

TURNERS & GROWERS LIMITED

CONSTITUTION

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CONSTITUTION OF TURNERS & GROWERS LIMITED

1. INTERPRETATION

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

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

“**Alternate Director**” has the meaning set out in clause 21.1;

“**Board**” means Directors who number not less than the required quorum acting together as the board of Directors of the Company;

“**Class**” means a class of Securities having identical rights, privileges, limitations and conditions, and includes or excludes Securities which NZX in its discretion deems to be of or not of that Class;

“**Company**” means **Turners & Growers Limited**;

“**Constitution**” means this constitution, as altered from time to time;

“**Director**” means a person appointed as a director of the Company;

“**Equity Security**” means an Equity Security as defined in the Listing Rules, which has been issued, or is to be issued, by the Company, as the case may require;

“**Independent Director**” has the meaning given in the Listing Rules;

“**Listed**” has the meaning given to it in the Listing Rules;

“**Listing Rules**” means the listing rules of NZX in force from time to time;

“**Managing Director**” means a Director appointed by the Board to the office of managing director in accordance with clause 22.1 of this Constitution.

“**NZX**” means New Zealand Exchange Limited, its successors and assigns and as the context permits includes any duly authorised delegate of NZX (including NZX Discipline);

“**NZX Discipline**” has the meaning given in the Listing Rules;

“**Ordinary Resolution**” means a resolution passed by a simple majority of the votes of shareholders of the Company entitled to vote and voting on the resolution;

“**Personal Representative**” means:

- (a) in relation to a deceased individual shareholder, the executor, administrator or trustee of the estate of that shareholder;
- (b) in relation to a bankrupt individual shareholder, the assignee in bankruptcy of that shareholder; and
- (c) in relation to any other individual shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been

appointed thereunder, and a donee of an enduring power of attorney complying with that Act;

“Relevant Interest” has the meaning given to it in sections 5 and 6 of the Securities Markets Act 1988;

“Representative” means a person appointed as a proxy or representative under clause 16 or a Personal Representative;

“Ruling” has the meaning given to it in the Listing Rules;

“Security” has the meaning given to it in the Listing Rules;

“Register” means the share register of the Company required to be kept under section 87 of the Act;

“Special Resolution” means a resolution passed by a majority of 75% or more of the votes of those shareholders entitled to vote and voting on the resolution;

“Treasury Stock” means shares in the Company which have been acquired by the Company and are held by the Company as treasury stock in accordance with the Act and includes shares in the Company held by a subsidiary of the Company other than in accordance with section 82(6) of the Act.

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

- (a) the headings appear as a matter of convenience and shall not affect the construction of this Constitution;
- (b) in the absence of an express indication to the contrary, references to sections, clauses or paragraphs are to sections, clauses and paragraphs of this Constitution;
- (c) a reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or statutory instrument as from time to time amended or re-enacted or substituted;
- (d) a reference to a Listing Rule includes that Listing Rule as from time to time amended or substituted;
- (e) the singular includes the plural and vice versa and one gender includes the other genders;
- (f) the words "written" and "writing" include facsimile communications and any other means of communication resulting in permanent visible reproduction;
- (g) the word "person" includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality;
- (h) words or expressions defined in the Act or the Listing Rules have the same meaning in this Constitution except as otherwise expressly provided in this Constitution. In the event of any conflict between a word or expression defined in the Act and in the Listing Rules, the meaning in the Listing Rules will prevail unless this will result in a failure to comply with the requirements of the Act or any other legislation or regulatory requirement, where the meaning in the Act will prevail.

1.3 **Powers of shareholders:** Unless otherwise specified in the Act or this Constitution any power reserved to shareholders may be exercised, and any approval of shareholders may be given, by Ordinary Resolution.

2. THE COMPANIES ACT AND THE LISTING RULES

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

2.2 **Incorporation of Listing Rules:** While the Company is Listed, those provisions of the Listing Rules which are required to be contained or incorporated by reference in this Constitution, as they may be modified by any Ruling relevant to the Company, will be deemed to be incorporated in this Constitution and have the same effect as though they were set out in full with any necessary modification.

2.3 **Listing Rules Prevail:** While the Company is Listed, if there is any provision in this Constitution that is inconsistent with the Listing Rules relevant to the Company, the Listing Rules prevail.

2.4 **Compliance with Listing Rules:** Subject to:

- (a) the terms of any Ruling from time to time given by NZX; and
- (b) the requirements of the Act and any other applicable legislative or regulatory requirement,

the Company shall, for so long as it is Listed, comply with the Listing Rules.

2.5 **NZX rulings:** If NZX has granted a Ruling in relation to the Company authorising any act or omission which in the absence of the Ruling would be in contravention of the Listing Rules or this Constitution, that act or omission will be deemed to be authorised by the Listing Rules and this Constitution.

2.6 **Effect of failure to comply:** Failure to comply with the Listing Rules shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the failure to comply with the Listing Rules shall not be entitled to enforce that transaction or contract. This provision does not affect the rights of any holder of Securities of the Company against the Company or the Directors arising from failure to comply with the Listing Rules.

