs

Except as provided in paragraph 5.14 of this Schedule, if a poll is duly demanded it must be taken in such manner as the chairperson directs, and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.

5.14 Poll on election of chairperson

A poll demanded on the election of a chairperson or on a question of adjournment must be taken forthwith. A poll demanded on any other question may be taken at such time and place as the chairperson of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

6. PROXIES

6.1 Right to vote by proxy

A Shareholder may exercise the right to vote either by being present in person or by proxy.

6.2 Right of proxy to attend

A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.

6.3 Appointment of proxy

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.

6.4 Proxy form to be sent with Notice of Meeting

A proxy form must be sent to all [Share](#)holders of the Company with each notice calling a meeting of the Company.

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6.5 Two Way Voting

The proxy form shall as a minimum, (so far as the subject-matter and form of the resolution reasonably permits) provide for two-way voting (for or against) on all resolutions, enabling the [Share](#)holder to instruct the proxy as to the casting of the vote and may provide for the Shareholder to abstain from voting on each resolution and/or for the Proxy to exercise a discretion to vote (for or against) each resolution and should state clearly the consequences if no Proxy instruction is provided.

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6.6 Proxy form must not name proxy

The Company shall not issue any form of notice of appointment with a proxy named in it, either by name or by reference to an office which that proxy holds, but the Company may indicate in a footnote that certain persons or officers are willing to act as a proxy if a [Share](#)holder desires to appoint them or any of them.

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6.7 Validity of vote

A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or insanity of the Appointer or revocation of the proxy or revocation of the authority under which the proxy was executed, or the Transfer of any Share in respect of which the proxy is given, if no notice in writing of such death, insanity, revocation or Transfer has been received by the Company before the start of the meeting or adjourned meeting at which the proxy is used.

6.8 Deposit of Proxy

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. POSTAL VOTES

7.1 Shareholders may not exercise the right to vote at a meeting by casting a postal vote unless the Board elects to the contrary in relation to a particular meeting. [A postal vote may be cast using electronic means permitted by the Board.](#)

8. MINUTES

8.1 Minutes must be kept

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

8.2 Evidence

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

9. SHAREHOLDER PROPOSALS

9.1 Notice of matter for discussion or resolution

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.

9.2 Notice of Shareholder proposal at Company's expense

If the notice is received by the Board not less than 20 [Business 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.

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9.3 Notice of Shareholder proposal at Shareholder's expenses

If the notice is received by the Board not less than 5 [Business Days](#) and not more than 20 [Business 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.

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9.4 Notice of late Shareholder proposal to be given if practicable

If the notice is received by the Board less than 5 [Business Days](#) before the last day on which 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.

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9.5 Proposing Shareholder's written statement

If the Directors intend that Shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.

9.6 Limits on obligation to include statement

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.

9.7 Payment by Shareholder of costs

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.

10. CORPORATIONS MAY ACT BY REPRESENTATIVES

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 provided that the chairperson of a meeting, the Board, or the persons checking the entitlement of people to attend a meeting, shall waive any time limit for prior notice in respect of a corporation in favour of a person who at a meeting can produce reasonable evidence of their authority to represent the corporation. Until notice of revocation of such authority shall have been given to the Company any person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as that corporation could exercise if it were an individual member of the Company.

11. VOTES OF JOINT HOLDERS

Where 2 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.

12. LOSS OF VOTING RIGHTS

12.1 No vote when amount owing on Share

A Shareholder is not entitled to vote at any meeting of Shareholders (including a meeting of an Interest Group) in respect of any Share if any amount is due and payable on that Share by the Shareholder to the Company.

12.2 Voting restrictions

Notwithstanding anything to the contrary in this Constitution or the Listing Rules, a person is not entitled to cast a vote on a resolution when that person is disqualified from voting by virtue of the voting restrictions specified in the Listing Rules.

12.3 Deadline for challenge

Without prejudice to any remedy (other than those which take legal effect against the Company) which any Shareholder may have against any disqualified person who casts a vote at a meeting in breach of paragraph 12.2 of this Schedule, no resolution of, or proceeding at, that meeting may be impugned on the basis of a breach of that paragraph. Any objection by a Shareholder to the accuracy or completeness of any list of Shareholders, who are disqualified from voting on a resolution pursuant to paragraph 12.2 of this Schedule, which has been supplied by the Company to the NZX or to any Shareholder, on request pursuant to the Listing Rules shall be disregarded by the Company and the chairperson of the relevant meeting if it is notified to the Company later than one Business Day before the time fixed for commencement of the meeting.

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SECOND SCHEDULE

PROCEEDINGS OF THE BOARD

1. CHAIRPERSON

1.1 Election of chairperson

The Directors may elect one of their number as chairperson of the Board.

1.2 Terms of office

The Director elected as chairperson holds that office until he or she dies or resigns or the Directors elect a chairperson in his or her place.

