

**CONSTITUTION**

**of**

**SOLUTION DYNAMICS LIMITED**

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**CONSTITUTION  
of  
SOLUTION DYNAMICS LIMITED**

**PART A: PRELIMINARY**

**1. INTERPRETATION**

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

**“Act”** means the Companies Act 1993;

**“Call”** means a resolution of the Board under clause 25.1 requiring holders to pay all or part of the unpaid amount of the issue price of any Securities and, where the context requires, means the obligation of a holder to meet the amount due pursuant to such a resolution;

**“Company”** means **Solution Dynamics Limited**;

**“Employee”** for the purposes of clauses 8.1, 8.5, 10.3, 10.6 and 10.7, includes an employee or officer of the Company or any of its Subsidiaries, a labour only contractor, consultant, or consultant company who or which contracts with the Company or with any of its Subsidiaries, any trustee or trustees on behalf of any of the above employees or officers, and any trustee or trustees of or in respect of any pension, superannuation or like fund established for the benefit of any of the above employees or officers.

**“Executive Director”** means a person appointed as an executive director of the Company under clause 16.7;

**“Listing Rules”** means the listing rules which relate to the NZAX as amended from time to time; and

**“NZAX”** means the alternative exchange operated by the New Zealand Exchange Limited under that description.

**1.2 Defined Terms:** Terms used in this constitution which have defined meanings in the Act shall have the same meanings in this constitution unless the context requires otherwise. Terms defined in the Listing Rules shall, where used in this constitution, have the same meaning as is given to those terms in the Listing Rules. Where a term is defined in both the Act and the Listing Rules, that term shall have the same meaning as given to the term in the Listing Rules unless this constitution expressly provides otherwise.

**1.3 Section Numbers:** Unless otherwise indicated, references to section numbers are to sections of the Act.

**1.4 Headings:** Headings are for guidance only and shall not affect the interpretation of this constitution.

**1.5 Schedules:** The schedules form part of this constitution.

**1.6 Reference to Statutes:** References to any legislation or provision of any legislation are deemed to be references to that legislation or provision as amended, substituted or re-enacted and unless the context requires otherwise include any statutory instruments issued under that legislation or provision.

1.7 **Singular and Plural:** The singular includes the plural and vice versa, and words importing one gender include the other genders.

## 2. THE NZAX LISTING RULES

2.1 **Compliance with the Listing Rules:** For so long as it is Listed, the Company shall comply with the Listing Rules provided that, if the NZX has made a Ruling in relation to the Company authorising any act or omission which in the absence of such Ruling would be in contravention of the Listing Rules or this constitution, that act or omission shall, unless a contrary intention appears in this constitution, be deemed to be authorised by the Listing Rules and by this constitution.

2.2 **Transactions not Affected:** Any failure to comply with the Listing Rules or clauses 14.2 to 14.6 (both inclusive), 23 and 23.2 of this constitution shall not itself affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by or affecting the Company, except that a party to a transaction or contract who knew of the failure to comply with the Listing Rules or those provisions of this constitution at the time of entering into the transaction or contract shall not be entitled to enforce that transaction or contract provided however that this clause does not affect the rights of any holder of Securities of the Company against the Company, or the Directors of the Company, arising from the failure to comply with the Listing Rules or those provisions of this constitution.

2.3 **Listing Rules to Prevail:** Nothing in this constitution will prohibit or restrict any action which is or may be expressly permitted by the Listing Rules or the NZX to be taken by the Company, the Board, each Director or the holders of Securities of the Company. In the event of any inconsistency between the Listing Rules and this constitution, the Listing Rules shall prevail.

## 3. PRE BREAK DISCLOSURE

3.1 **Pre Break Announcement:** The Company shall not:

- (a) issue or buy back any Equity Securities;
- (b) confer an entitlement to holding the Securities of a third party; or
- (c) enter into any transaction; or
- (d) otherwise do any act or thing,

specified in clauses 8, 10.2 to 10.9 (both inclusive), 10.13, 10.14, 11, 14.2 to 14.6 and 23 (together referred to for the purposes of this clause 3 as "transaction") otherwise than in accordance with the provisions set out in those clauses for the entering into or conduct of such transactions, unless, at least 10 Business Days prior to the entering into or conduct of such transaction, or prior to such transaction becoming unconditional, as the case may be, the Company has released a Pre Break Announcement to the Market.

3.2 **No Special Meeting:** On the expiration of the period of 10 Business Days referred to in clause 3.1, the Company may proceed with the transaction if, but only if:

- (a) no special meeting of the Security holders has been called pursuant to section 121 within the 10 Business Day period; or
- (b) a special meeting has approved the transaction.

- 3.3 **NZX Approval:** The Pre Break Announcement referred to in clause 3.1, shall be provided to NZX for approval, at least 10 Business Days prior to the proposed release date and must contain the following:
- (a) a certificate from the Directors (other than any Director who is interested in the transaction) certifying that the terms of the transaction are fair and reasonable to, and in the best interests of, holders of Securities;
  - (b) sufficient explanation to enable a Security holder to understand the proposed transaction;
  - (c) sufficient explanation to enable a Security holder to understand the effect of the proposed transaction;
  - (d) the particulars of all interests of the Directors in the transaction;
  - (e) confirmation that pursuant to section 121 where shareholders holding shares together carrying not less than 5% of the voting rights entitled to be exercised on the transaction, submit a written request, the Board must call a special meeting of shareholders; and
  - (f) in relation to the advice in sub-clause (e) above, the contact details for the Company for the acceptance of a “written request” under section 121.

## **PART B: SPECIAL POWERS OF COMPANY**

### **4. ACQUISITION OF OWN SECURITIES**

- 4.1 **Company may acquire its own Securities:** Subject to clauses 8 and 11, the Company is permitted to purchase or otherwise acquire Securities issued by it, and it may also hold its own Securities, in accordance with the Act.

### **5. ACQUISITION OF OWN SECURITIES OTHER THAN PRO RATA**

- 5.1 **Company may acquire Securities other than pro rata:** Subject to clauses 8 and 11, the Company may make an offer to one or more holders of Securities of the Company to purchase or otherwise acquire Securities issued by the Company other than on a pro rata basis, in accordance with the Act.

### **6. REDEEMABLE SECURITIES**

- 6.1 **Company may redeem Securities:** The Company may redeem those Securities which, by their terms of issue, are redeemable, in accordance with the Act and any applicable provisions of clauses 8 and 11 of this constitution:

- (a) at its option; or
- (b) at the option of the holder of the Security if permitted by the terms of issue of the Security; or
- (c) on a date specified in this constitution or the terms of issue of the Security;

in each case for a consideration that is either specified, calculated by reference to a formula, or required to be fixed by a suitably qualified person who is not associated with or interested in the Company as provided in section 68.

### **7. REDEMPTION OF SECURITIES OTHER THAN PRO RATA**

- 7.1 **Company may redeem Securities other than pro rata:** Subject to clauses 8 and 11, the Company may exercise an option to redeem Securities issued by the Company in relation to one or more holders of Securities of the Company other than on a pro rata basis, in accordance with the Act.

### **8. BUY BACKS, REDEMPTION AND FINANCIAL ASSISTANCE**

- 8.1 **Prohibition on Acquisition of Equity Securities:** Subject to clause 8.2, the Company shall not acquire Equity Securities of the Company unless the acquisition is:

- (a) effected by offers made by the Company through the NZX's order matching market, or through the order matching market of a Recognised Stock Exchange; or
- (b) effected in compliance with section 60(1)(a) (read together with section 60(2)); or
- (c) an acquisition of the nature referred to in section 61(7); or
- (d) approved in accordance with clause 8.7; or
- (e) required by a Security holder of the Company pursuant to section 110 or 118; or

- (f) effected in compliance with section 60(1)(b)(ii) (read together with section 61) and:
  - (i) is made only from any person who is not a Director, Associated Person of a Director or Employee of the Company; and
  - (ii) the total number of Equity Securities of the same Class acquired together with all other Equity Securities of the same Class as those Equity Securities that are to be acquired, pursuant to this sub-clause (f) during the shorter of the period of 12 months preceding the date of the acquisition and the period from the date on which the Company was Listed to the date of the acquisition, will not exceed 20% of the total number of Equity Securities of that Class on issue at the commencement of that period:

Provided that for the purposes of sub-clause (f) above Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, convert. Provided also that where the Conversion ratio of those Securities is fixed by reference to the market price of the underlying Securities, the market price for the purposes of sub-clause (f) shall be the average end of day market price over the 20 Business Days before the earlier of the day the acquisition is entered into or announced to the market.

**8.2 Prior Notice of Acquisition or Sale:** Before the Company acquires Equity Securities of the Company, other than an acquisition from a holder who holds less than a Minimum Holding, the Company shall give at least three Business Days' notice to the NZX. That notice shall:

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

The Company may at any time by three Business Days' notice to the NZX vary any notice so given and may cancel such notice at any time. The requirements of this clause 8.2 are in addition to the obligations imposed on the Company in respect of the acquisition of its own shares under the Act.

**8.3 Prohibition on Redemption:** The Company shall not redeem Equity Securities of the Company, other than a redemption from a holder who holds less than a Minimum Holding, unless:

- (a) those Equity Securities were issued in compliance with clause 10.2(a) or clause 10.5, and the Company is bound or entitled to redeem those Equity Securities pursuant to the terms of their issue; or
- (b) those Equity Securities are redeemed in compliance with section 69(1)(a); or
- (c) those Equity Securities are Debt Securities which may be Converted into shares in an NZAX Issuer which is a company (which includes the Company) and, before that Conversion, they are redeemed in cash; or
- (d) the redemption of those Equity Securities is approved in accordance with clause 8.7.