3. RIGHTS ATTACHING TO SHARES

3.1 **Existing ordinary shares:** Each ordinary share in the Company at the date of adoption of this Constitution confers on the holder the following rights (in addition to the rights set out elsewhere in this Constitution):

- (a) subject to the rights of holders of any shares or other Equity Securities which confer special rights as to dividends, the right to an equal share in dividends authorised by the Board; and
- (b) subject to the rights of holders of any shares or other Equity Securities which confer special rights as to surplus assets, the right to an equal share in the distribution of surplus assets of the Company.

- 3.2 **New shares:** Subject to clause 4, further shares in the Company (including different Classes of Equity Securities) may be issued which:
- (a) rank equally with, or in priority to, existing shares in the Company; or
 - (b) have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise; or
 - (c) confer preferential rights to distributions of capital or income; or
 - (d) confer special, limited or conditional voting rights; or
 - (e) do not confer voting rights; or
 - (f) are redeemable in accordance with section 68 of the Act; or
 - (g) are Convertible; or
 - (h) have any one or more of the rights or limitations set out in paragraphs (a) to (g).
- 3.3 **Alteration of Rights:** The issue by the Company of any further Equity Securities which rank equally with, or in priority to, any existing Equity Securities, whether as to voting rights or distributions, shall:
- (a) be permitted (subject to clause 4); and
 - (b) not be deemed to be an action affecting the rights attached to those existing Equity Securities.

4. **ISSUE OF NEW EQUITY SECURITIES**

- 4.1 **Issue of new Equity Securities:** The Board may issue Equity Securities to any person and in any number it thinks fit provided that while the Company is Listed, the issue is made in compliance with the Listing Rules. The provisions of sections 45(1) and 45(2) of the Act shall not apply to any issue or proposed issue of Equity Securities by the Company.
- 4.2 **Consolidation and subdivision of shares:** Subject to any applicable provisions of the Listing Rules, the Board may:
- (a) consolidate and divide shares or shares of any Class in proportion to those shares or the shares in that Class; or
 - (b) subdivide the shares or shares of any Class in proportion to those shares or the shares in that Class.
- 4.3 **Bonus issues:** Subject to any applicable provisions of the Listing Rules, the Board may resolve to apply any amount which is available for distribution to shareholders either:
- (a) in paying up in full shares or other Securities of the Company to be issued credited as fully paid to:
 - (i) the shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and

- (ii) if applicable, the holders of any other Securities of the Company who are entitled by the terms of issue of those Securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the shareholders, or at some time later, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any shares held by the shareholders referred to in paragraph (a)(i);
- (c) or partly as set out in paragraph (a)(i) and partly as set out in paragraph (a)(ii).

4.4 **Treasury Stock:** The transfer by the Company of Treasury Stock of the Company shall be deemed to constitute the issue of Equity Securities.

4.5 **Entitlements to Third Party Securities:** Entitlements conferred by the holding of Equity Securities of the Company, to Securities of a third party (whether or not that third party is an Issuer), shall not be created or conferred other than in compliance with this clause 4, as if such Securities comprised an issue of Equity Securities of the Company.

5. **BUYBACKS AND REDEMPTIONS OF SHARES AND FINANCIAL ASSISTANCE**

5.1 **Powers:** The Company may:

- (a) purchase or otherwise acquire shares issued by it from one or more shareholders;
- (b) purchase or otherwise acquire other Equity Securities from one or more holders;
- (c) hold any shares or other Equity Securities so purchased or acquired; and
- (d) redeem any redeemable shares or other Equity Securities held by one or more holders:
 - (i) at its option; or
 - (ii) at the option of the holder of the shares or other Equity Securities if permitted by the terms of issue; or
 - (iii) on a date specified in this Constitution or the terms of issue of the shares or other Equity Securities,

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 of the Act,

in accordance with the provisions, and subject to the restrictions, of the Act, this Constitution and the Listing Rules.

5.2 **Permitted financial assistance:** The Company shall not give financial assistance for the purpose of, or in connection with, the acquisition of any shares or other Equity Securities issued, or to be issued, by the Company unless the giving of that assistance is in accordance with the provisions of the Act and the Listing Rules.

6. **CALLS ON SECURITIES**

- 6.1 **Ability to Call:** Subject to the terms of issue of any Security, 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 6.9, a Call may be revoked or postponed at any time by the Board.
- 6.2 **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.
- 6.3 **Joint holders' liability:** The joint holders of a Security shall be jointly and severally liable to pay all calls in respect of that Security.
- 6.4 **Unpaid Calls to accrue interest:** Subject to clause 6.9, 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.
- 6.5 **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.
- 6.6 **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.
- 6.7 **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.
- 6.8 **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.

6.9 **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.

7. LIEN ON EQUITY SECURITIES

7.1 **Lien on unpaid and partly paid Equity Securities:** The Company shall have a first and paramount lien on every Equity Security which is not a fully paid Equity Security (and any dividends or other distributions in respect of that Equity Security) for:

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

7.2 **Power of sale:** If any amount due in respect of an Equity Security on which the Company has a lien is unpaid for more than 10 working days after notice in writing demanding payment has been given to the holder or the person entitled to receive notices in respect of that Equity Security:

- (a) the Company may sell the Equity Security on such terms as the Board determines; and
- (b) to give effect to any such sale, the Board may authorise any person to execute a transfer of the Equity Security to, or at the direction of, the purchaser.