1.3 Election of chairperson for particular meetings

If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

2. NOTICE OF MEETING

2.1 Convening meetings

A Director or an Employee, if requested by a Director to do so, may convene a meeting of the Board by giving notice in accordance with paragraph 2.2 of this Schedule.

2.2 Notice

The following provisions apply in relation to meetings of the Board (except where otherwise agreed by all Directors in relation to any particular meeting or meetings or as provided in paragraph 2.3 of this Schedule):

- a. not less ~~than~~ two clear days' notice of a meeting of the Board shall be sent to each Director and to an Alternate Director required to receive notice pursuant to clause ~~21.2~~, unless the Director waives that right, or a shorter period of notice is required to enable the Board to comply with its obligations under the Listing Rules.
- b. notice to a Director of a meeting of the Board may be:
 - i. delivered to the Director;
 - ii. posted to the address given by the Director to the Company for such purpose; ~~or~~
 - iii. sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
 - iv. sent by electronic means in accordance with any request made by the Director from time to time for such purpose.
- c. a notice of meeting shall specify the date, time and place of the meeting and, in the case of a meeting by means of audio, or audio and visual, ~~or electronic~~ communication, the manner in which each Director may participate in the proceedings of the meeting.

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d. a notice given to a director pursuant to this paragraph 2.2 is deemed to be given:

- i. in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
- ii. in the case of posting, 3 days after it is posted; or

.....

iv. in the case of electronic means, at the time of transmission.

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2.3 Irregularity in notice

An irregularity in the notice of the 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. METHOD OF HOLDING MEETINGS

3.1 A meeting of the Board may be held either:

- a. by a number of Directors sufficient to form a quorum being assembled together at the place, date and time appointed for the meeting; or
- b. by means of audio, audio and visual, or electronic communication by which all the Directors participating in the meeting and constituting a quorum can simultaneously hear each other throughout the meeting.

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4. QUORUM

4.1 Number constituting quorum

A quorum for a meeting of the Board is three Directors.

4.2 No business without quorum

No business may be transacted at a meeting of Directors if a quorum is not present.

4.3 Alternate Director may be included

In accordance with clause 21.1 of this Constitution an Alternate Director entitled to be present at a meeting shall be included for the purpose of establishing a quorum.

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4.4 Interested Director

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.

5. VOTING

5.1 Number of votes

Every Director has one vote.

5.2 Chairperson has casting vote

Subject to any restriction in the Listing Rules, the chairperson has a casting vote.

5.3 Majority

A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it.

5.4 Presumption as to voting

A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of a resolution of the Board, unless he or she expressly dissents from, or votes against the resolution at the meeting.

5.5 Disclosure of Interests

A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of paragraph 5.6 of this Schedule.

5.6 Personal involvement of Directors

Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act and section 199(2) of the Act, a Director may:

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

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

5.7 Interested Directors may not vote

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

- a. may attend a meeting of the Board at which any matter relating to the transaction arises but shall not be included among the Directors present at the meeting for the purposes of a quorum and may not vote on a Board Resolution in respect of any matter relating to the transaction except as provided in paragraph 5.8 of this Schedule;

- b. may sign a document relating to the transaction on behalf of the Company, and may do any other thing in his or her capacity as a Director in relation to the transaction, as if the Director were not interested in the transaction.

5.8 Exception to voting prohibition

Notwithstanding the provisions of paragraph 5.7a of this Schedule, a Director may vote in respect of a matter in which he or she is Interested if that matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Act.

5.9 Alternate Director may vote

An Alternate Director may attend and vote at meetings of the Board in accordance with and subject to clause [21.2](#) of this Constitution if the Director that has appointed the Alternate Director is absent from the meeting.

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6. MINUTES

The Board must [ensure minutes](#) are kept of all proceedings at meetings of the Board.

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7. RESOLUTIONS

7.1 Written resolution

A resolution in writing, signed or assented to by [all](#) Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

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7.2 Forms of resolution

Any such resolution may consist of several documents (including [those transmitted by electronic means](#)) in like form each signed or assented to by one or more Directors.

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7.3 Resolution to be kept in minute book

A copy of any such resolution must be entered in the minute book of Board proceedings.

8. NO NOTICE TO DIRECTORS OUTSIDE NEW ZEALAND

It is not necessary to give notice of a meeting of the Board to any Director for the time being absent from New Zealand but if a Director is resident outside New Zealand, or to the knowledge of the Company is temporarily absent from New Zealand and the Director has appointed an Alternate Director under the provisions of this Constitution, notice must (subject to clause [21.2](#) of this Constitution) be given to the Alternate Director.

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9. COMMITTEES

The proceedings of committees of the Board shall be governed by this Schedule with all necessary modifications, provided that the quorum for such meetings shall be a majority of the members of the committee or where there are more than 3 members of a sub-committee, the quorum shall be 2 members of the committee present or participating in the meeting.