- 8.4 **Prohibition on Financial Assistance:** The Company shall not give financial assistance for the purpose of, or in connection with, the acquisition of Equity Securities issued or to be issued by the Company unless the giving of that assistance:
- (a) is in accordance with the Act and complies with clause 8.5; or
  - (b) is approved in accordance with clause 8.7.
- 8.5 **Permitted Financial Assistance:** The Company may give financial assistance of the nature referred to in clause 8.4 if:
- (a) the financial assistance is not given in whole or in part to any Director of the Company, Associated Person of a Director or Employee of the Company, and the amount of the financial assistance, together with the amount of all other financial assistance given under this clause 8.5(a) by the Company during the shorter of the period of 12 months preceding the date of giving of the financial assistance, and the period from the date on which the Company was Listed to the date of giving of the financial assistance, does not exceed 5% of the Shareholders' Funds of the Company; or
  - (b) the financial assistance is given to Employees of the Company and:
    - (i) the amount of the financial assistance, together with the amount of all other financial assistance given under this clause 8.5(b) by the Company during the shorter of the period of 12 months preceding the date of giving of the financial assistance, and the period from the date on which the Company was Listed to the date of giving of the financial assistance, does not exceed 2% of the Shareholders' Funds of the Company; and
    - (ii) the amount of the financial assistance, together with the amount of all other financial assistance given under this clause 8.5(b) during the shorter of the period of five years preceding the date of giving of the financial assistance and the period from the date on which the Company was Listed to the date of giving of the financial assistance, does not exceed 5% of the Shareholders' Funds of the Company; and
    - (iii) the financial assistance is not given to any Director or Associated Person of a Director; or
  - (c) the financial assistance is offered or given so that all holders of Equity Securities of the Company are treated, or given the opportunity to be treated, on the same basis.
- 8.6 **Exception:** For the purposes of clause 8.5(b)(iii) financial assistance given to a Director or an Associated Person of a Director solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest, shall be deemed not to be financial assistance given to a Director or Associated Person of a Director.
- 8.7 **Acquisition, Redemption or Assistance with Approval of Holders:** The Company may acquire Equity Securities under clause 8.1(d) or redeem Equity Securities under clause 8.3(e), or give financial assistance under clause 8.4(b), if the precise terms and conditions of the specific proposal (the "Proposal") to acquire or redeem those Equity Securities, or of the giving of that financial assistance, 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 of the Company whose rights or entitlements are materially affected in a similar way by the Proposal. Any

such acquisition shall be completed within 12 months, and redemption or financial assistance completed or given within six months, after the passing of the relevant resolutions.

## 9. INDEMNITY AND INSURANCE

9.1 **Indemnity of Directors:** Subject to clause 9.3, the Board is authorised to cause the Company to indemnify each Director:

- (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 (otherwise than by settling any proceeding relating to any such liability); and
- (b) in respect of liability to any person other than the Company or a Related Company for any act or omission by him or her in his or her capacity as a Director or a director of a Subsidiary of the Company, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability, and this indemnity shall continue in force, despite any subsequent revocation or amendment of this clause, in relation to any liability which arises out of any act or omission by a Director prior to the date of such revocation or amendment, but shall be subject to any limitations contained in any deed or agreement from time to time in force between the Company and the Director relating to indemnities.

9.2 **Other Indemnities:** Subject to clause 9.3, the Board is authorised to cause the Company to indemnify each Director of a Related Company, or an employee of the Company or a Related Company:

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

9.3 **Exceptions:** An indemnity given pursuant to clauses 9.1 or 9.2 shall not apply in respect of:

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

9.4 **Insurance:** The Board is authorised to cause the Company to effect insurance for a Director or employee of the Company or 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 that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a Director or employee and in which he or she is acquitted.

9.5 **Definitions:** In this clause 9:

- (a) “**Director**” includes a former Director and “**employee**” includes a former employee; and
- (b) other words given extended meanings in section 162(9) have those extended meanings.

## **PART C: SECURITIES – ISSUE, TRANSFER AND VOTING**

### **10. ISSUE OF SECURITIES**

**10.1 Powers of Company to Issue:** Subject to clauses 10.2 to 10.16, the Company may issue Securities to any person and in any number it thinks fit.

**10.2 Prohibition on Issue:** No Equity Securities of the Company shall be issued (including on Conversion of any other Security) unless:

- (a) the precise terms and conditions of the specific proposal to issue those Equity Securities have been approved (subject to clause 10.4) by separate resolutions (passed by a simple majority of Votes) of holders of each Class of Quoted Equity Securities of the Company whose rights or entitlements could be affected by the issue, and the issue is completed within the time specified in clause 10.3; or
- (b) the issue is made in accordance with any of clauses 10.5 to 10.9 (both inclusive).

**10.3 Time Limit:** An issue authorised by resolutions passed pursuant to clause 10.2(a) shall be completed:

- (a) if that issue is made solely to Employees within 36 months after the passing of those resolutions; or
- (b) in all other circumstances, within 12 months after the passing of those resolutions.

**10.4 Exception:** A resolution pursuant to clause 10.2(a) of the holders of a Class of Securities shall not be required if:

- (a) the terms of issue of those Securities expressly reserved the right to make the issue of new Equity Securities in question, and specified at least the maximum number, and Class, of new Equity Securities which could be issued, and the time within which they could be issued; or
- (b) those Securities were issued on terms that the holders of those Securities would vote together with the holders of another Class or Classes of Equity Securities on a resolution of the nature referred to in clause 10.2(a) and the issue is approved by a resolution (passed by a simple majority of Votes) of holders of all the relevant Classes voting together.

**10.5 Pro Rata Issues and \$5,000 offers:** The Company may issue Equity Securities if:

- (a) those Equity Securities are offered to holders of existing Equity Securities of the Company 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) those Equity Securities are issued to holders of existing Equity Securities of the Company 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; or
- (ba) those Equity Securities are offered to holders of existing Equity Securities of the Company for a consideration not exceeding \$5,000 per existing Equity

Security holder and the number of Equity Securities to be issued is not greater than 30% of the number of fully paid Equity Securities already on issue.

Notwithstanding 10.5(a), 10.5(b) and 10.5(ba) above, the Company shall be entitled:

- (c) to issue any Equity Securities in respect of which an offer is not accepted, or which because of fractional entitlements are not otherwise offered, to such persons and in such manner as the Directors consider equitable and in the interests of the Company, provided that the price and terms and conditions of the issue of such Equity Securities are not materially more favourable to the persons to whom they are issued than the terms of the original offer;
- (d) to offer and issue Equity Securities to the holders of existing Securities in accordance with specific rights attached to those existing Securities to participate in issues of Equity Securities, notwithstanding that the effect may be that existing proportionate rights to Votes and Distribution Rights are not maintained;
- (e) to 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
- (f) to 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.

For the purposes of this clause 10.5, the term "Distribution Right" means a right of the nature referred to in paragraph (a) or (b) of the definition of "Equity Security" in the Listing Rules.

**10.6 Issues Within 20% Limit:** The Company may issue Equity Securities if:

- (a) the issue is not made in whole or in part to any Director or Associated Person of a Director, or Employee of the Company; and
- (b) the total number of Equity Securities issued, and all other Equity Securities of the same Class issued pursuant to this clause 10.6 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 to the date of the issue, will not exceed the aggregate of:
  - (i) 20% of the total number of Equity Securities of that Class on issue at the commencement of that period;
  - (ii) 20% of the number of the Equity Securities of that Class issued during that period pursuant to clauses 10.2(a), 10.5, 10.7, or 10.9; and
  - (iii) any Securities of that Class issued pursuant to this clause 10.6 during that period, the issue of which has been ratified by an Ordinary Resolution of the Company;

less:

- (iv) 20% 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).

Provided that for the purposes of this clause, Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert. Provided also that where the conversion ratio of those Securities is fixed by reference to the market price of the underlying Equity Securities, the market price, unless otherwise specified in the terms of the issue, shall be the average end of day market price over the 20 Business Days before the earlier of the day the issue is made or announced to the market.

10.7 **Employee Share Issues:** The Company may issue Equity Securities if:

- (a) the issue is made to Employees of the Company;
- (b) the issue is of a Class of Securities already on issue;
- (c) the total number of Securities issued, and all other Equity Securities of the same Class issued to Employees of the Company pursuant to this clause 10.7 during the shorter of the period of 12 months preceding the date of issue and the period from the date on which the Company was Listed to the date of the issue, does not exceed 5% 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 clauses 10.2(a), 10.5, 10.6, and 10.9; and
- (d) the total number of Securities issued, and all other Equity Securities of the same Class issued to Employees of the Company pursuant to this clause 10.7 during the shorter of the period of five years preceding the date of the issue and the period from the date on which the Company was Listed to the date of issue, does not exceed 10% of the total number of Equity Securities of that Class on issue immediately preceding the date of the issue.

For the purposes of this clause:

- (e) Equity Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert.
- (f) Directors and Associated Persons of Directors shall not participate in any such issue unless the scheme for such participation and the precise levels of entitlement for each such person have been previously approved by an Ordinary Resolution of the Company.
- (g) 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 the issue, shall be the average end of day market price over the 20 Business Days before the earlier of the day the issue is made or announced to the market.

10.8 **Exception:** For the purposes of clause 10.7 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, shall be deemed not to be an issue to a Director or Associated Person of a Director, or an issue in which Directors or Associated Persons participate.

**10.8A Repricing:** Except as provided in the Listing Rules, the Company may not reprice or amend the terms of any Securities issued with Shareholders' approval to or for the benefit of Employees or Directors under this clause 10, in their capacity as such, without either the approval of NZX or a further Ordinary Resolution of the shareholders resolving to approve the repricing or amendment.

**10.9 Other Issues:** The Company may issue Equity Securities if:

- (a) the issue is made as consideration in an offer made by the Company in accordance with:
  - (i) any takeover code approved under section 28 of the Takeovers Act 1993; or
  - (ii) provisions of the constitution or Trust Deed of another NZAX Issuer which comply with Listing Rule B3 where that issuer 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 NZX is at least as useful to the recipients of the offer as the requirements of one or more of the provisions referred to in 10.9(a)(i) or (a)(ii),

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

- (b) the issue is made upon Conversion of:
  - (i) any Equity Security;
  - (ii) any other Security, which on issue was approved in the manner set out in clause 10.2(a), as if Listing Rule 7.3.1(a) applied to that Security, from time to time issued by the Company if the terms of issue of those Securities provided for Conversion to the kind of Security issued; or
- (c) the issue is made to an existing holder of Equity Securities of the Company in order to bring that holder's holding up to a Minimum Holding; or
- (d) the issue is made pursuant to an arrangement, amalgamation or compromise effected pursuant to Part XIII or Part XV of the Act; or
- (e) 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 Security holder 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 reinvestment plan would maintain the existing proportionate 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.