7.3 **Absolute title of purchaser:** The title of a purchaser of any Equity Securities sold pursuant to clause 7.2 shall not be affected by any irregularity or invalidity in any sale.

7.4 **Application of sale proceeds:** The net proceeds of sale of any Equity Security sold pursuant to clause 7.2, after deducting expenses of sale shall be applied in and towards satisfaction of any unpaid calls, instalments or other amounts and any interest on those amounts and the balance (if any) shall be paid to the person entitled to the Equity Security at the date of sale. The remedy of any person aggrieved by such sale shall be in damages only and against the Company exclusively.

8. FORFEITURE OF SHARES

8.1 **Notice:** If a Call on an Equity Security is not paid when due, the Board may give 10 working days notice to the holder requiring payment of the Call, together with interest on the amount of the Call. The notice shall specify the place of payment and state that if the notice is not complied with the relevant Equity Security will be liable to be forfeited.

8.2 **Forfeiture:** If the notice is not complied with the Equity Security may, before payment of the overdue amount has been made, be forfeited by resolution of the Board.

8.3 **Sale of forfeited Equity Securities:** A forfeited Equity Security may be sold or otherwise disposed of on such terms and in such manner as the Board determines. To give effect to any sale or disposal the Board may authorise any person to execute any relevant documentation. The Board may, at any time before the sale or disposal, cancel the forfeiture.

8.4 **Application of sale proceeds:** The net proceeds of sale of any forfeited Equity Security shall be applied in the same manner as set out in clause 7.4.

8.5 **Absolute title of purchaser:** The title of a purchaser of a forfeited Equity Security shall not be affected by any irregularity or invalidity in the forfeiture, sale or other disposal of the Equity Security.

8.6 **Consequences of forfeiture:** A person whose Equity Securities have been forfeited shall cease to be a holder in respect of those Equity Securities and shall surrender the Equity Security certificate for cancellation but shall remain liable to the Company for all moneys due to the Company at the date of forfeiture in respect of the Equity Securities together with interest thereon.

8.7 **Evidence of forfeiture:** A statutory declaration by a Director or any other person authorised by the Board that an Equity Security has been forfeited on a specified date shall be conclusive evidence of that forfeiture.

9. TRANSFER OF EQUITY SECURITIES

9.1 **Transferor to remain holder until registration:** The transferor of an Equity Security shall remain the holder of the Equity Security until the name of the transferee is entered in the Register.

9.2 **Authorised transactions:** Any Equity Securities disposed of by an "authorised transaction" or a "stock exchange transaction" within the meaning of the Securities Transfer Act 1991 may be transferred by an instrument of transfer complying with the provisions of that Act or by an instrument complying with clause 9.4.

9.3 **Transfer executed outside New Zealand:** Where an instrument of transfer would have complied with the provisions of the Securities Transfer Act 1991 if it had been executed by the transferor in New Zealand, it may nevertheless be registered by the Company if it is executed under the common seal of a corporation as transferor or otherwise in any usual manner for execution by such a corporation, or in any other case if the signature of the transferor has been witnessed by a person who has added his or her occupation and address after his or her signature.

9.4 **Form of transfer:** Every instrument of transfer of Equity Securities not falling within clauses 9.2 and 9.3 shall comply with the following provisions:

- (a) the form of the instrument of transfer shall be any usual or common form or any other form which the Board may approve;
- (b) the instrument of transfer must be signed or executed by or on behalf of the transferor; and
- (c) where the Equity Securities being transferred are not fully paid up, the instrument of transfer must also be signed or executed by or on behalf of the transferee.

9.5 **Power to refuse to register:** The Board may decline to register any transfer of Equity Securities where:

- (a) the Company has a lien on any of the Equity Securities; or
- (b) the transfer is not accompanied by the certificate (if any) for the Equity Securities to which it relates or other evidence as the Board may reasonably require to show the right of the transferor to make the transfer; or
- (c) registration, together with the registration of any further transfer then held by the Company and awaiting registration, would result in the proposed transferee holding Equity Securities of less than a Minimum Holding,

provided that the Board resolves to exercise its powers under this clause 9.5 within 30 working days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five working days of the resolution being passed by the Board.