10. OTHER PROCEEDINGS

Except as provided in this Schedule the Board may regulate its own procedure.

Certified as the Constitution of the Company

Chairman of the Company

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"Aggregate Net Value"	in relation to assets has the meaning given to the term in Listing Rule 9.2.2.
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"Appraisal Report"	has the meaning given to that term by Listing Rule 1.2.
"Associated Person"	has the meaning given to that term by Listing Rule 1.3.
"Audit Committee"	has the meaning given to that term by Listing Rule 1.1.2.

"Average Market has the meaning given to that term by Listing Rule 1.1.2.

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"Disqualifying Relationship" has the meaning set out in Listing Rule 1.1.2.

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"Material Transaction" means, for the purposes of clause 20, a transaction or a related series of transactions in terms of which the Company or any of its subsidiaries:

- a. purchases or otherwise acquires, gains, leases (as lessor or lessee) or sells or otherwise disposes of, assets having an Aggregate Net Value in excess of 5% of the Average Market Capitalisation of the Company; or
- b. issues its own securities or acquires its own Equity Securities having a market value in excess of 5% of the Average Market Capitalisation of the Company; or
- c. borrows, lends, pays, or receives, money, or incurs an obligation, of an amount in excess of 5% of the Average Market Capitalisation of the Company; or
- d. enters into any guarantee, indemnity, underwriting, or similar obligation, or gives any security, for or of obligations which could expose the Company and its subsidiaries to liability in excess of 5% of the Average Market Capitalisation of the Company; or
- e. provides or obtains any services (including, without limitation, obtaining underwriting of Securities or services as an employee) in respect of which the actual gross cost to the Company and its subsidiaries 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 the Average Market Capitalisation of the Company; or
- f. amalgamates, except for amalgamations of a wholly owned Subsidiary of the Company with another wholly owned Subsidiary of the Company or with the Company.

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"month" means a calendar month.

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"Ordinary Resolution" means a resolution that is approved by a simple majority of the Votes of those holders of Securities of the Company which carry Votes entitled to Vote and voting on the question.

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

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- "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 Debt Security; and
 - c. any Option or Right.

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

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"Subsidiary" has the meaning given to the term in Listing Rule 1.1.2.

"Trading Participant" has the meaning given to that term by Listing Rule 1.1.2.

"Treasury Stock" has the meaning given to that term by Listing Rule 1.1.2.

"Vote" has the meaning given to that term by Listing Rule 1.1.2.

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- i. expressions defined in the Listing Rules shall, unless the Constitution expressly provides otherwise, have the same meaning in this Constitution.

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Obligations prior to Listing

For as long as the Company is not listed on the Exchange:

- a. any provision of this Constitution which states that it is subject to the approval of the Exchange shall be read as if that approval had been obtained; and
- b. all references to Quoted Equity Securities shall be read as Equity Securities; and
- c. Rulings of the Exchange are not binding on the Company or the holders of Securities; and
- d. any provision or part of a provision that is not intended to have effect if the Company is not so listed will not have effect.

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- b. series A convertible preference Shares;

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subject to this Constitution and to any rights previously conferred on the holders of any existing Share or Class of Share.

Redeemable Shares

If redeemable Shares are issued then the terms on which those Shares are issued are deemed to be incorporated in this Constitution.

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Terms of Issue of Series A Convertible Preference Shares

The series A convertible preference Shares are issued on the following terms:

the Shares are convertible to ordinary Shares at the option of the holders on the following basis:

that 180 days have passed from the date of issue of the Shares;

the holder must give written notice to the Board to convert the Shares;

the Board must convert these Shares to ordinary Shares within 10 days of receiving the written notice from a holder; and

these Shares will be converted on the basis that one series A convertible preference Share converts to five ordinary Shares.

the Shares will automatically convert into ordinary Shares on the basis that one series A convertible preference Share converts to five ordinary Shares when the Company issues further ordinary Shares at not less than \$0.75 per share that total \$25,000,000.00.

the Shares are not transferable except to a Personal Representative of the holder and only on the basis that within 12 months of the Personal Representative being entitled to the Shares, they must convert them in accordance with clause 3.3.a except that clause 3.3.a.i will not apply.