**10.10 Types of Equity Securities:** Subject to the Act, and in particular section 117 (which relates to alteration of Security holders' rights), the Listing Rules and this constitution, any Security in the Company may be issued with such preferred, deferred, or other

special rights or such restrictions (whether in regard to Dividends, voting, return of capital or otherwise) as the Board may from time determine, and in particular, Securities in the Company may:

- (a) be issued as Securities that are redeemable:
  - (i) at the option of the Company where the option is exercised in relation to all holders of the same Class of Securities of the Company and in a manner that will leave unaffected relative voting rights;
  - (ii) at the option of the Company where the option is exercised in relation to one or more holders of Securities of the Company and the procedure set out in section 71 (which relates to special redemption of shares) is complied with;
  - (iii) at the option of the holder of the Securities; or
  - (iv) on a date specified in the terms of issue of the Securities,  
for a consideration that is:
    - (aa) specified;
    - (bb) to be calculated in accordance with a formula; or
    - (cc) required to be fixed by a suitably qualified person who is not associated with or interested in the Company; or
- (b) confer preferential rights to Distributions of capital or income; or
- (c) confer special, limited, or conditional voting rights; or
- (d) not confer voting rights; or
- (e) subject to the Listing Rules, have limitations or restrictions on transferability.

**10.11 Convertible Securities:** Subject to the Act, this constitution and the Listing Rules, the Board may issue Convertible Securities with such rights or such restrictions (including as to transfer in conjunction with Securities) as the Board may from time to time determine.

**10.12 Bonus Issues:** Subject to clause 10.5(b), the Board may resolve to apply any amount which is available for Distribution either:

- (a) in paying up in full Securities of the Company to be issued credited as fully paid to the Security holders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; or
- (b) in paying up any amount which is unpaid on any Shares held by the Security holders referred to in clause 10.12(a).

**10.13 Treasury Stock:** The transfer by the Company of Treasury Stock of the Company shall for the purposes of this clause 10 be deemed to constitute the issue of Equity Securities.

**10.14 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 NZAX Issuer), shall not be created or conferred other than in



compliance with this clause 10, as if such Securities comprised an issue of Equity Securities of the Company.

**10.15 Pre-emptive Right on Issue:** Section 45 shall not apply to the Company.

**10.16 Alteration of Rights of Holders of Securities:**

- (a) The Company shall comply with the provisions of sections 116 and 117. For the purposes of this clause, those sections shall be deemed to be modified so that:
  - (i) references in those sections to “shares” shall (subject to sub-clause (b)) be deemed to include reference to all Equity Securities of the Company, and reference to “shareholders” shall be read accordingly;
  - (ii) in respect of Equity Securities of the Company which are not shares:
    - (aa) 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 Equity Securities entitled to vote and voting; and
    - (bb) references to the constitution shall be deemed to be references to the document which governs the rights of those Equity Securities.
- (b) The Company shall be required by clause 10.16(a) to comply with sections 116 and 117 but shall not be required by the modifications deemed to be made by clause 10.16(a) above to comply with those sections in respect of actions that affect the rights attached to:
  - (i) Equity Securities of the Company which are not Quoted; or
  - (ii) Equity Securities of the Company 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 Offering Document (if any) pursuant to which those Equity Securities were offered.
- (c) For the purposes of section 117(3) the issue of further shares ranking equally with, or in priority to, existing shares, whether as to voting rights or Distributions, is permitted provided such issue is made in accordance with this constitution.

**10.17 Consolidation and Subdivision of Securities:** The Board may authorise:

- (a) the consolidation and division of Securities or any Class of Securities in proportion to those Securities or the Securities in that Class; or
- (b) the subdivision of Securities or any Class of Securities in proportion to those Securities or the Securities in that Class.

## 11. ISSUES, BUY BACKS AND REDEMPTIONS OF SECURITIES AFFECTING CONTROL

11.1 **Prohibition:** Notwithstanding clauses 8.1 to 8.7 (both inclusive), 10.2 to 10.9 (both inclusive) and 10.13 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 of (either then or at any future time) effective control of the Company; and
- (b) that person or group of Associated Persons is entitled before the issue, acquisition, or redemption to exercise, or direct the exercise of, not less than 1% of the total Votes attaching to Securities of the Company;

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

## 12. TRANSFER OF SECURITIES

12.1 **No Transfer Restrictions:** Subject to the provisions of any legislation, and to clause 12.2, the Company shall not impose any restriction on the right of a holder of a Security to transfer that Security, or any restriction upon registration of a properly completed transfer of Securities.

12.2 **Permitted Transfer Restrictions:** The Company may decline to accept or register any transfer of Securities:

- (a) where the Company has a lien on the Securities; or
- (b) if such registration, together with the registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the proposed transferee holding Securities of less than the Minimum Holding.

12.3 **Improper Instrument of Transfer:** A transfer of Securities in writing that has not been properly completed shall be promptly returned to the person submitting it, for completion, and (subject to clause 12.2) shall be registered when the errors or omissions have been rectified.

12.4 **Sale of Less than Minimum Holding:** The Company may at any time give notice to any person holding less than a Minimum Holding of Quoted Securities of any Class that if at the expiration of three months after the date the notice is given the holder still holds Quoted Securities which are less than a Minimum Holding, the Company may exercise the power of sale of those Securities set out in this clause. If that power of sale becomes exercisable:

- (a) the Company may arrange for the sale of those Securities through the NZX or in some other manner approved by the NZX;
- (b) the holder of the Quoted Securities shall be deemed to have authorised the Company to act on the holder's behalf and to execute all necessary documents for the purposes of that sale;
- (c) the net proceeds of sale of the Quoted Securities (after deduction of reasonable sale expenses and any unpaid calls or any other amounts owing to the Company in respect of the Securities) shall be held on trust for the holder of the Securities by the Company and paid to such holder on surrender of any

certificates for the Securities sold or on an indemnity being given to the Company in the case of a certificate which has been lost or destroyed or if no certificate has been issued in respect of the Securities, immediately upon the Company being satisfied of the holder's entitlement to the proceeds; and

- (d) the title of a purchaser of any Securities sold pursuant to this clause shall not be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.

Any Director may act on the Company's behalf in exercising the powers of the Company under this clause 12.4.

- 12.5 **Transferor is deemed to remain holder until registration of transfer:** The transferor of a Security shall be deemed to remain the holder of the Security until the name of the transferee is entered in the Share Register in respect thereof.
- 12.6 **Suspension of registration:** The registration of transfers may be suspended by the Board for such periods of time as the Board may determine, provided that registration shall not be suspended for more than 30 days or such other length of time in any year as may be specified from time to time by the Act.
- 12.7 **On death of holder, survivor or executor only recognised:** In the case of the death of a holder of Equity Securities, the survivors or survivor, where the deceased was a joint holder, or the legal personal representatives of the deceased, where the deceased was a sole holder, shall be the only persons recognised by the Company as having any title to or interest in the Equity Securities of the deceased; but nothing in clauses 12.7 to 12.11 shall release the estate of a deceased joint holder from any liability which had arisen by virtue of such joint ownership.
- 12.8 **Person becoming entitled on death or bankruptcy of holder may be registered:** Any person becoming entitled to an Equity Security as a result of the death or bankruptcy of a holder of Equity Securities shall, upon such evidence being produced as may from time to time be properly required by the Board, have the right either to be registered as a holder of Equity Securities in respect of the Equity Security or, instead of being so registered, to make such transfer of the Equity Security as the deceased or bankrupt holder could have made.
- 12.9 **Rights to Distributions of personal representative or assignee of bankrupt holder:** Where a holder of Equity Securities dies or becomes bankrupt, the personal representatives or the assignee of such holder's estate, as the case may be, shall, upon the production of such evidence as may from time to time be required by the Board be entitled to the same Distributions and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise) as the holder would have been entitled to if the holder had not died or become bankrupt. Where two or more persons are jointly entitled to any Equity Security in consequence of the death of the holder of Equity Securities they shall, for the purposes of this constitution, be deemed to be joint holders of the Equity Security.
- 12.10 **Transfer on behalf of mentally disordered holder of Equity Securities:** Where any holder of Equity Securities becomes mentally disordered or subject to a protection of property order, that holder's manager will be entitled, upon the production of any evidence that may from time to time be required by the Board, to transfer the Equity Securities or to be registered as a holder of Equity Securities in respect of the Equity Securities and to receive the same Distributions and other advantages and to have the same rights (whether in relation to meetings of the Company, or to voting, or otherwise) as the holder of Equity Securities would have been entitled to if that holder had not become mentally disordered or subject to a protection of property order.

- 12.11 **Refusal of Transfer:** Notwithstanding the provisions of clauses 12.7 to 12.10 the Board has the same right to refuse or suspend registration of a transfer of Equity Securities as it would have had in the case of a transfer of the Equity Securities by that holder of Equity Securities before becoming a mentally disordered or protected person, or before that holder's death or bankruptcy, as the case may be.
- 12.12 **Transfer of Securities other than Equity Securities:** The provisions of this clause 12 shall also apply to the transfer of Securities other than Equity Securities, with any necessary modifications determined by the Board.
- 12.13 **No Cancellation of Rights:** Except as expressly permitted by the Listing Rules and this constitution, no benefit or right attaching to a Security shall be cancelled or varied by reason only of a transfer of that Security.
- 12.14 **Multiple Registers:** The Share Register may, by resolution of the Board, be divided into two or more registers, which may be kept in different places.

### 13. TRANSMISSION OF SECURITIES

- 13.1 **Transmission:** If the holder of a Security dies, the survivor (if the deceased was a joint Security holder), or in all other cases the personal Representative, shall be the only persons recognised by the Company as having any title to or interest in the Securities of the deceased Security holder but nothing in this clause shall release the estate of a deceased joint Security holder from any liability in respect of any Security or constitute a release of any lien which the Company may have in respect of any Security.
- 13.2 **Rights of Personal Representative:** A Personal Representative of the holder of a Security:
- (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 proxy), and is subject to all limitations, attached to the Securities held by that holder of a Security; and
  - (b) is entitled to be registered as holder of those Securities, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative pursuant to this sub-clause.
- 13.3 **Joint Personal Representatives:** Where a Security 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 Security.

### 14. RIGHTS AND POWERS ATTACHING TO SECURITIES

- 14.1 **Security Holders' Rights:** The rights specified in section 36(1) are hereby altered by the following provisions set out in this clause 14.
- 14.2 **Restriction:** Notwithstanding anything to the contrary in this constitution or the Listing Rules, on any resolution of the nature listed in column 1 of the table below, no Vote in favour of any such resolution shall be cast on any Securities held by a person of the nature listed in respect of that resolution in column 2 of the table below, or by (except in relation to a resolution under clause 20.1 or 20.2) any Associated Person of such a person.