- 9.6 **Sale of less than Minimum Holding:** The Board may at any time give notice to any holder holding less than a Minimum Holding of Equity Securities of any Class that if at the expiration of three months after the date the notice is given the holder still holds Equity Securities which are less than a Minimum Holding, the Board may exercise the power of sale of those Equity Securities set out in this clause 9.6. If that power of sale becomes exercisable:
- (a) the Board may arrange for the sale of those Equity Securities through NZX or in some other manner approved by NZX;
 - (b) the holder 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 Company shall account to the holder for the net proceeds of sale of the Equity Securities (after deduction first of reasonable sale expenses and secondly of any unpaid calls or any other amounts owing to the Company in respect of the Equity Securities), which shall be held on trust for the holder by the Company and paid to the holder on surrender of any certificates for the Equity 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 Equity Securities, immediately upon the Company being satisfied of the holder's entitlement to the proceeds; and
 - (d) the title of a purchaser of any Equity Securities sold pursuant to this clause 9.6 shall not be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.
- 9.7 **Registration of transfers:** Every instrument of transfer shall be delivered to the Company's share registrar, together with the Equity Security certificate for the Equity Securities to be transferred. If there is no Equity Security certificate for those Equity Securities or if the Equity Security certificate has been lost, damaged or destroyed, the transferee shall provide such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer.
- 9.8 **Power to divide share register:** The Register may be divided into two or more registers kept in different places.
- 9.9 **No trusts recognised:** Except as required by law or as expressly authorised by clause 10.1, the Company shall be entitled to treat the registered holder of any Security as the absolute owner thereof and shall not, unless ordered by a court of competent jurisdiction, be liable or under any obligation to recognise any trust or equity or equitable or other claim to or interest in such Security on the part of any other person whether or not it shall have actual or other notice thereof and any such notice, if given, shall be absolutely inoperative against the Company for any purpose.
- 9.10 **Transfer of securities other than Equity Securities:** This clause 9 shall apply to transfers of Securities of the Company other than Equity Securities with any necessary modifications determined by the Board.

10. TRANSMISSION

- 10.1 **Transmission on death of holder:** If a holder of Securities dies the survivor, if the deceased was a joint shareholder, or the holder's Personal Representative, shall be the only persons recognised by the Company as having any title to or interest in the Securities of the deceased holder. Nothing in this clause 10.1 shall release the estate of a deceased joint 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.
- 10.2 **Rights of Personal Representatives:** A holder's Personal Representative:
- (a) is entitled to exercise all rights (including without limitation the rights to receive distributions, to attend meetings and to vote in person or by representative), and is subject to all limitations, attached to the Securities held by that holder; 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 paragraph (b).
- 10.3 **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.
- 10.4 **Refusal of Transfer:** Notwithstanding the provisions of clauses 10.1 to 10.3 the Board has the same right to refuse or suspend registration of a transfer of Securities as it would have had in the case of a transfer of the Securities by that holder of Securities before the appointment of the Personal Representative.

11. MEETINGS OF SHAREHOLDERS

- 11.1 **Methods of holding meetings:** A meeting of shareholders may be held either:
- (a) by a number of shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
 - (b) if determined by the Board, by a number of shareholders, who constitute a quorum, being assembled together at the date and time appointed for the meeting and at one or more venues at which, by means of audio, or audio and visual, communication all participating shareholders can simultaneously hear each other throughout the meeting.
- 11.2 **Meetings of other groups:** A meeting of the holders of Securities in an Interest Group may be called by the Board at any time, and shall be called on the written request of persons holding Securities 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 of the Interest Group in question. All the provisions of this Constitution relating to meetings of shareholders apply, with all necessary modifications, to a meeting of a group of Security holders, except that:
- (a) the necessary quorum is two persons holding, or representing the holders of, Securities in the group;
 - (b) if the Board so elects, one meeting may be held of holders constituting more than one 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 members of each group; and

- (c) any holder of Securities in the group, present in person or by Representative, may demand a poll.

12. NOTICE OF MEETINGS OF SHAREHOLDERS

- 12.1 **Written notice:** Written notice of the time, date and place of a meeting of shareholders must be sent to every shareholder entitled to receive notice of the meeting and to every Director and the auditor of the Company not less than 10 working days before the meeting.
- 12.2 **Rights of Equity Security holders and Directors:** Equity Security holders of all Classes shall be entitled to attend meetings of shareholders and to receive copies of all notices, reports and financial statements issued generally to holders of Securities carrying votes. Each Director who is not also a shareholder shall have the same rights.
- 12.3 **Contents of notice:** The notice must state:
 - (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
 - (b) the text of any special resolution to be submitted to the meeting.
- 12.4 **Irregularity in notice:** An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver. The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person will not invalidate the proceedings at the meeting.
- 12.5 **Adjourned meetings:** If a meeting of shareholders is adjourned for less than 30 days it is not necessary to give notice of the time, date and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

13. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

- 13.1 **Chairperson of the Board to act:** If the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of shareholders, that Director must chair the meeting.
- 13.2 **Other chairperson:** If no chairperson of the Board has been elected or if at any meeting of shareholders the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting or the chairperson is unwilling or unable to act, the Directors present, if any, may elect one of their number to be chairperson of the meeting. If no Director is willing to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to be chairperson.
- 13.3 **Regulation of procedure:**
 - (a) Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the proceedings at meetings of shareholders.
 - (b) Without limiting the chairperson's powers under clause 13.3(a), the chairperson has the power to:

- (i) determine all matters relating to the proper conduct of meetings, including power to ensure that the business of the meeting is not restricted by any immaterial procedural irregularities;
- (ii) preserve order in the conduct of those present at meetings;
- (iii) confine discussion to relevant matters within the scope of the meeting and reasonable limits of time;
- (iv) determine whether proposed motions, amendments and discussion items are in order;
- (v) close the discussion and move to a vote on any matter;
- (vi) determine any dispute as to the admission or rejection of a vote; and
- (vii) expel and remove from a meeting any shareholder or other person interfering unduly with the reasonable conduct of the meeting or preventing the proper transaction of business, and make all rulings necessary to give effect to these powers.