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The Board may issue Equity Securities if:

- a. **Rights Issues:** those Equity Securities are offered to the 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, and that offer is Renounceable; or
- b. **Bonus Issues:** those Equity Securities are issued to the 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. However bonus issues may only be made to holders of ordinary shares if such an issue is also made to the holders of series A convertible preference Shares; or
- c. those Equity Securities are offered to all holders of existing Equity Securities of the Company carrying Votes for consideration not exceeding \$5,000 per existing Equity Security holder (being the registered holder or, in the case of Securities held through a custodian, the beneficial owners of the Securities) and the number of Equity Securities to be issued is not greater than 30% of

the number of fully paid Equity Securities carrying Votes that are already on issue;

provided that notwithstanding subclauses a., b. and c. of this clause 4.5:

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- e. **Offer in Accordance with Specific Rights:** the Board may 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
- f. **Rounding up to Minimum Holding:** the Board may authorise 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
- g. **No Offer if Expressly Excluded:** the Board shall not offer or issue Equity Securities to holders of existing Equity Securities the terms of which expressly exclude the right to participate in the relevant offer or issue; and
- h. **No Offer Outside New Zealand:** the Board shall not offer or issue Equity Securities to holders of existing Securities in a jurisdiction outside New Zealand if the legal requirements of that jurisdiction are such that it is unduly onerous for the Company to make the offer in that jurisdiction provided that in the case of Renounceable Rights, the Company shall arrange the sale of any Renounceable Rights to the relevant Equity Securities and to account to holders in that jurisdiction for the proceeds.

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Issues within 15% Limit

The Board may issue Equity Securities if:

- a. **Excluded Entities:** the issue is not made in whole or in part to any Director of the Company, Associated Person of a Director or Employee of the Company; and
- b. **Limited Percentage:** the total number of Equity Securities issued, together with all other Equity Securities of the same Class issued pursuant to this clause 4.6 during the shorter of the period of 12 months preceding the date of the issue and the period from the date on which the Company was Listed on the Exchange to the date of the issue, will not exceed the aggregate of:
 - i. 15% of the total number of Equity Securities of that Class on issue at the commencement of that period; and
 - ii. 15% of the number of Equity Securities of that Class issued during that period pursuant to any of clauses 4.4, 4.5, 4.7 and 4.8; and
 - iii. any Equity Securities of that Class issued pursuant to this clause 4.6 during that period, the issue of which has been ratified by an Ordinary Resolution; and

less:

- iv. 15% 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).

For the purposes of this clause 4.6:

- v. Securities which will, or may, Convert to other Equity Securities are deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may Convert; and
- vi. where the Conversion ratio is fixed by reference to the market price of the underlying Equity Securities, the market price shall, unless otherwise specified in the terms of the issue, be the volume weighted average market price over the 20 Business Days before the earlier of the day the issue is made or announced to the market.

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Employee Share Issues

The Board may issue Equity Securities if the issue is of a Class of Securities already on issue and is made to Employees of the Company and:

- a. the total number of Securities issued, together with all other Equity Securities of the same Class issued to Employees pursuant to this clause 4.7 during the shorter of the period of 12 months preceding the date of the issue and the period from the date on which the Company was Listed on the Exchange to the date of the issue does not exceed 3% of the aggregate of:
 - i. the total number of Equity Securities of that Class on issue at the commencement of that period; and
 - ii. the total number of Equity Securities of that Class issued during that period pursuant to any of clauses 4.4, 4.5, 4.6 and 4.8;
- b. no Director or Associated Person of a Director shall participate in any such issue unless the scheme for such participation and the precise level of entitlement for each such person have previously been approved by an Ordinary Resolution.

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For the purposes of this clause 4.7:

- c,. 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 that Director or Associated Person has no beneficial interest, is 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;
- d. Securities which will, or may, Convert to other Equity Securities are deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert and where the conversion ratio is fixed by reference to the market price of the underlying Equity Securities, the market price, unless otherwise specified in the terms of issue,

shall be the volume weighted average market price over the 20 Business Days before the earlier of day the issue is made or announced to the market.

Except as provided in the Listing Rules the Company shall not reprice or amend the terms of any Securities issued with Shareholder approval to or for the benefit of Employees or Directors under Listing Rule 7.3 in their capacity as such, without either the approval of the Exchange or a further Ordinary Resolution of the Shareholders resolving to approve the repricing or amendment.

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Other Permitted Issues

The Board may issue Equity Securities in any of the following circumstances:

- a. **Takeovers:** the issue is made as consideration in an offer made by the Company or any of its subsidiaries in accordance with:
 - i. any takeover code approved under the Takeovers Act 1993; or
 - ii. the provisions of the constitution or other governing documentation of the Company which comply with the requirements of section 4 of the Listing Rules where the Company is not a Code Company; or
 - iii. any takeover law regime of 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 paragraphs i. or ii. of this subclause; and

that offer is made to all holders (other than the Company and its Related Companies) of Equity Securities (as defined in the Listing Rules) in any company or other entity Listed on the NZSX, or on a Recognised Stock Exchange, which is not a company or other entity that is an Associated Person of the Company or of any Director; or

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Conversion of Convertible Securities: the issue is made upon Conversion of any Equity Security or any other Security from time to time issued by the Company if the terms of issue of those Securities provided for Conversion to the kind of Securities issued; or