Column 1 RESOLUTION	Column 2 DISQUALIFIED PERSON
Resolution under clause 10.2 (Issue of Securities)	Subject to clause 14.3:  (a) Any person to whom it is proposed to issue the new Securities referred to in the resolution; or  (b) If the resolution does not specify the persons to whom it is proposed to issue Securities, any Director of the Company who is not excluded by the terms of the resolution from participation in the issue.
Resolution under clause 10.2 to approve a Rights issue of Equity Securities which is not Renounceable	Any Director of the Company and any Associated Person of the Company.
Resolution under clause 10.6(b)(iii)	Any person who has been issued, or has acquired, Securities the subject of ratification by that resolution.
Resolution under clause 10.7	Any Director intended or likely to benefit from the issue referred to in the resolution.
Resolution under clause 11.1	Any person whose effective control of the Company would be materially increased.
Resolution under clauses 20.1 and 20.2	The Director intended to receive a payment.

- 14.3 **Exception:** On a resolution under clause 10.2, a person to whom it is proposed to issue the new Securities referred to in that resolution is not disqualified from Voting if the new Securities are to be offered on the same basis to all holders of Securities of the same Class as the Securities held by that person.
- 14.4 **Proxies or Representatives:** Clause 14.2 shall not prevent a person disqualified from Voting under that clause, who has been appointed as a proxy or Voting representative by another person who is not disqualified from Voting under that clause, from Voting in respect of the Securities held by that other person in accordance with the express instructions of that other person.
- 14.5 **Discovery of Disqualified Persons:** The Company shall use reasonable endeavours to ascertain, no later than five Business Days before any meeting to consider a resolution referred to in clause 14.2, the identity of holders of Securities who are disqualified from Voting on that resolution pursuant to clause 14.2, and on request shall supply a list of such holders to the NZX and any holder of Equity Securities of the Company.
- 14.6 **Deadline for Challenge:** Without prejudice to any remedy (other than those which take legal effect against the Company) which any holder of Securities may have

against any disqualified person who casts a Vote at a meeting in breach of clause 14.2, no resolution of, or proceeding at, that meeting shall be impugned on the basis of a breach of clause 14.2. Any objection by a holder of Securities to the accuracy or completeness of any list provided pursuant to clause 14.5 shall be disregarded by the Company and the chairperson of the relevant meeting if it is notified to the Company later than one full Business Day before the time fixed for commencement of the meeting.

14.7 **Partly Paid Securities:** Where there are Securities of the same Class, some of which are fully paid and some of which are not fully paid, each Security which is not fully paid shall carry only a fraction of the Vote which would be exercisable if the Security was fully paid. That fraction must be equivalent to the proportion which the amounts paid (not credited) is of the total amount paid and payable (excluding amounts credited and amounts paid in advance of the call).

## 15. **EQUITABLE INTERESTS IN SECURITIES**

15.1 **No Notice of Trusts:** No notice of a trust, whether express, implied, or constructive, may be entered on the Share Register.

15.2 **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 Security 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 Security, or any interest in any fraction or part of a Security or (except as provided by this constitution or by law) any other rights in respect of any Security, except an absolute right of the registered holder to the entire Security.

## PART D: DIRECTORS

### 16. APPOINTMENT OF DIRECTORS

16.1 **Sections 153 and 156(1):** The provisions of sections 153 and 156(1) shall be read subject to clauses 16.2 to 19.1 inclusive.

16.2 **Minimum and Maximum Numbers:** Unless and until otherwise determined by the Company in general meeting by Ordinary Resolution there shall be a maximum number of seven Directors of the Company. The minimum number of Directors (other than alternate Directors) shall be three and at least two Directors shall be ordinarily resident in New Zealand.

16.3 **Appointment of Directors:** A person may be appointed as a Director at any time by:

- (a) an Ordinary Resolution; or
- (b) the Board.

A person appointed by the Board pursuant to clause 16.3(b) shall retire from office at the next annual meeting of the Company, but shall be eligible for re-election at that meeting.

16.4 **Appointment of Directors to be Voted on Individually:** No resolution to appoint or elect a Director (including a resolution to re-elect any Director) shall be put to holders of Securities unless:

- (a) the resolution is for the appointment of one Director; or
- (b) the resolution is a single resolution for the appointment of two or more Directors, and a separate resolution that it be so voted on has first been passed without a vote being cast against it.

Nothing in this clause 16.4 prevents the election of two or more Directors by ballot or poll including where the number of candidates for the office of Director exceeds the vacancies available and the ballot or poll will result in the election of those candidates, equal to the number of vacancies to be filled, who receive the highest number of votes.

16.5 **Existing Directors to Continue:** The persons holding office as Directors on the date of adoption of this constitution continue in office and are deemed to have been appointed as Directors pursuant to this constitution.

16.6 **Alternate Directors:** A Director may appoint another person to be an alternate Director during his or her absence or inability to act as Director. No Director may appoint another person to act as alternate Director for him or her, except with the consent of a majority of his or her co-Directors. That appointment may be revoked by a majority of his or her co-Directors or by the Director who appointed the alternate. A Director may not be appointed to act as alternate for another Director. No Director shall appoint a deputy or agent otherwise than by way of appointment of an alternate. A person holding office as an alternate Director shall be entitled to all notices of meetings of the Directors and any paper minutes or documents sent to Directors and to attend and vote at any meetings of Directors but shall not vote at that meeting except in the place of the Director for whom he or she is an alternate and he or she shall not require any Security qualification and shall not be entitled to be remunerated otherwise than out of the remuneration of the Director appointing him or her. Any

appointment or revocation under this clause shall be effected by notice in writing to the Company.

**16.7 Executive Directors:** Without limiting section 130 but excluding from any such delegation any of the matters set out in the Second Schedule to the Act:

- (a) the Board may from time to time appoint one or more of the Directors (whether appointed in accordance with clause 16.3(b) or otherwise) to the office of Executive Director. No term of appointment of an Executive Director of the Company shall exceed five years. This clause shall not preclude the reappointment of an Executive Director upon the expiry of a term of appointment and shall not affect the terms of the engagement of that Executive Director as an employee of the Company;
- (b) the Board may fix an Executive Director's remuneration (except his, her, or their remuneration in his, her or their capacity as a Director or Directors) which may be in addition to his, her or their remuneration as an ordinary Director or Directors and may be either by way of salary, commission on profits earned or participation in the profits of the Company or any Security scheme or by a combination of two or more of those modes;
- (c) he or she shall be subject to the same provisions as regards resignation, removal and disqualification as the other Directors of the Company, and if he or she ceases to hold the office of Director for any cause he or she shall ipso facto cease to be an Executive Director. One Executive Director shall be exempted from the requirement in clause 17.1 to retire by rotation (as provided for in clause 17.2) provided that where there are two or more Executive Directors the Board shall nominate which Executive Director shall be exempt from the requirement to retire by rotation;
- (d) the Board may entrust to and confer upon an Executive Director any of the powers exercisable by the Directors (except the power to make calls, forfeit Securities, borrow money or issue debentures) upon such terms and conditions and with such restrictions as they may think fit and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of those powers;
- (e) the Board may delegate any of its powers to committees consisting of such persons as they think fit and may from time to time remove such delegation.

**16.8 Nominations:** No person (other than a Director retiring at the meeting) shall be elected as a Director at a meeting of Security holders of the Company unless that person has been nominated by a Security holder entitled to attend and vote at the meeting. The opening date (if any) for nominations shall not be later than three months, and the closing date for nominations shall not be earlier than two months, before the date of the meeting at which the election is to take place. There shall be no restriction on the persons who may be nominated as Directors nor shall there be any precondition to the nomination of a Director other than compliance with time limits in accordance with this clause. The Company shall make an announcement to the NZX no less than three months before the date of the meeting at which the election is to take place of the opening date for nominations and the closing date for nominations. Notice of every nomination received by the Company before the closing date for nominations shall be given by the Company to all persons entitled to attend the meeting together with, or as part of, the relevant notice of meeting.



## 17. ROTATION OF DIRECTORS

17.1 **Retirement by Rotation:** Subject to clause 17.2 at least one third of the Directors, or if their number is not a multiple of three, then the number nearest to one third, shall retire from office at the annual meeting of the Company each year, but shall be eligible for re-election at that meeting. The Directors to retire shall be those who have been longest in office since they were last elected or deemed elected. If there are two or more such Directors, the Director to retire shall be determined by agreement between them and failing agreement, by lot.

17.2 **Exceptions to Rotation:** The following Directors shall be exempt from the obligation to retire under clause 17.2:

- (a) Directors appointed by the Board, who are subject to re-election pursuant to clause 16.3(b); and
- (b) one Executive Director (as nominated by the Board pursuant to clause 16.7(c)).

The exempted Executive Director shall be included in the number of Directors upon which the calculation for the purposes of clause 17.1 is based, but any Directors appointed pursuant to clause 16.3(b) who are subject to re-election pursuant to that clause shall not be included in that calculation.

## 18. REMOVAL OF DIRECTORS

### 18.1 Removal from Office:

- (a) All Directors shall be subject to removal from office as Director by Ordinary Resolution.
- (b) The office of Director is vacated if the person holding that office:
  - (i) resigns by notice in writing to the Company; or
  - (ii) being an employee of the Company, ceases such employment. A person who ceases to be a Director by reason of ceasing employment may be reappointed a Director pursuant and subject to the provisions of clause 16.3; or
  - (iii) is removed from office in accordance with the Act or subclause 18.1(a); or
  - (iv) becomes disqualified from being a Director pursuant to the Act; or
  - (v) dies; or
  - (vi) is absent from meetings of the Board for more than six months without the Board's permission, and the Board resolves that the office be vacated.

## 19. TIMING OF APPOINTMENT AND RETIREMENT

### 19.1 Timing:

- (a) A person who is not already a Director who is appointed or elected as a Director at a meeting of Security holders, shall take office as a Director immediately after the conclusion of the meeting.

- (b) A Director who retires at a meeting of Security holders and who is not re-elected or deemed to be re-elected at that meeting shall remain in office until, and his or her retirement shall take effect at, the conclusion of the meeting.
- (c) A Director who is removed from office at a meeting of Security holders by Ordinary Resolution shall remain in office until, and his or her removal shall take effect at, the conclusion of the meeting.

## 20. DIRECTORS' REMUNERATION

20.1 **Fixing Remuneration:** No remuneration shall be paid to a Director in his or her capacity as a Director of the Company or of any Subsidiary other than a Subsidiary which is Listed (including remuneration paid to that Director by a Subsidiary, other than a Subsidiary which is also Listed) unless that remuneration has been authorised by an Ordinary Resolution of the Company. Each such resolution shall express Directors' remuneration as either:

- (a) a monetary sum per annum payable to all Directors taken together; or
- (b) a monetary sum per annum payable to each person from time to time holding office as a Director.