14. **QUORUM FOR MEETINGS OF SHAREHOLDERS**

14.1 **Quorum required:** Subject to clause 14.3 no business may be transacted at a meeting of shareholders if a quorum is not present.

14.2 **Size of quorum:** A quorum for a meeting of shareholders is present if six shareholders are present in person or by Representative.

14.3 **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 shareholders under section 121(b) of the Act, the meeting is dissolved;
- (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Directors may appoint and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the commencement of the meeting, the shareholders or their Representatives present will constitute a quorum.

15. **VOTING AT MEETINGS OF SHAREHOLDERS**

15.1 **Meetings in one place:** In the case of a meeting of shareholders held under clause 11.1(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson:

- (a) voting by voice; or
- (b) voting by show of hands.

15.2 **Audio-visual meetings:** In the case of a meeting of shareholders held under clause 11.1(b), unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.

15.3 **Postal votes:** Unless the Board determines otherwise, shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines

that shareholders may exercise the right to vote at a meeting by casting postal votes, the procedures in relation to postal voting shall be those set out in clause 7 of the First Schedule to the Act together with any other procedures determined by the Board.

15.4 Number of votes: Subject to the provisions of clause 15.5 and subject to any rights or restrictions attached to any shares:

- (a) where voting is by voice or a show of hands, every shareholder present in person or by Representative has one vote;
- (b) on a poll every shareholder present in person or by Representative has:
 - (i) one vote in respect of every fully paid share held by that shareholder;
 - (ii) in respect of each share held by that shareholder which is not fully paid, a fraction of the vote or votes which would be exercisable if that share was fully paid. That fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amount paid and payable (excluding amounts credited and amounts paid in advance of a call).

15.5 Voting restrictions: No shareholder shall be entitled to vote at any meeting:

- (a) in respect of shares on which any call or other moneys are due and unpaid; or
- (b) in favour of a resolution when that person is disqualified from doing so by virtue of any applicable voting restriction in the Listing Rules.

15.6 Declaration of chairperson conclusive: A declaration by the chairperson that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 15.7.

15.7 Right to demand poll: At a meeting of shareholders a poll may be demanded by:

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

For the purposes of this clause 15.7, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

15.8 Time of demand for poll: A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.

15.9 Timing of poll: The chairperson may determine the time and manner in which a poll is to be taken and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

- 15.10 **Counting of votes on poll:** If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present in person or by Representative and voting.
- 15.11 **Scrutineers:** If a poll is taken the scrutineers shall be the auditors of the Company for the time being unless they are unable or unwilling to act or unless the chairperson directs to the contrary in which case the scrutineers shall be appointed by the chairperson.
- 15.12 **Declaration of result:** The chairperson shall be entitled to declare the result of a poll upon the receipt of a certificate from the auditors setting out the maximum number of votes which could be cast at the meeting and upon receipt of notice from the scrutineers that, in the light of the auditors' certificate, sufficient votes to determine the result of the resolution have been counted. The auditors' certificate may set out the maximum number of votes which could be cast at the meeting if all persons entitled to attend and vote at the meeting did so, or it may set out the maximum number of votes which could be cast at the meeting if all persons at the meeting who are entitled to vote did vote.
- 15.13 **Chairperson has no casting vote:** In the case of an equality of votes, whether on a show of hands, voice, or on a poll, the chairperson does not have a casting vote.
- 15.14 **Votes of joint holders:** Where two or more persons are registered as the holder of a share, the vote of the person named first in the Register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.
- 15.15 **Validity of votes:** In the case of any dispute as to the admission or rejection of a vote the chairperson shall determine the same and such determination made in good faith shall be conclusive.

16. PROXIES AND CORPORATE REPRESENTATIVES

- 16.1 **Proxies permitted:** A shareholder may exercise the right to vote either by being present in person or by proxy. A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.
- 16.2 **Form of proxy:** A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.
- 16.3 **Lodging proxy:** No proxy is effective in relation to a meeting unless the proxy form is received by or on behalf of the Company at any place specified for the purpose in the notice of meeting not later than 48 hours before the start of the meeting. If the written notice appointing a proxy is signed under power of attorney, a signed certificate of non-revocation of power of attorney must accompany that notice.
- 16.4 **Validity of proxy vote:** A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, if no written notice of such death, mental disorder, revocation, or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.
- 16.5 **Corporate representatives:** A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy. A representative shall have the same rights and powers as if the representative were a proxy.

17. **MINUTES OF SHAREHOLDER MEETINGS**

The Board must ensure that minutes are kept of all proceedings at meetings of shareholders. Minutes which have been signed correct by the chairperson are prima facie evidence of the proceedings.

18. **SHAREHOLDER PROPOSALS**

A shareholder may give written notice to the Board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder is entitled to vote. The provisions of clause 9 of the First Schedule of the Act apply to any notice given pursuant to this clause.

19. **ADJOURNED MEETINGS AND DISORDERLY MEETINGS**

19.1 **Chairperson's discretion to adjourn meetings:** The chairperson may, in his or her sole discretion, at any time during the meeting adjourn from time to time and place to place (including either to a later time at the same meeting or to an adjourned meeting):

- (a) the meeting; or
- (b) any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion in relation to any of those matters.