- c. **Issue to Round Up Holdings:** the issue is made to a holder of Equity Securities in order to bring that person's holding up to a Minimum Holding; or
- d. **Issue on Amalgamation:** the issue is made pursuant to Part XIII or Part XV of the Act; or

e. **Issue in Lieu of Dividends:** the issue is made pursuant to a plan for the issue of Securities in lieu of Dividends or as part of a dividend re-investment plan that entitles an existing Shareholder to subscribe for Securities by applying all or any specified part of any dividend declared by the Company and payable to that person, and which issue or dividend re-investment plan would, except to the extent that the plan excludes existing holders in a jurisdiction outside New Zealand if the legal requirements of that jurisdiction are such that it is unduly onerous for the Company to extend the plan to that jurisdiction, maintain the existing right of each existing holder relative to other holders of Equity

Securities to Votes and Distribution Rights if the offer were accepted by all such holders. However any issue to holders of ordinary Shares must also be made to the holders of series A convertible preference Shares.

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Treasury Stock

The transfer by the Company of Treasury Stock shall be deemed to be an issue of new Equity Securities to which the provisions of clause 4 apply.

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Transactions Deemed to be Issues of Equity Securities

The grant or creation by the Company in favour of the holders of any Class of Equity Securities of any right or entitlement to Securities of a third party (whether or not that third party is an Issuer of Securities), shall be deemed to be an issue of new Equity Securities to which the provisions of clause 4.3 apply.

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Issue of Securities Affecting Control

Notwithstanding the provisions of clause 4.3, no issue, acquisition or redemption of Securities shall be made by the Company if:

- a. there is a significant likelihood that the issue, acquisition or redemption will result in any person or group of Associated Persons materially increasing their ability to exercise, or direct the exercise (either then or at any future time) of, effective control of the Company; and
- b. that person or group of Associated Persons is entitled before the issue, acquisition or redemption to exercise, or direct the exercise of, not less than 1% of the total votes attaching to the Securities of the Company;

unless the precise terms and conditions of the issue have been approved by an Ordinary Resolution of the Company.

Transfer of Rights

The terms of issue of Equity Securities pursuant to clause 4.5a are subject to clause 13.10 of this Constitution.

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However any such consolidation or subdivision made to the class of ordinary Shares must also be made to the class of series A convertible preference Shares on the same basis.

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Entitlements to Third Party Securities

Entitlements conferred by the holding of Equity Securities of the Company, to Securities of a third party (whether or not that third party is an issuer as defined in the Listing Rules), shall not be conferred or created other than in accordance with clause 4, as if such Securities comprised an issue of Equity Securities of the Company.

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Notice of Meetings

a. The text of any resolution to be put to a meeting for the purposes of clauses 4.4, 4.6.b.iii, 4.7 and 4.11 shall be set out in the notice of the relevant meeting. That notice shall be approved by the Exchange and in accordance with Listing Rule 6.1, and shall contain the particulars specified in Listing Rule 6.2.1.

b. A notice of meeting to consider a resolution of the nature referred to in subclause a. shall be accompanied by an Appraisal Report if:

in the case of an issue, the issue is intended or is likely to result in more than 50% of the Securities to be issued being acquired by Directors or Associated Persons of Directors. No Appraisal Report is required to accompany any notice of meeting referred to in subclause a. if the issue is made pursuant to clause 4.7 and the amount in terms of the proposed issue will be determined according to criteria applying generally to all Employees eligible to participate in that issue.

in the case of an acquisition or redemption or the giving of financial assistance, it is intended or likely that more than 50% of the Securities to be acquired or redeemed will be Securities held by Directors or Associated Persons of Directors of the Issuer, or that more than 50% of the total financial assistance to be given will be given to such persons.

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Partly Paid Securities

Each Security which is not fully paid shall carry only a fraction of the Vote which would be exercisable if the Security were fully paid. The fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call).

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Participation of Options in Rights Issues

An Option issued after the Company has Listed on the Exchange must not confer the right to participate in a Rights issue unless the Option:

- a. is exercised before the Record Date for the Rights issue; or
- b. was issued under a pro rata offer made pursuant to clause 4.5 to the holders of Quoted Equity Securities; or
- c. was issued with the approval of holders of Quoted Equity Securities and the Option holder can participate in a new issue to the holders of the underlying Securities in accordance with the terms of such an Option.

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Option - Change of Exercise Price or Number of Underlying Securities

The Company must not issue an Option after the Company is Listed on the Exchange which confers the right to a change in the exercise price or number of underlying Securities, except if that Option:

- a. was issued with the approval of holders of Quoted Equity Securities, then the exercise price or number of underlying Securities may change in accordance with the formula or provision contained in the terms of the Option if there is a Rights issue to the holder of the underlying Securities; or
- b. was not issued with the approval of holders of Quoted Securities and there is a Rights issue to the holders of the underlying Securities, then the exercise price of an Option may be reduced according to the formula set out in Listing Rule 8.1.7.