If remuneration is expressed in accordance with 20.1(a), then in the event of an increase in the total number of Directors holding office, the Directors may, without the authorisation of an Ordinary Resolution of the Company, increase the total remuneration by such amount as is necessary to enable the Company to pay to the additional Director or Directors remuneration not exceeding the average amount then being paid to each of the other non-Executive Directors (other than the chairperson) of the Company.

No resolution which increases the amount fixed pursuant to a previous resolution shall be passed at a general 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.

20.2 **Payments Upon Cessation of Office:** The Company may make a payment to a Director or former Director, or 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:

- (a) the amount of the payment, or the method of calculation of the amount of that payment, is authorised by an Ordinary Resolution; or
- (b) without an Ordinary Resolution if that Director or a former Director was in office on or before 1 May 2004 and has continued to hold office since that date and the total amount of that payment (or the base for the pension) does not exceed the total remuneration of that Director in his or her capacity as a Director in any three years chosen by the Company.

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.

20.3 **Expenses and Special Remuneration:** Notwithstanding clause 20.1:

- (a) each Director is entitled to be paid or reimbursed for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with

the Director's attendance at meetings or otherwise in connection with the Company's business; and

- (b) subject to clause 23.2 (if applicable), the Board may authorise, without the approval of holders of Securities of the Company, the payment of special remuneration to any Director who is or has been engaged by the Company to carry out work or perform any services which are not in the capacity of a Director.

## **PART E: DIRECTORS' AND SECURITY HOLDERS' MEETINGS**

### **21. DIRECTORS' MEETINGS**

21.1 **Compliance with Schedule 1:** Meetings of directors of the Company shall be conducted in accordance with **Schedule 1** attached to and forming part of this constitution.

### **22. SECURITY HOLDERS' MEETINGS**

22.1 **Compliance with Schedule 2:** Meetings of Security holders of the Company shall be conducted in accordance with **Schedule 2** attached to and forming part of this constitution.

## PART F: CONTROLLED TRANSACTIONS

### 23. DISPOSAL OR ACQUISITION OF ASSETS

23.1 **Restrictions:** The Company shall not (subject to clause 23.2) enter into any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of the Company or assets to be held by the Company:

- (a) which would change the essential nature of the business of the Company; or
- (b) in respect of which the gross value is in excess of 50% of the Average Market Capitalisation of the Company;

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

For the purpose of clause 23.1(b):

**“Average Market Capitalisation”** means the average end of day market capitalisation of the Company's Equity Securities carrying Votes over the 20 Business Days before the earlier of the day the transaction is entered into or is announced to the market.

23.2 **Exception:** Clause 23.1 shall not apply to:

- (a) a takeover offer by the Company in respect of a Code Company; or
- (b) any transaction entered into by the Company with a Bank, on arms length terms and in the ordinary course of banking business, as a result of which transaction the Company has recourse to the credit risk of that Bank.

### 24. TRANSACTIONS WITH RELATED PARTIES

24.1 **Restriction:** The Company shall not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or
- (b) in the case of a guarantee or other transaction of the nature referred to in sub-clause (c) of the definition of Material Transaction in clause 24.3, a direct or indirect beneficiary of such guarantee or other transaction,

unless:

- (c) that Material Transaction is an employment agreement with a natural person who is not a director (within the meaning of section 126 of the Act) of the Company or any of its Subsidiaries; or
- (d) that Material Transaction is approved by an Ordinary Resolution of the Company.

24.2 **Exception:** Clause 24.1 shall not apply to:

- (a) any transaction entered into by the Company with a Bank which is a Related Party of the Company, on arm's length terms and in the normal course of

banking business, as a result of which transaction the Company has recourse to the credit risk of a Bank; or

- (b) the issue, acquisition, or redemption, by the Company of Securities of the Company, or the giving by the Company of financial assistance for the purposes of, or in connection with, the purchase of Securities, or the payment of a Distribution to holders of Securities, if all holders of Securities of the Class in question are treated in the same way, so that each such holder has an opportunity to receive the same benefit in respect of each Security held by that holder. For the purposes of this sub-clause (b), a transfer by the Company of shares held by the Company in itself is deemed to constitute an issue of Securities; or
- (c) any employment or service contracts which are Material Transactions under clause 24.3(d) where the NZX is satisfied that the terms of the contract have been set on an arm's length, commercial basis; or
- (d) any transaction indemnifying any Director or Employee of the Company or a Related Company which would be a Material Transaction under clause 24.3(c), where such Director or Employee, at the time the indemnity is to be granted, has not been involved in any proceedings, threatened proceedings or circumstances in any capacity which are likely to result in a claim by the Director or Employee under the proposed indemnity; or
- (e) arrangements, amalgamations or compromises pursuant to Part XV of the Act.

**24.3 Definition of Material Transaction:** For the purposes of this clause 23.2 "Material Transaction" means a transaction or a related series of transactions whereby the Company:

- (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 10% 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 10% of the Average Market Capitalisation of the Company;
- (c) borrows, lends, pays, or receives, money, or incurs an obligation, of an amount in excess of 10% of the Average Market Capitalisation of the Company; or
- (d) enters into any guarantee, indemnity, or similar obligation, or gives any security, for or of obligations which could expose the Company to liability in excess of 10% of the Average Market Capitalisation of the Company; or
- (e) provides or obtains any services (including without limitation the underwriting of Securities or services as an employee) in respect of which the actual gross cost to the Company in any financial year (ignoring any returns or benefits in connection with such services) is likely to exceed an amount equal to 1.5% of the Average Market Capitalisation of the Company; or
- (f) amalgamates, except for amalgamations of a wholly owned Subsidiary with another wholly owned Subsidiary or with the Company;

Provided that for the purposes of this clause 24.3:

- (i) "**Average Market Capitalisation**" means the average end of day market capitalisation of the Company's Equity Securities carrying Votes over the 20

Business Days before the earlier of the day the transaction is entered into or is announced to the market; and

- (ii) **“Aggregate Net Value”** means the net value of those assets calculated as the greater of the net tangible asset backing value (from the most recently published financial statements) or market value.

24.4 **Definition of Related Party:** For the purposes of this clause 23.2, “Related Party” means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:

- (a) a Director or officer of the Company or any of its Subsidiaries; or
- (b) a substantial security holder (as defined in the Securities Markets Act 1988) of the Company; or
- (c) an Associated Person of the Company or any of the persons referred to in (a) or (b), other than a person who becomes an Associated Person as a consequence of the Material Transaction itself (or an intention or proposal to enter into the Material Transaction itself); or
- (d) a person in respect of whom there are arrangements other than the Material Transaction itself, intended to result in that person becoming a person described in (a), (b), or (c), or of whom the attainment of such a status may reasonably be expected, other than as a consequence of the Material Transaction itself;

but excludes a wholly owned Subsidiary of the Company, other than a wholly owned Subsidiary which:

- (i) is a party to a Material Transaction of the type described in clause 24.3(e); and
- (ii) the Company intends to sell, or otherwise dispose of, the Subsidiary to a Related Party.

24.5 **Voting Restrictions:** No vote in favour of a resolution under clause 24.1 shall be cast on any Securities held by any person (or any Associated Person of that person) referred to in clause 24.4 who is a party or beneficiary (in terms of clause 24.1(a) or (b)) to or of the transactions the subject of the resolution.

24.6 **Proxies or Representatives:** Clause 24.5 shall not prevent a person disqualified from Voting under that clause, who has been appointed as a proxy or Voting representative by another person who is not disqualified from Voting under that clause, from Voting in respect of the Securities held by that other person in accordance with the express instructions of that other person.

24.7 **Discovery of Disqualified Persons:** Each Company shall use reasonable endeavours to ascertain, no later than five Business Days before any meeting to consider a resolution referred to in clause 24.5, the identity of holders of Security who are disqualified from voting on that resolution pursuant to clause 24.5, and on request shall supply a list of such holders to NZX and any holder of Equity Securities of the Company.

24.8 **Deadline for Challenge:** Without prejudice to any remedy (other than those which take legal effect against the Company concerned) which any holder of Securities may have against any disqualified person who casts a Vote at a meeting in breach of clause 24.5, no resolution of, or proceeding at, that meeting shall be impugned on the basis of a breach of clause 24.5. Any objection by a holder of Securities to the

accuracy or completeness of any list provided pursuant to clause 24.5 shall be disregarded by the Company and the chairperson of the relevant meeting if it is notified to the Company later than one full Business Day before the time fixed for commencement of the meeting.



## PART G: OTHER PROVISIONS

### 25. CALLS ON SECURITIES

- 25.1 **Ability to Call:** Subject to the terms of issue of any Securities, the Board may resolve to require the holders of unpaid or partly paid Securities to pay all or part of the amount unpaid on the Securities. Notice of the Call must be given to the holder at the time of the Call or to a subsequent holder of the Securities. Failure to give notice to a holder will not invalidate a Call but it will not be payable by that holder until the notice has been served on the holder. The notice must specify the day by which and the place at which the Call must be paid. Notice of a Call sent by post to a holder to the address recorded in the Register as the address of the holder, will be deemed to have been served on the holder the day after it was posted. Subject to clause 25.9, a Call may be revoked or postponed at any time by the Board.
- 25.2 **Call deemed made:** A Call shall be deemed to have been made at the time when the resolution of the Board authorising the Call was passed and may be required to be paid by instalments.
- 25.3 **Joint holders' liability:** The joint holders of a Security shall be jointly and severally liable to pay all calls in respect of that Security.
- 25.4 **Unpaid Calls to accrue interest:** Subject to clause 25.9, if a sum called in respect of a Security is not paid before or on the day appointed for payment, the person from whom the sum is due will be liable to pay interest on the sum (from the day appointed for payment to the time of actual payment) at such rate as the Board may determine either at the time of the Call or subsequently. The Board may at its discretion waive payments of any such interest either in whole or in part.
- 25.5 **Payment on allotment:** Any sum which by the terms of issue of a Security becomes payable on allotment or at any fixed date shall for the purposes of this constitution be deemed to be a Call duly made and payable on the date on which by the terms of issue the same becomes payable and in case of non-payment all the relevant provisions of this constitution as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a Call duly made and notified.
- 25.6 **Proof of Holding:** On the trial or hearing of any action for the recovery of any money due for any Call it shall be sufficient to prove that the name of the holder of the Security sued is entered in the Register of the Company as the holder or one of the holders of the Securities in respect of which such debt accrued, that the resolution making the Call is duly recorded in the records of the Company and that notice of such Call was duly given to the holder sued in pursuance of this constitution; and it shall not be necessary to prove the appointment or qualification of the Directors who made such call nor any other matter whatsoever; and the proof of the matters aforesaid shall be conclusive evidence of the debt.
- 25.7 **Directors' discretion to differentiate:** The Board may, on the issue of Securities, by agreement with the holders concerned, differentiate between the holders as to the amounts to be paid and the times of any Calls or payment.
- 25.8 **Payments in advance:** The Board may if it thinks fit receive from any holder of Securities willing to advance the same all or any part of the money uncalled and unpaid upon any Securities held by that holder and upon all or any part of the money so advanced may (until the same would, but for the advance, become payable) pay interest at such rate as may be agreed upon between the Board and the holder of

Securities paying the sum in advance; but no holder shall be entitled as of right to any interest on any money so paid in advance and the Board may decline to pay any interest. The Board may at any time repay the amount so advanced upon giving to the holder of Securities three months' notice in writing.