In addition, if at any meeting a motion or proposal to adjourn the meeting has been defeated, the chairperson has an absolute discretion whether or not to accept and put to the meeting any further motion or proposal to adjourn the meeting.

19.2 **Direction to adjourn:** If directed by the meeting, the chairperson must adjourn the meeting.

19.3 **Provisions relating to adjourned meetings:** No business can be transacted at any adjourned meeting other than the unfinished business at the original meeting. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same manner as the original meeting. Otherwise, it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

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

19.5 **Completion of unfinished business:** If any meeting is dissolved by the chairperson pursuant to clause 19.4, the unfinished business of the meeting shall be dealt with as follows:

- (a) in respect of any resolution concerning the approval or authorisation of a Distribution, the Board may, in the exercise of the powers conferred on it by the Act, authorise the Distribution;
- (b) in respect of any resolution concerning the remuneration of the auditors, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the auditors;

- (c) the chairperson may direct that any item of business which is uncompleted at the meeting, and 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 clauses 15.9 to 15.15.

20. APPOINTMENT AND REMOVAL OF DIRECTORS

20.1 **Board composition:** The composition of the Board must include the following:

- (a) the minimum number of Directors (other than Alternate Directors) is three;
- (b) the maximum number of Directors (other than Alternate Directors) is nine;
- (c) at least two Directors must be ordinarily resident in New Zealand; and
- (d) while the Company is Listed, it shall have not less than the minimum number of Independent Directors prescribed by the Listing Rules.

20.2 **Independent Directors:** While the Company is Listed, the Company and the Board shall comply with the Listing Rules applicable to the appointment and identification of Independent Directors under clause 20.1(d).

20.3 **Existing Directors to continue in office:** The Directors in office at the date of adoption of this Constitution shall continue in office subject to the provisions of this Constitution.

20.4 **Appointment and removal by Ordinary Resolution:** A Director may be appointed by Ordinary Resolution. All Directors shall be subject to removal from office as Director by Ordinary Resolution.

20.5 **Appointment by Board:** Subject to clause 20.1(b), the Board may at any time appoint additional Directors. A Director appointed by the Board shall hold office only until the next annual meeting of the Company but shall be eligible for election at that meeting.

20.6 **Nominations:** No person (other than a Director retiring at a meeting) shall be elected as a Director at an annual meeting unless that person has been nominated by a Security holder entitled to attend and vote at the meeting. 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 20.6. Nominations must be received by the Company between the date three months before the date of the meeting and the date two months before the date of the meeting. The Company will make an announcement to the market no less than three months prior to the date of the proposed annual meeting advising of the opening date and closing date for Director nominations. Notice of every valid nomination received by the Company before the closing date for nominations shall be given by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of meeting and the Company shall specify in the notice of meeting the Board's view on whether or not the nominee would qualify as an Independent Director.

20.7 **Rotation:** 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 each year. The Directors to retire shall be those who have been longest in office since they were last elected or deemed elected. In the case of Directors who were last appointed Directors on the same day, those to retire shall be determined by agreement between those Directors or, if they cannot agree, by lot.

20.8 **Exceptions to rotation:** The provisions of clause 20.7 shall be read subject to the following exceptions:

- (a) a Director appointed pursuant to clause 20.5, shall not be subject to retirement by rotation and shall not be included in the number of Directors upon which the calculation of the number of Directors to retire by rotation is made;
- (b) the Managing Director shall not be subject to retirement by rotation, but shall be included in the number of Directors upon which the calculation of the number of Directors to retire by rotation is made.

20.9 **Appointment of Directors to be voted on individually:** No resolution to appoint or elect a Director (including a resolution to elect a Director under clause 20.5) shall be put to the 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 approved without a vote being cast against it.

Nothing in this clause prevents the election of two or more Directors by ballot or poll.

20.10 **Vacation of office:** A Director shall cease to hold office as a Director if the Director:

- (a) becomes bankrupt or makes an arrangement or compromise with the Director's creditors generally;
- (b) becomes disqualified from being a Director pursuant to Section 151 of the Act;
- (c) resigns from office by notice in writing to the Company;
- (d) is removed from office pursuant to this Constitution or the Act; or
- (e) has for more than six months been absent without permission of the Board from meetings of the Board held during that period.

20.11 **Timing of retirement and appointment:** If:

- (a) a Director retires at a meeting of shareholders and is not re-elected, the Director shall remain in office until, and his or her retirement shall take effect at, the conclusion of the meeting;
- (b) a Director is removed from office at a meeting of shareholders by Ordinary Resolution, the Director shall remain in office until, and his or her removal shall take effect at, the conclusion of the meeting;
- (c) a person who is not already a Director is appointed or elected as a Director at a meeting of shareholders, that person shall take office as a Director immediately after the conclusion of the meeting.

21. ALTERNATE DIRECTORS

21.1 **Appointment:** Each Director may from time to time appoint any person who is not already a Director and who is approved by a majority of the other Directors to be the Director's alternate director (an Alternate Director). No Director may appoint a deputy or agent otherwise than by way of appointment of an Alternate Director.