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Change of Option on a Bonus Issue

If there is a bonus issue to the holders of the underlying Securities, the number of Securities over which an Option is exercisable may be increased (or additional Securities may be reserved for issue on exercise of an Option) by the number of Securities which the holder of the Option would have received if that Option had been exercised before the Record Date for the issue, consolidation or subdivision.

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Change of Option on Consolidation or Subdivision

If there is a consolidation or subdivision or similar proportionate reconstruction of the underlying Securities the number of Securities over which an Option is exercisable may be consolidated or subdivided in the same ratio and the exercise price amended in inverse proportion to that ratio.

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Evidence that Power of Sale has Arisen

A certificate signed by a Director stating that the power of sale has arisen and is exercisable by the Company, or that a Share has been forfeited on the date stated in the certificate shall be conclusive evidence of those facts.

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in accordance with the provisions of the Act and this Constitution

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Prohibitions on Purchase or Acquisition

Subject to clause 11.3, the Company shall not purchase, acquire or redeem any of its Equity Securities other than by way of:

- a. an acquisition effected by offers made by the Company through the order matching market of the Exchange or of a Recognised Stock Exchange, or
- b. an acquisition effected in compliance with section 60(1)(a) (read together with section 60(2)) of the Act; or

- c. an acquisition of the nature referred to in section 61(7) of the Act; or
- d. an acquisition or redemption approved in accordance with clause 11.5; or
- e. an acquisition required by a Shareholder pursuant to section 110 or section 118 of the Act; or
- f. an acquisition effected in compliance with section 60(1)(b)(ii) (read together with section 61) of the Act and:
 - i. is not made from any person who is a Director, Associated Person of a Director, or Employee; and
 - ii. the total number of Equity Securities acquired, together with all other Equity Securities of the same Class as those Equity Securities that are to be acquired pursuant to this subclause f. during the shorter of the period of 12 months preceding the date of the acquisition and the period from the date in which the Company was Listed on the Exchange to the date of the acquisition, will not exceed 15% of the total number of Equity Securities of that Class on issue at the commencement of that period; or

provided that for the purposes of this subclause f.:

- iii. 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 Securities into which they will, or may, Convert; and
- iv. Where the Conversion ratio of any such Securities is fixed by reference to the market price of the underlying Securities, the market price for the purposes of this subclause f shall be the volume weighted average market price over the 20 Business Days before the earlier of the day the acquisition is entered into and or announced to the market.
- g. a redemption from a holder who holds less than a Minimum Holding; or
- h. a redemption of Equity Securities issued in compliance with clause 4.4 or clause 4.5 where the Issuer is bound or entitled to redeem those Equity Securities pursuant to their terms of issue, or
- i. a redemption in compliance with section 69(1)(a) of the Companies Act 1993; or
- j. a redemption of Equity Securities that are Debt Securities which may be Converted into shares in an Issuer which is a company, and, before that Conversion, they are redeemed in cash.

Prior Notice of Acquisition

Before the Company purchases or acquires any Equity Securities, other than a purchase or an acquisition from a holder who holds less than a Minimum Holding, the Company shall give at least three Business Days' notice to the Exchange specifying:

- a a period of time, not exceeding 12 months from the date of the notice, within which the Company will acquire the Equity Securities; and
- b. the Class and maximum number of Equity Securities to be acquired in that period;

provided that the Company may at any time cancel any notice so given, or, by three Business Days' notice to the Exchange, vary any such notice.

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Acquisition or Redemption with Approval of Equity Security Holders

The Company may acquire or redeem Equity Securities under clause 11.2.d if the precise terms and conditions of the specific proposal (the "Proposal") to acquire or redeem those Equity Securities have been approved by separate resolutions (passed by a simple majority of Votes) of members of each separate group of each Class of Quoted Equity Securities whose rights or entitlements are materially affected in a similar way by that proposal; and a Proposal authorised by resolutions passed pursuant to clause 11.4(a) shall be completed:

if that Proposal is transacted solely with Employees (as defined in Listing Rule 7.3.6) within 36 months after the passing of those resolutions; or

in all other circumstances, within twelve months after the passing of those resolutions.

Acquisition of Equity Securities other than Shares

Equity Securities which are not Shares may be acquired pursuant to clauses 11.2.b, 11.2.c and 11.2.f, or redeemed pursuant to clause 11.4.b, if the Company complies with the sections of the Act referred to in the relevant clause, on the basis that references in those sections of the Act to:

"shares" shall be deemed to be references to all Equity Securities of the Class of Equity Securities which is the subject of the acquisition or redemption and references to "shareholders" shall be read accordingly; and

"constitution" shall be deemed to be references to the document which governs the rights attaching to those Equity Securities.

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Transfer of Rights

Every person to whom unissued Equity Securities are offered pursuant to clause 4.5a may decline or accept the offer, or Transfer their Rights thereunder to any person or persons to whom the Equity Securities, when issued, could be transferred but the Directors have the same right to decline to accept any such Transfer as they would have if the Transfer were a Transfer of Shares, and the provisions of this Constitution as to the Transfer of Shares, with all necessary modifications, apply to Transfers of Rights to unissued Equity Securities.