25.9 **Cancellation of amount due:** No obligation to pay any amount which is unpaid on any Equity Security shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution.

## 26. SUSPENSION OF RIGHT TO DIVIDENDS, FORFEITURE AND LIENS

26.1 **Notice from Directors:** If a holder of a Security fails to pay any Call (or instalment of a Call) on the day appointed for payment, the Board may, at any time after that date, serve a notice on the holder requiring payment of so much of the Call or instalment as is unpaid together with any interest which may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment.

26.2 **Due date specified:** The notice shall name a further day (not earlier than the expiration of 14 days from the date of the notice) on or before which the payment required by the notice is to be made and shall state that in the event of non-payment at or before the time appointed the Securities in respect of which the call was made will be liable to be forfeited.

26.3 **Board may withhold Distributions for non-payment of Calls:** If a holder of a Security fails to pay any Call (or instalment of a Call) on the day appointed for payment under clause 26.2, the Board may at any time after that date, while any part of the Call or instalment payable by the holder remains unpaid, suspend payment of any Dividends or other Distributions payable to the holder.

26.4 **Amount owing under Call may include interest:** The amount owing under the Call for the purposes of clauses 26.3, 26.5 and 26.6 may include any interest which may have accrued and all expenses which may have been incurred by the Company by reason of non-payment by the holder of the amount owing under the Call.

26.5 **Application of suspended Dividends:** All Dividends and other Distributions suspended pursuant to clause 26.3 may be applied by the Company to reduce the amount owing under the Call. Dividends and other Distributions so applied will be deemed to have been paid in full.

26.6 **Lifting suspension of right to Dividends:** When the total Dividends and Distributions withheld and applied under clause 26.5 equal the total amount owing under the Call, including amounts owing under clause 26.4, the suspension of the right to Dividends and Distributions will be lifted, and all rights to be paid Dividends and Distributions on the Securities will resume.

26.7 **Directors' Resolution:** If the requirements of any notice given in accordance with clause 26.2 are not complied with, any Security in respect of which the notice has been given may at any time thereafter before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect. Such forfeiture shall include all Dividends declared in respect of the forfeited Securities and not actually paid before the forfeiture.

26.8 **Note on Register:** When any Security shall have been so forfeited notice of the resolution shall be given to the holder in whose name it stood immediately prior to the forfeiture; and an entry of the forfeiture, with the date thereof, shall forthwith be made in the Register, and any certificate of any Securities so forfeited as aforesaid shall be immediately cancelled by the Company and the holder in whose name such cancelled Security stood immediately prior to such cancellation shall return the certificate (if any)

for such Security so forfeited to the Company within 14 days of receiving notice of such resolution as aforesaid.

- 26.9 **Sale of forfeited Security:** Subject to clause 25.9, a forfeited Security may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Board thinks fit.
- 26.10 **Liability remains following sale:** A person whose Securities have been forfeited shall cease to be a holder in respect of the forfeited Securities, but shall, notwithstanding, remain liable to pay to the Company all money which at the date of forfeiture was payable by that holder to the Company in respect of the Securities but that holder's liability shall cease if and when the Company receives payment in full of all such money in respect of the Securities.
- 26.11 **Non-payment:** The provisions of this constitution as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a Security becomes payable at a fixed time on account of the issue price of the Security as if the same had been payable by virtue of a call duly made and notified.
- 26.12 **Lien:** The Company shall have a first and paramount lien upon all the Securities registered in the name of each holder of Securities whether solely or jointly with others and upon the proceeds of sale thereof, and on Distributions from time to time declared in respect of such Securities for:
- (a) unpaid Calls, instalments, premiums, or other amounts, and any interest payable on such amounts, relating to the specific Securities; and
  - (b) such amounts as the Company may be called upon to pay under any legislation in respect of the specific Securities.

and for the purpose of giving better effect to the provisions of this clause each holder of Securities irrevocably appoints the Company and each officer of the Company as attorney for that holder authorising the Company to complete an assignment to the Company of any moneys owing by that holder under the provisions of this clause and each holder agrees to ratify and confirm any act carried out by the Company in that behalf.

- 26.13 **Sale of Securities subject to lien:** The Company may sell in such manner as the Board thinks fit any Securities on which the Company has a lien but no sale shall be made unless a sum in respect of which the lien exists is presently payable nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable has been given to the registered holder for the time being of the Securities or the person entitled thereto by reason of his or her death or bankruptcy.
- 26.14 **Accounting for proceeds:** If Securities 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.
- 26.15 **Evidence of forfeiture:** A certificate under the hand of a Director and countersigned by a second Director that the power of sale hereinbefore mentioned has arisen and is exercisable by the Company under this constitution, or that a Security in the Company has been duly forfeited on the date stated therein, shall be conclusive evidence of the facts stated therein.

26.16 **Authority to transfer:** For giving effect to any such sale after forfeiture or for enforcing a lien in purported exercise of the powers hereinbefore given the Directors may authorise some person to transfer the Securities sold to the purchaser thereof. The purchaser shall be registered as the holder of the Securities comprised in any such transfer and he shall not be bound to see to the application of the purchase money nor shall such purchaser's title to the Securities be affected by any irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively. If the certificate for forfeited Securities is not delivered up to the Company the Directors may issue a new certificate distinguishing it as they think fit from the certificate not delivered up.

## 27. DISTRIBUTIONS

27.1 **Power to Authorise:** The Board, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the Solvency Test may, subject to the Act and this constitution, authorise Distributions by the Company at times, and of amounts, and to any holders of Securities, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.

27.2 **Form of Distribution:** Subject to the rights of holders of any Securities in a Class, the Board may make a Distribution in such form as it thinks fit, but, except as provided in clause 27.3, shall not differentiate between holders as to the form in which a Distribution is made without the prior approval of the holders of Securities.

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

27.4 **Entitlement to Dividends:** The Board shall not authorise a Dividend:

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

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

27.5 **Deduction of Expenses:** The Company may deduct from any Distribution due to any holder of Securities all sums of money, if any, which are:

- (a) presently payable by that holder of Securities to the Company on account of any liability in respect whereof the Company has a lien on the Securities on which such Distribution is payable; or
- (b) required by law to be deducted by the Company.

27.6 **Method of Payment:** Any Distribution payable in cash in respect of the Securities may be paid by direct bank credit (if so authorised by the holder) or by cheque or

warrant sent through the post directed to the registered address of the holder or, in the case of joint holders (subject to any arrangement between such joint holders consented to by the Directors), to the registered address of any one of the joint holders or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any Distributions payable in respect of the Securities held by them as joint holders but the Company may require the receipt of all the joint holders. The Company shall not be responsible for the loss in transmission of any cheque or warrant sent through the post as aforesaid whether sent at the request of a holder of Securities or otherwise.

27.7 **No Interest:** No Distribution shall bear interest against the Company.

27.8 **Unclaimed Distributions:** All Distributions unclaimed for one year after having been declared may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed and all Distributions unclaimed for five years after having been declared may be forfeited by the Directors for the benefit of the Company provided always that the Directors must at any time after such forfeiture annul the same and, subject to the Company meeting the Solvency Test, pay the Distributions so forfeited to any person producing evidence of entitlements to the same and shall do so unless in the opinion of the Directors such payment would adversely affect the Company.

27.9 **Directors Establish Reserves:** The Directors may, from time to time, set aside out of the profits of the Company such sums as they think proper as a reserve or reserves which shall at the discretion of the Directors be applicable for any purpose to which the profits of the Company may be properly applied, and pending any such application may, at the like discretion, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit. The Directors may also without placing the same to reserve carry forward any profits which they think prudent not to distribute.

## 28. EXECUTION OF DOCUMENTS

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

- (a) two or more Directors;
- (b) any Director, or any person authorised by the Board, whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Company in accordance with section 181.

28.2 **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.

28.3 **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.

## 29. NOTICES

- 29.1 **Notices, Reports, Financial Statements:** Security holders shall be entitled to attend general meetings and to receive copies of all notices, reports and financial statements issued generally to holders of Securities carrying Votes.
- 29.2 **Service of Notices Overseas:** If the holder of a Security has not given to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to that holder at such address and shall be deemed to have been received by that holder 24 hours after the time of posting.
- 29.3 **Accidental Omissions:** The failure to send an annual report, notice, or other document to a Security holder in accordance with the Act or this constitution does not invalidate the proceedings at a meeting of Security holders if the failure to do so was accidental.
- 29.4 **Joint Security Holders:** A notice may be given by the Company to the joint holders of Security by giving the notice to the joint holder named first in the register in respect of that Security.
- 29.5 **Security holder Deceased or Bankrupt:** If the holder of a Security dies or is adjudicated bankrupt, notice may be given in any manner in which notice might have been given if the death or bankruptcy had not occurred, or by giving notice in the manner provided in section 391 of the Act to the representative of the holder at the address supplied to the Company for that purpose.
- 29.6 **General:** Each notice of meeting of holders of Securities shall contain or be accompanied by sufficient explanation to enable a reasonable person to understand the effect of the resolutions proposed in the notice of meeting.
- 29.7 **Notice of Meeting for Issues and Buy backs:** The text of any resolution to be put to a meeting of the Company for the purposes of clauses 8.7, 10.2, 10.6(b)(iii), 10.7 or 11 shall be set out in the notice of the relevant meeting. The notice shall be approved by NZX and shall contain the precise terms and conditions of the specific proposal to issue, ratify the issue of, acquire, or redeem the Securities in question, or to provide financial assistance. The resolution shall not authorise any issue, acquisition, redemption or assistance which varies in any material respect from the description in the notice. In particular, as a minimum, the notice or the papers accompanying it shall state or contain so much of the following information as is applicable:
- (a) the number of Securities to be issued, acquired, or redeemed or, if the number is not known, the formula to be applied to determine the number, and the maximum number which may be issued, acquired or redeemed;
  - (b) the purpose of the issue, acquisition or redemption;
  - (c) the issue, acquisition or redemption price, or if the price is not known, the formula to be applied to determine the price, and the time or times for payment with sufficient detail to enable Security holders to ascertain the terms of issue, acquisition or redemption to or from any party;
  - (d) the party or parties to whom the Securities are to be issued, or from whom they are to be acquired, where that is known, and in all cases identifying by name any such parties who are Directors or Associated Persons of the Company or any Director;

- (e) in the case of an issue, the consideration for the issue and where that is cash, the specific purpose for raising the cash;
- (f) the period of time within which the issue, acquisition or redemption will be made;
- (g) in the case of an issue, the ranking of the Securities to be issued for any future benefit; and
- (h) in the case of a resolution under clause 8.7 authorising the giving of financial assistance, the amount and full terms of that assistance, and the party or parties to whom that assistance is to be given, identifying by name any such parties who are Directors or Associated Persons of the Company or any Director.