- 21.2 **Form of appointment and removal:** Any appointment or removal of an Alternate Director must be by notice in writing to the Company signed by the relevant Director.
- 21.3 **Rights of Alternate Director:** Each Alternate Director will be entitled to:
- (a) receive notices of all meetings of the Board if the Director who appointed the Alternate Director is known to be either outside of New Zealand or otherwise unavailable to attend meetings;
 - (b) attend and vote at any such meeting at which the Director who appointed the Alternate Director is not personally present; and
 - (c) subject to clause 23.7, in the absence of the Director who appointed the Alternate Director, perform all the functions, and exercise all the powers, of that Director.
- 21.4 **Remuneration and expenses:** Each Alternate Director's:
- (a) remuneration (if any) must be paid by the Director who appointed the Alternate Director; and
 - (b) expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties will be paid by the Company.
- 21.5 **Cessation of appointment:** An Alternate Director will cease to be an Alternate Director:
- (a) if the Director who appointed the Alternate Director ceases to be a Director or revokes the appointment (except that, solely for the purposes of this clause 21.5, a Director retiring by rotation at a meeting of shareholders who is re-elected at that same meeting shall be deemed not to have ceased to be a Director);
 - (b) on the occurrence of any event relating to the Alternate Director which, if the Alternate Director were a Director, would disqualify the Alternate Director from being a Director; or
 - (c) if a majority of the other Directors resolve to revoke the Alternate Director's appointment.

22. **MANAGING DIRECTOR**

- 22.1 **Appointment and removal:** The Board may appoint one of the Directors to the office of Managing Director for a term not exceeding five years and on such other terms as the Board thinks fit. A Managing Director may be reappointed at any time within three months before expiry of a term of appointment for a further period not exceeding five years, and that term may be likewise extended. Subject to the terms of any agreement entered into between the Board and the Director concerned, the Board may revoke the appointment. The appointment of a Managing Director shall terminate automatically if he or she ceases to be a Director. A Managing Director will receive such remuneration and benefits as the Board may determine but will not be entitled to receive any remuneration for services provided to the Company solely in that person's capacity as a Director.

22.2 **Resignation:** A Managing Director shall, subject to the provisions of any contract between him or her and the Company, be subject to the same provisions concerning resignation, removal and disqualification as the other Directors. If a Managing Director ceases to hold the office of Director from any cause he or she immediately ceases to be Managing Director.

23. PROCEEDINGS OF THE BOARD

23.1 **Methods of holding meetings:** A meeting of the Board may be held either:

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all the Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting. A Director may not leave the meeting by disconnecting unless he or she has previously obtained the express consent of the chairperson 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.

23.2 **Notice of meeting:** A Director or, if requested by a Director to do so, an employee of the Company approved by the Board for this purpose, may convene a meeting of the Board by giving notice in accordance with this clause 23.2 and clause 23.3. Each Director who is in New Zealand must be given not less than two days notice of a meeting of the Board, unless the Director waives that right or in the opinion of the chairperson or of Directors who would together constitute a quorum at the meeting, the meeting is necessary as a matter of urgency, in which event such notice as is practicable in the circumstances shall be given. Notice may be given to a Director in any of the following ways:

- (a) by delivery of the notice to the Director, in which case the notice will be deemed to be given when delivered;
- (b) by sending the notice by:
 - (i) facsimile transmission to the facsimile number given by the Director to the Company for the purpose of receiving notices, in which case the notice will be deemed to be given when sent; or
 - (ii) email to the email address given by the Director to the Company for the purpose of receiving notices, in which case the notice will be deemed to be given when sent; or
- (c) by 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.

23.3 **Contents of notice:** A notice of a meeting must specify the date, time and place of the meeting and, if the meeting is to be by means of audio or audio and visual communication, the manner in which the Director will be contacted to participate at the time of the meeting.

- 23.4 **Waiver of irregularity:** An irregularity in a notice of meeting is waived if all the Directors entitled to receive notice of the meeting attend or participate in the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- 23.5 **Quorum:** A quorum for a meeting of the Board is a majority of Directors. No business may be transacted at a meeting of the Board unless a quorum is present.
- 23.6 **Insufficient number of Directors:** The Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the minimum number fixed by clause 20.1(a), 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.
- 23.7 **Chairperson:** The Directors may elect one of their number as chairperson of the Board and determine the period for which the chairperson is to hold office. The chairperson or, in the absence of the chairperson, the deputy chairperson of the Board, will chair all meetings of the Board. If no chairperson or deputy chairperson is elected, or if at a meeting of the Board the chairperson or deputy chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, then the Directors present may elect one of their number to be chairperson of the meeting.
- 23.8 **Votes:** Subject to clauses 23.12 and 23.13 every Director has one vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or a majority of the votes cast on it are in favour of it. A Director present at a meeting of the Board may abstain from voting and will not be treated as having voted in favour of it for the purposes of the Act.
- 23.9 **Resolutions in writing:** A resolution in writing, signed or assented to by a majority of Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form, each signed or assented to by one or more Directors. A copy of any such resolution must be entered in or kept with the records of Board proceedings and a copy also sent to each of the Directors who did not sign the resolution.
- 23.10 **Minutes:** The Board must ensure that minutes are kept of all proceedings at meetings of the Board.
- 23.11 **Validity of acts:** All acts done by any meeting of the Board or of a committee of Directors or by any person acting as a Director are valid notwithstanding:
- (a) any defect in the appointment of any Director or person acting as a Director; or
 - (b) that they or any of them were disqualified;
 - (c) any irregularity in a notice of meeting.
- 23.12 **Interested Directors may not vote:** Subject to clause 23.13 a Director may not vote on a Board resolution in respect of a matter in which the Director is interested, and the Director shall not be counted in the quorum for the purposes of consideration of that matter. In this clause and clause 23.13 the word "interested" has the meaning given to that word in section 139 of the Act.
- 23.13 **Exception to voting prohibition:** Notwithstanding clause 23.12 a Director may vote in respect of and be counted in the quorum for the Board for the purposes of a matter in which the Director is interested if the 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.