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Inspection of Company Records

The Company will keep the following Records available for inspection and copying in accordance with the Act by any Shareholder or by a person authorised in writing by a Shareholder who gives notice in accordance with the Act of intention to inspect:

- a. the certificate of incorporation of the Company;
- b. the Constitution;
- c. the Share Register;
- d. the names and residential addresses of the Directors;
- e. the registered office and address for service of the Company;
- f. minutes of all meetings and resolutions of Shareholders;
- g. copies of all written communications to all Shareholders or Class of Shareholders during the preceding 10 years, including annual reports, financial statements, and group financial statements;
- h. certificates given by the Directors under the Act; and
- i. the interests register of the Company.

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Restriction

The Company shall not enter, or permit any of its subsidiaries to 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 held or to be held by the Company:

- a. which would change the essential nature of the business of the Company and its subsidiaries taken as a whole; or
- b. in respect of which the gross value is in excess of 50% of the Average Market Capitalisation of the Company;

except with the prior approval of an Ordinary Resolution or a Special Resolution if the Company must obtain approval of the transaction or transactions under section 129 of the Act.

Conditional transaction

The Company or a subsidiary may enter into an agreement involving a transaction which in terms of clause 19.1 requires the approval of an Ordinary Resolution or a Special Resolution if the agreement provides that the transaction is conditional upon the passing of such resolution and may not take place until the resolution has been passed.

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Exception

Clause 19.1 shall not apply to:

A takeover offer made by a Company:

In respect of a Code Company in accordance with any takeovers code approved under the Takeovers Act 1993; or

In respect of a company that is not a Code Company but to whom section 4 of the Listing Rules applies, in accordance with the Constitution or Trust Deed of that other company which complies with section 4 of the Listing Rules where that other company is not a Code Company; or

In relation to any other person, in accordance with any takeover law regime of a jurisdiction other than New Zealand which is applicable to that person and 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 (i) or (ii);

Any transaction entered into by the Company with a Bank as principal, on arms length terms and in the ordinary course of its banking business, as a result of which transaction such company has recourse to the credit risk of that Bank or in respect of a takeover offer by an Issuer that is a Code Company (as defined in the Takeovers Code).

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Notice of Meeting relating to Disposal or Acquisition of Assets

The notice of meeting containing the resolution to approve any transaction referred to in clause 19.1 shall contain or be accompanied by such information, reports, valuations, and other material as are necessary to enable the holders of Securities to appraise the implications of the transactions.

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The text of any resolution to be put to a meeting for the purposes of clause 20.1 shall be set out in the notice of the relevant meeting. That notice shall:

- a. be approved by the Exchange in accordance with the Listing Rule 6.1;
- b. be accompanied by an Appraisal Report; and
- c. contain such other material as is necessary to enable the holders of Securities to decide whether the transaction price and terms are fair.

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- c. an Executive Director, even though not liable to retire by rotation by virtue of clause 24.2, shall be taken into account in calculating the number of Directors to retire.

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Re-election of retiring Director

A Director retiring by rotation at a meeting shall, if standing for re-election, be deemed to have been re-elected unless:

- a. some other person is elected to fill the vacated office; or
- b. it is resolved not to fill the vacated office; or
- c. a resolution for the re-election of that Director is put to the meeting and lost.

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EXECUTIVE DIRECTOR

Appointment

The Board may from time to time appoint a Director to the office of Executive Director (by whatever name called) for such period not exceeding five years, and on such terms, as the Board thinks fit. The Executive Director may be reappointed as Executive Director at the end of his or her term of such appointment.

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Powers

The Board may from time to time entrust to and confer upon the Executive Director any of the powers exercisable by the Board upon such terms and conditions, and with such restrictions, as it may think fit and either collaterally 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 and shall not affect the terms of the engagement of that Executive Director as an Employee.

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Not Subject to Retirement by Rotation

The Executive Director is not liable to retire by rotation under clause 22.6 while holding that office.

Resignation

The Executive Director is subject to the same provision as regards resignation, removal and disqualification as the other Directors, and if the Executive Director ceases to hold the office of Director from any cause he or she automatically ceases to be Executive Director.

Dismissal

Every Executive Director shall be liable to be dismissed or removed by the Board. The Board may enter into any agreement on behalf of the Company with any person who is, or is about to become, Executive Director, with regard to the terms and conditions of such person's employment, but so that the remedy of any such person for any breach of the agreement shall be in damages only, and such person shall have no right to claim to continue in such office contrary to the will of the Board.

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Remuneration

The remuneration of the Executive Director shall be fixed by the Board and may be in addition to the remuneration of that Executive Director as an ordinary Director.