29.8 **Notice of Meeting for Disposal or Acquisition of Assets:** The notice of meeting containing the resolution to approve any transaction referred to in clause 23.1 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.

29.9 **Notice of Meeting for Transactions with Related Parties:** The text of any resolution to be put to a meeting of the Company for the purposes of 24.1 shall be set out in the notice of the relevant meeting. The notice shall:

- (a) be approved by NZX;
- (b) be accompanied by a certificate from the Directors (other than any Director who is interested in the transaction) certifying that the terms of the transaction are fair and reasonable to shareholders and in the best interests of the Company; and
- (c) contain such other material as is necessary to enable the holders of Securities of the Company to decide whether the transaction price and terms are fair.

## SCHEDULE 1 – DIRECTORS’ MEETINGS

All meetings of Directors of the Company shall be conducted in accordance with the Third Schedule to the Act, except where varied by the following provisions:

### 1. Procedure

- 1.1 **Meetings:** Subject to the provisions of this Schedule, the Directors may meet together for the dispatch of business, adjourn, or otherwise regulate their meetings and proceedings as they may think fit and may determine the quorum necessary for the transaction of business.
- 1.2 **Quorum:** The quorum for meetings of Directors shall be a majority of Directors unless in respect of a matter to be considered by the Board, there would be less than three Directors eligible to be counted in a quorum and vote, in which case the quorum shall be the number of Directors present at the meeting and eligible to vote on the relevant matter. No business may be transacted at a meeting of Directors if a quorum is not present. If a quorum shall not be present at a meeting then the meeting may be adjourned for at least 48 hours and notice of the day, time and place for such adjourned meeting shall be given to all Directors at least two days prior to the time of such adjourned meeting. If at that further meeting a quorum is not present within 30 minutes after the time appointed for the meeting any Director present is a quorum.
- 1.3 **Powers of Quorum:** A meeting of the Directors at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under this constitution or the Act for the time being vested in or exercisable by the Directors generally.
- 1.4 **Calling of Meeting:** The chairperson of Directors, the Managing Director or any two Directors may at any time summon a meeting of the Directors.

### 2. Notice

- 2.1 **Usual Notice for Meetings:** Every Director who is in New Zealand shall be given not less than five clear days’ notice of a meeting unless the Director waives that right. Notice may be given to a Director by:
- (a) delivery of the notice to the Director in which case the notice will be deemed to be given when delivered;
  - (b) sending the notice by facsimile transmission to the facsimile number given by the Director to the Company for the purposes of receiving notices, in which case the notice will be deemed to be given when sent; or
  - (c) posting the notice to the address given by the Director for the purpose of receiving notices, in which case the notice will be deemed to be given three days after it is posted.
- 2.2 **Urgent Meeting:** If, in the opinion of the chairperson or in his or her absence the deputy chairperson (if any) or in the absence of both, the Managing Director (if any), a meeting is required in the interests of the Company to be convened on less than five clear days’ notice, the meeting may be convened on short notice provided that:
- (a) not less than three-quarters of the Directors entitled to be given notice consent to such shorter notice; or



- (b) the chairperson, or in his or her absence the deputy chairperson (if any), or in the absence of both, the Managing Director (if any) and at least one other Director reasonably consider that by reason of extreme urgency, a meeting on short notice is required in the interests of the Company and that it is not practicable to give five clear days' notice.

In the case of a meeting convened on short notice pursuant to this clause 2.2:

- (i) a copy of the notice convening the meeting shall be given to every Director entitled to be given notice either personally or shall be sent prior to the holding of a meeting by facsimile transmission to the facsimile number given by the Director to the Company for the purposes of receiving notices, in which case the notice will be deemed to be given when sent;
- (ii) an Executive Director (if any) or in his or her absence the next most senior executive of the Company, shall use all reasonable endeavours to contact every Director either personally or by telephone prior to the holding of the meeting to try to ensure that every Director is aware that the meeting is to be held;
- (iii) every Director shall be entitled to attend the meeting telephonically or by other electronic means; and
- (iv) the business to be transacted at the meeting shall be limited to business related to the urgent matter or matters which necessitated the meeting being called on short notice.

### 3. Meeting Methods

3.1 **Telephone and video conferences:** For the purposes of this constitution the contemporaneous linking together with simultaneous audio or audio and visual means of a number of the Directors not less than the quorum, whether or not any one or more of the Directors is out of New Zealand, shall be deemed to constitute a meeting of the Directors and all the provisions in this constitution as to meetings of the Directors shall apply to such meetings by telephone so long as the following conditions are met:

- (a) All the Directors for the time being entitled to receive notice of a meeting of the Directors (including any alternate for any Director) shall be entitled to notice of such a meeting and to be linked by such means for the purposes of such meeting. Notice of any such meeting may be given by such means.
- (b) Each of the Directors taking part in such a meeting must be able to hear each of the other Directors taking part throughout the meeting.
- (c) At the commencement of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Directors of the Company to all the other Directors taking part.
- (d) A Director may not leave the meeting by disconnecting unless he or she has previously obtained the express consent of the chairperson of the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times at such a meeting unless he or she has previously obtained the express consent of the chairperson to leave the meeting as aforesaid. Neither the meeting nor any business conducted at the

meeting shall be invalidated if a Director does leave a meeting conducted in this manner without the express consent of the Chairperson.

3.2 **Minutes of telephone and vide conferences:** A minute of the proceedings at such meetings shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting.

#### 4. **Voting**

4.1 **One vote:** Questions arising at any meeting of the Directors shall be determined by vote of the Directors. On any such vote each Director shall have one vote.

4.2 **Interested Directors:** A Director shall not vote in respect of any matter in which that Director is interested, nor shall the Director be counted in the quorum for the purposes of consideration of that matter provided that a Director may vote in respect of and be counted in the quorum for the purposes of a matter in which that Director 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. In this clause, the term "interested" bears the meaning assigned to that term in section 139.

#### 5. **Chairperson**

5.1 **Election:** The Directors shall from time to time elect a chairperson and (if they think fit) a deputy chairperson and determine the period, not exceeding three years, for which they respectively are to hold office and may from time to time re-elect such chairperson or deputy chairperson for further periods not exceeding three years at any one time. The chairperson, or failing him or her the deputy chairperson (if any), shall preside at all meetings of the Directors, but if no such chairperson or deputy chairperson is present within 10 minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairperson of such meeting, and the Director so chosen shall preside at such meeting accordingly.

5.2 **No vote:** The chairperson shall not have a casting vote.

#### 6. **Committees**

6.1 **Procedure:** Any committee of Directors shall in the exercise of the powers so delegated conform to any regulation that may be imposed upon it by the Directors. Save as aforesaid the meetings and proceedings of a committee shall be governed by the provisions of this constitution regulating the proceedings and meetings of Directors, including those relating to the signing of written resolutions.

#### 7. **Defects**

7.1 **Validity:** All acts done by any meeting of the Directors or a committee of Directors or by any person acting as a Director, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid or that they or any of them were disqualified, shall be as valid as if every such person had been duly appointed and was qualified to be a Director.

#### 8. **Resolutions in lieu of meeting**

8.1 **Written resolutions:** A resolution in writing signed by all of the Directors for the time being entitled to vote on that resolution (or their alternate Directors) shall be as valid and effective as if it had been passed at a meeting of the Directors duly called and constituted. Any such resolution may consist of several documents (including

facsimile or other similar means of communication) in like form each signed or assented to by one or more Directors. A copy of any such resolution must be entered into the minute book of Board proceedings.

9. **Minutes of meetings**

9.1 **Recording:** The Directors shall cause minutes to be made in books provided for the purpose of recording:

- (a) The names of the Directors present at each meeting of the Directors and of any committee of the Directors.
- (b) All resolutions and proceedings at all meetings of the Company and of the Directors and of committees of Directors.

9.2 **Certification:** Any such minutes of any meeting of the Directors or of any committee signed by the chairperson of such meeting or by the chairperson of the next succeeding meeting as correct record of the meeting shall be prima facie evidence of the matters stated in such minutes.

10. **Vacancies and Reduction of Numbers**

10.1 **Continuing directors:** Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the number fixed by this constitution as the minimum number of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a general meeting of the Company, but for no other purpose.

## SCHEDULE 2 – SECURITY HOLDERS’ MEETING

All meetings of Security holders of the Company shall be conducted in accordance with the First Schedule to the Act, except where varied by the following provisions:

### 1. **Methods of Holding Meetings**

1.1 **Methods:** A meeting of Security holders may be held either:

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

### 2. **Meetings of Security Holders**

2.1 **Annual Meetings:** The Company shall hold annual meetings of Security holders in accordance with section 120.

2.2 **Special Meetings:** All meetings of Security holders, other than annual meetings, shall be called special meetings.

2.3 **Calling of Special Meeting:** A special meeting of Security holders entitled to vote on an issue:

- (a) may be called by the Board at any time;
- (b) shall be called by the Board on the written request of Security holders 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.

2.4 **Time and Place of Meetings:** Each meeting of Security holders shall be held at such time and place as the Board appoints.