23.14 **Other procedures:** Except as set out in this clause 23, the Board may regulate its own procedure. The provisions of the Third Schedule of the Act shall not apply to proceedings of the Board except to the extent that those provisions are included in this Constitution.

24. DIRECTORS' REMUNERATION

24.1 **Fixing remuneration:** No remuneration shall be paid to a Director in his or her capacity as a Director of the Company or any Subsidiary, other than a Subsidiary which is Listed (including any 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. Each such resolution shall express Directors' remuneration as a monetary sum per annum payable to either:

- (a) all Directors taken together; or
- (b) any person who from time to time holds office as a Director.

24.2 **Increase in number of Directors:** If remuneration is expressed in accordance with clause 24.1(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, 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).

24.3 **Notice of increase:** No resolution which increases the amount fixed pursuant to a previous resolution shall be approved at a meeting of the Company unless notice of the amount of increase has been given in the notice of meeting.

24.4 **Board's discretion:** If remuneration is expressed in accordance with clause 24.1(a), the remuneration may be distributed among the Directors in such manner as the Board from time to time determines.

24.5 **Executive Directors:** Executive Directors are not entitled to receive any remuneration for services as Directors. Nothing in clauses 24.1 to 24.3 and this clause, shall affect the remuneration of executive Directors in their capacity as executives.

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

24.7 **Special remuneration:** Notwithstanding clause 24.1, but subject to the Listing Rules applicable to transactions with related parties of the Company, the Board may authorise special remuneration to any Director who is or has been engaged by the Company or a Subsidiary to carry out any work or perform any services which is not in the capacity of a Director of the Company or a Subsidiary.

24.8 **Payments Upon Cessation of Office:** The Company may make a payment to a Director or former Director, or his or her dependents, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, only if the amount of the payment, or the method of calculation of the amount of that payment is authorised by an Ordinary Resolution provided that the Company

may make a payment to a Director or former Director that was in office on or before 1 May 2004 and has continued to hold office since that date, or to his or her dependents, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, without an Ordinary Resolution provided that 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 24.8 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.

24.9 **Director may hold another office or place of profit:** A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of Director for such period and on such terms (as to remuneration and otherwise) as the Board may determine and no Director or intending Director shall be disqualified from contracting with the Company either with regard to tenure of any such other office or place of profit or as vendor, purchaser, or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested be liable to be avoided nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of the Director holding that office or of the fiduciary relationship thereby established.

25. INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES

25.1 **Indemnity for Directors:** The Company is authorised to indemnify a Director or employee of the Company or a related company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act.

25.2 **Other indemnities and insurance:** The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company or a related company for any liability or costs for which the Company may effect insurance for a Director or employee under the Act. The Board may determine the amounts and the terms and conditions of any such insurance.

25.3 **Interpretation:** Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 25.

26. DISTRIBUTIONS

26.1 **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 Equity Securities, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.

26.2 **Form of Distribution:** Subject to the rights of holders of any Equity Securities in a Class, the Board may make a Distribution in such form as it thinks fit, but except as provided in clause 26.3 shall not differentiate between holders as to the form in which a Distribution is made without the prior approval of the holders of Equity Securities.

26.3 **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 Equity Securities, the register on which a holder's Equity 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.

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

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

unless the amount of the Dividend in respect of an Equity 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 Equity 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.

26.5 **Deduction of expenses:** The Directors may deduct from any Distribution due to any holder of Equity Securities all sums of money, if any, which are:

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

26.6 **Method of payment:** Any Distribution payable in cash in respect of the Equity 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 Equity 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 Equity Securities or otherwise.

26.7 **No interest:** No Distribution shall bear interest against the Company.

26.8 **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.

26.9 **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.

27. NOTICES

27.1 **Method of service:** All notices, reports, accounts or documents required to be sent to a shareholder shall be sent in the manner set out in section 391 of the Act. Notices to any other person shall be sent in the same manner as if that person was a shareholder.

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

27.3 **Joint holders:** A notice may be given by the Company to the joint holders of a Security by giving the notice to the joint holder named first in the register in respect of the Security.

28. INSPECTION OF RECORDS

Except as provided in the Act or unless the Board determines otherwise in any particular case, no holder of Securities shall be entitled to:

- (a) inspect any records, books, papers, correspondence or documents of the Company; or
- (b) require or receive any information concerning the Company's business, trading or customers, or any trade secret or secret process of or used by the Company.

29. EXECUTION OF DEEDS

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

- (a) two or more Directors;
- (b) any Director, 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 of the Act.