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Authorisation

Subject to the Listing Rules the Board may authorise the:

- a. payment of remuneration or the provision of other benefits by the Company to a Director for services in any capacity other than as a Director of the Company or a Subsidiary; or
- b. payment, notwithstanding the provisions of clause 25.3,

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- c. payment, notwithstanding the provisions of clause 25.3, of special remuneration to any non-executive Director who is or has been engaged by the Company to carry out any services which in the opinion of the Board are additional to those usually required of non-executive directors of similar companies in accordance with the requirements of the Listing Rules; or
- d. payment by the Company to a Director or former Director of compensation for loss of office other than as a Director; or
- e. making of loans by the Company to a Director; or
- f. giving of guarantees by the Company for debts incurred by a Director; or
- g. entering into of a contract to do any of the things set out in subclauses a. to f. of this clause 25.1;

if the Board is satisfied that to do so is fair to the Company.

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Interests Register and Certificate

If a payment, benefit, loan, guarantee or contract is authorised under clause 25.1:

- a. the Board must ensure that particulars thereof are immediately entered in the interests register; and
- b. Directors who vote in favour thereof must sign a certificate stating that, in their opinion, it is fair to the Company, and the grounds for that opinion.

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Shareholder Approval

No remuneration shall be paid to a Director in his or her capacity as Director of the Company or any Subsidiary other than a Subsidiary which is Listed unless that remuneration has been authorised by an Ordinary Resolution. Each such resolution shall express the Director's remuneration as either:

- a. a monetary sum per annum payable to all Directors of the Company taken together; or
- b. a monetary sum per annum payable to any person from time to time holding office as a Director of the Company.

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Power to Increase when Additional Director

If:

- a. the approved remuneration of the Directors is expressed in accordance with clause 25.3a; and
- b. the total number of Directors of the Company holding office is increased;

then the amount of remuneration payable in accordance with clause 25.3.a may be increased by the Board without Shareholder approval by such amount as is necessary to enable the Company to pay the additional Director or Directors of the Company remuneration not exceeding the average amount then being paid to each of the other non-executive Directors (other than the chairperson).

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Notice of proposed increase

No resolution which increases the amount of the Director's remuneration shall be approved at a meeting of the Company unless notice of the amount of increase has been given in the notice of meeting. Nothing in this clause shall affect the remuneration of Executive Directors in their capacity as executives.

Retirement benefits

The Company may make a payment to a Director or former Director of the Company, or to his or her dependants, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, only if the amount of the payment or the method of calculation of that payment is authorised by an Ordinary Resolution of the Company provided that the Company may make payment to a Director or former Director if such payment is permitted by the Listing Rules but nothing in this clause shall affect any amount paid to an Executive Director upon or in connection with the termination of his or her employment with the Company, or the payment of any amount attributable to the contribution (or any normal subsidy related thereto) made by a Director to a superannuation scheme.

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In this clause 26:

"**Director**" includes a former Director and "**director**" includes a former Director.

"**Effect Insurance**" includes pay, whether directly or indirectly, the costs of the insurance.

"**Employee**" includes a former employee.

"**Indemnify**" includes relief or excuse from liability, whether before or after the liability arises; and "**Indemnity**" and "**Indemnified**" have corresponding meanings.

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Preference on Liquidation to Series A Convertible Preference Shares

In the event of the liquidation or winding up of the Company, the holders of series A convertible preference Shares will be entitled to receive cash in

preference to any other class of Shareholder up to an amount equal to the issue price of the series A convertible preference Shares.

An amalgamation of the Company under sections 219 to 225 of the Act or a sale of all or substantially all of the Company's assets will be deemed to be a liquidation or winding up for the purposes of this clause 30.2.

AUDIT COMMITTEE

31.1 The Company shall, as soon as reasonably practicable after the adoption of this Constitution but not later than the Listing Rules so prescribe, have an Audit Committee which shall:

- a. be comprised of solely Directors of the Company; and
- b. have at least three members; and
- c. have a majority of the members that are Independent Directors; and
- d. have at least one member with an accounting or financial background.

31.2 The responsibilities of the Audit Committee include as a minimum:

- a. ensuring that the processes are in place and monitoring those processes so that the Board is properly and regularly informed and updated on corporate financial matters; and
- b. recommending the appointment and removal of the independent auditor; and
- c. meeting regularly to monitor and review the independent and internal auditing practises; and
- d. having direct communication with and unrestricted access to the independent and any internal auditors or accountants; and
- e. reviewing the financial reports and advising all Directors whether they comply with the appropriate laws and regulations; and
- f. ensuring that the external auditor or lead audit partner is changed at least every five years.

No quorum

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

- a. in the case of a meeting called under section 121(b) of the Act, the meeting is dissolved;
- 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, subject to the Constitution of the Company, if, at the adjourned meeting, a quorum is not present within 30

minutes after the time appointed for the meeting, the Shareholders or their proxies present are a quorum.