2.5 **Equity Security holders entitled to attend:** Equity Security holders of all classes are entitled to attend meetings of Security holders and to receive copies of all notices, reports and financial statements issued generally to the holders of all Securities entitled to vote at meetings of Security holders but are not entitled to vote at any such meeting unless the terms of the relevant Equity Securities so provide.

2.6 **Meetings of Interest Groups:** A meeting of the Security holders constituting an Interest Group may be called by the Board at any time. All the provisions of this constitution relating to meetings of Security holders shall apply, with all necessary modifications, to meetings of Interest Groups, except that:

- (a) the necessary quorum for a meeting is one Security holder having the right to vote at the meeting, present in person or by Representative;
- (b) any Security holder in the relevant Interest Group, present in person or by Representative, may demand a poll; and
- (c) if the Board so elects, one meeting may be held of Security holders constituting more than one Interest Group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the Votes of the Security holders in each Interest Group.

### 3. **Notice**

- 3.1 **Written Notice:** Written notice of the time and place of a meeting of Security holders shall be sent to every Security holder entitled to receive notice of the meeting, to every Director, and to the auditor of the Company, not less than 10 Working Days before the meeting.
- 3.2 **Form of Resolutions:** So far as reasonably practicable, the resolutions to be proposed at a meeting shall be framed in a way which facilitates the giving of two way voting instructions to proxies.
- 3.3 **Waiver of Notice Irregularity:** An irregularity in a notice of a meeting is waived if all the Security holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Security holders agree to the waiver.
- 3.4 **Accidental Omission of Notice:** The accidental omission to give notice of a meeting to, or the non-receipt or late receipt of notice of a meeting by, any person entitled to receive notice, does not invalidate the proceedings at the meeting.
- 3.5 **Notice of Adjourned Meeting:** If a meeting of Security holders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clause 3.1.

### 4. **Quorum**

- 4.1 **Requirement for quorum:** Subject to clause 4.3, no business may be transacted at a meeting of Security holders if a quorum is not present.
- 4.2 **Quorum:** A quorum for a meeting of Security holders is present if:
- (d) Not less than 5 Security holders or representatives of bodies corporate who are shareholders are present; or
  - (e) Security holders or representatives of shareholders who between them hold not less than 5% of the Securities of the Company carrying voting rights are present.
- 4.3 **Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called by the Board on the written request of Security holders entitled to exercise that right, 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 Board may appoint and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Security holders or their proxies present are a quorum.

### 5. **Procedure**

- 5.1 **Regulation:** Subject to the provisions of the Act, and except as otherwise provided in this constitution, the chairperson may regulate the procedure at meetings of Security holders.

## 6. **Adjournment**

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

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

6.3 **Completion of Unfinished Business if Meeting Dissolved:** If a meeting is dissolved by the chairperson pursuant to clause 6.2, the unfinished business of the meeting shall be dealt with as follows:

- (a) in respect of a 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 a 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 uncompleted business, 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 clause 9.

## 7. **Chairperson**

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

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

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

7.4 **No casting vote:** The chairperson of a meeting of Security holders shall not have a casting vote.

## 8. Voting

8.1 **Voting at Meeting in One Place:** In the case of a meeting of Security holders held under clause 1.1(a), unless a poll is demanded in accordance with clause 9, voting at the meeting shall be by the Security holders signifying individually their assent or dissent by voice.

8.2 **Voting at Audio Visual Meeting:** In the case of a meeting of Security holders held under clause 1.1(b), unless a poll is demanded in accordance with clause 9, voting at the meeting shall be by the Security holders signifying individually their assent or dissent by voice.

8.3 **Entitlement to Vote:** A Security holder may exercise the right to vote either in person or by Representative.

8.4 **Number of Votes:** Subject to clauses 8.1 and 8.2 and to any rights or restrictions for the time being attached to any Security:

- (a) where voting is by show of hands or by voice every Security holder present in person or by Representative has one Vote;
- (b) on a poll every Security holder present in person or represented by Proxies has:
  - (i) in respect of each fully paid Security held by that Security holder, one Vote;
  - (ii) in respect of each Security held by that Security holder which is not fully paid, a fraction of the Vote or Votes which would be exercisable if that Security were fully paid equivalent to the proportion which the amount paid (excluding amounts credited as paid) on that Security bears to the total amount paid and payable thereon (excluding amounts credited as paid and amounts paid in advance of calls).

8.5 **Declaration by Chairperson:** A declaration by the chairperson of a meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 9.1.

8.6 **No Vote when Amount Owing on Security:** A Security holder is not entitled to vote at any meeting of Security holders (including a meeting of an Interest Group) in respect of any Security if any amount is due and payable on that Security by the Security holder to the Company.

## 9. Polls

9.1 **Right to Demand Poll:** At a meeting of Security holders a poll may be demanded by:

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

- 9.2 **When Poll May be Demanded:** A poll may be demanded either before or after the Vote is taken on a resolution. The demand for a poll may be withdrawn.
- 9.3 **When Poll Taken:** A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll.
- 9.4 **Poll Procedure:** A poll shall be taken in such manner as the chairperson directs and the result of the poll is deemed to be a resolution of the meeting at which the poll is demanded.
- 9.5 **Votes:** On a poll:
- (a) Votes may be given either personally or by proxy;
  - (b) Votes shall be counted according to the Votes attached to the Shares of each Security holder present in person or represented by proxy and voting in respect of those Shares;
  - (c) a Security holder need not cast all the Votes to which the Security holder is entitled and need not exercise in the same way all of the Votes which the Security holder casts.
- 9.6 **Scrutineers:** The auditors shall be scrutineers unless they are unable or unwilling to act, or the chairperson of the meeting directs otherwise, in which case the scrutineers shall be appointed by the chairperson.
- 9.7 **Declaration of Result:** The chairperson is entitled to declare the result of a poll upon receipt of a certificate from the scrutineers stating that sufficient Votes to determine the result of the resolution have been counted and setting out the basis of that determination.
10. **Proxies**
- 10.1 **Right to Appoint:** A Security holder may appoint a proxy to vote on behalf of the Security holder at a meeting of Security holders. The proxy is entitled to attend and be heard at the meeting, and to demand or join in demanding a poll, as if the proxy were the Security holder.
- 10.2 **Notice of Appointment:** A proxy shall be appointed by written notice signed by the appointing Security holder and the notice shall state whether the appointment is for a particular meeting or for a specified term. The notice shall (so far as the subject matter and form of the resolutions to be proposed at the relevant meeting reasonably permit) provide for two way voting on all resolutions, enabling the appointor to instruct the proxy as to the casting of the Vote.
- 10.3 **Proxy Form to be Sent with Notice of Meeting:** The Company shall send a form of notice of appointment of proxy to every Security holder entitled to attend and vote at a meeting, with the notice convening the meeting.
- 10.4 **Proxy Form Must Not Name Proxy:** The Company shall not issue any form of notice of appointment with a proxy named in it, either by name or by reference to an office which that proxy holds, but the Company may indicate in a footnote that certain persons or officers are willing to act as a proxy if a Security holder desires to appoint them or any of them.



- 10.5 **Production of Notice:** No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at its registered office, at such address as is specified for that purpose in the form of notice of appointment or in the notice convening the meeting, not later than 48 hours before the start of the meeting.
- 10.6 **Validity of Proxy Vote:** A Vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, or the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Security in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Company at its registered office, before the commencement of the meeting or adjourned meeting for which the proxy is appointed.
11. **Corporations may act as Representatives**
- 11.1 **Corporate Representatives:** A corporation which is a Security holder may appoint a person to attend a meeting of Security holders on its behalf in the same manner as that in which it could appoint a proxy.
12. **Votes of Joint Holders**
- 12.1 **Acceptance of Vote:** Where two or more persons are registered as the holder of a Security, the Vote of the person named first in the Share Register and voting on a matter must be accepted to the exclusion of the Votes of the other joint holders.
13. **Persons Entitled**
- 13.1 **Right to vote:** Where two or more persons are entitled to the rights of a deceased or bankrupt Security holder the right of one of them to vote shall be determined by the order in which their names appear in the probate, letters of administration, order of Court or other documents evidencing their rights.
14. **Mental Disorder**
- 14.1 **Mentally Disordered Person:** A Security holder who is mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 may vote by any person having authority to administer such person's estate. Subject to the provisions of any Court order or other order to administer property made pursuant to the Protection of Personal and Property Rights Act 1988 a Security holder may vote in respect of any shares that are subject to the order by any person appointed in that order. Any such person may vote either on a show of hands or on a poll and may vote by proxy.
- 14.2 **Application Outside New Zealand:** The provisions of this clause 14.2 apply in respect of Security holders who are not living in New Zealand and to whom the provisions of clause 14.1 are accordingly not applicable. Every such Security holder who is mentally disordered or in respect of whom an order has been made by any Court having jurisdiction in respect of such a mentally disordered person may vote whether on a show of hands or on a poll by any person in the nature of a manager appointed by that Court and any such manager appointed by that Court and any other person may on a poll vote by proxy.
15. **Security Holder Proposals**
- 15.1 **Notice:** A Security holder may give written notice to the Board of a matter the Security holder proposes to raise for discussion or resolution at the next meeting of Security holders at which the Security holder is entitled to vote.

15.2 **Text of Proposed Resolution:** If the notice is received by the Board:

- (a) not less than 20 working days before the last day on which notice of the relevant meeting of Security holders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Security holder proposal and the text of any proposed resolution to all Security holders entitled to receive notice of the meeting;
- (b) not less than five working days and not more than 20 working days before the last day on which notice of the relevant meeting of Security holders is required to be given by the Board, the Board must, at the expense of the Security holder, give notice of the Security holder proposal and the text of any proposed resolution to all Security holders entitled to receive notice of the meeting;
- (c) less than five working days before the last day on which notice of the relevant meeting of Security holders is required to be given by the Board, the Board may, if practicable, and at the expense of the Security holder, give notice of the Security holder proposal and the text of any proposed resolution to all Security holders entitled to receive notice of the meeting.

15.3 **Proxy:** If the Directors intend that Security holders may vote on the proposal by proxy or by postal vote, they must give the proposing Security holder 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 Security holder in support of the proposal, together with the name and address of the proposing Security holder.

15.4 **No Defamatory Statements:** The Board is not required to include in or with the notice given by the Board a statement prepared by a Security holder which the Directors consider to be defamatory, frivolous, or vexatious.

15.5 **Funds to company:** Where the costs of giving notice of the Security holder proposal and the text of any proposed resolution are required to be met by the proposing Security holder, the proposing Security holder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.