

This document is intended as a general overview of some of the key terms that are likely to be relevant to a New Zealand start-up. It is governed by New Zealand law and is only appropriate for use in New Zealand for limited liability companies registered in New Zealand. If any changes are made to the contents of this document, any cross-referencing may need to be updated.

It is not possible to provide comprehensive advice on the matters that may apply in the particular circumstances of your business in this document. This document is also by no means exhaustive.

If you have any queries or concerns in relation to this document, we recommend that you seek legal advice before taking any further action. No responsibility is taken for any actions taken or not taken on the basis of this document.

Constitution of [Name] Limited

Company Number [Number]

Dated

2023



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1 Definitions and Interpretation

Definitions

1.1 In this constitution the following definitions apply:

Act means the Companies Act 1993.

Alternate Director means a person appointed by a Director in accordance with clause 19.9 to act in the place of that Director.

Arm's Length Offer means the terms of the Offeror's offer or contract to acquire Shares where there is no collateral benefit passing to any Shareholder except under the terms of the offer.

Bad Leaver means any person who is a Leaver and is not a Good Leaver or an Early Leaver, provided that a Leaver who is otherwise a Bad Leaver may be re-categorised by the Board (with Investor Majority Consent) as a Good Leaver or an Early Leaver.

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

Buyer means a Shareholder who has agreed to purchase any Specified Shares in accordance with clause 10.8 or a person nominated pursuant to clause 10.12 who has agreed to purchase any Specified Shares.

Change in Control means, in relation to a company, a change in any of the following:

- (a) Control of the composition of the board of directors of the company.
- (b) Control of more than one half of the voting rights attaching to shares in the company.
- (c) Control of more than one half of the issued share capital of the company.

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

Company means [*Name of company*] Limited.

Date of Adoption means the date on which this constitution was adopted.

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

Distribution has the meaning set out in section 2(1) of the Act.

Drag Along Notice has the meaning given to that term in clause 11.1(b).

Dragged Shares has the meaning given to that term in clause 11.1(b).

Early Leaver means a Leaver who ceases to be an Employee in any of the circumstances in paragraphs (a) to (e) (inclusive) of the definition of Good Leaver within the Relevant Period, provided that a Leaver who is otherwise an Early Leaver may be re-categorised by the Board (with Investor Majority Consent) as a Good Leaver.

Effective Termination Date means the date on which the Employee's employment or consultancy terminates.

Employee means an individual who is employed by, or who provides consultancy services to, the Company or any Related Company of the Company.

Employee Shares in relation to an Employee means all Shares held by:

- (a) the Employee in question;
- (b) a Specified Trust that is principally for the benefit of the Employee in question and or his/her child, grandchild, wife or husband or Partner; and
- (c) a person that the Board declares acquired directly or indirectly from the Employee by reason of that person's relationship with the Employee, including but not limited to a child, grandchild, wife, husband, Partner or Specified Trust of the Employee.

Exiting Shareholders has the meaning given to that term in clause 12.1.

Fair Value means the fair value of the Specified Shares determined in accordance with clauses 10.13 to 10.16.

Forfeiture Event means, in relation to a Shareholder, any of the following:

- (a) Any step being taken to make that Shareholder bankrupt (if the Shareholder is an individual).
- (b) Any step being taken to appoint a receiver or liquidator of that Shareholder (if the Shareholder is a company).
- (c) Any Change in Control of that Shareholder (if the Shareholder is a company).

Good Leaver means a person who ceases to be an Employee by reason of:

- (a) death;
- (b) permanent disability or ill health which results in the Leaver being permanently unable to work;
- (c) resignation solely as a result of any of the matters referred to in paragraphs (a) and (b) above occurring to the Leaver's spouse or child;
- (d) being made redundant by the Company; or
- (e) retirement or reaching retirement age in accordance with his terms of employment, and

who, in the case of (a) to (e) above, is not an Early Leaver.

Intending Seller means a Shareholder who gives a Transfer Notice pursuant to clause 10.

Investor Majority Consent means the prior written consent of the Investor Majority.

Investor Majority means the Shareholders holding more than 50% of the Shares, excluding those Shares held by the Leaver.

Leaver means an Employee who ceases to be an employee or consultant of the Company.

Managing Director means a Director appointed to be managing director in accordance with clause 19.16.

Notice of Dispute means written notice given to the Board requiring that the Fair Value of the Specified Shares be determined pursuant to clauses 10.13 to 10.16.

Offering Shareholders has the meaning given to that term in clause 11.1(a).

Offer Price has the meaning given to that term in clause 11.3.

Offeror means any person who wishes to purchase Shares from a Shareholder(s).

Partner means in relation to a Shareholder, a person who is in a relationship in the nature of marriage or a de facto relationship (as that term is defined in the Property (Relationships) Act 1976) with that Shareholder.

Personal Representative means in relation to:

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

Proposed Sale Price means the amount an Intending Seller proposes as the sale price for the Specified Shares.

Related Company has the same meaning as defined in subsections 2(3) and 2(4) of the Act.

Relevant Period means the [4th] anniversary from the Date of Adoption.

Relevant Proportion means in respect of an Early Leaver, the lower of 100% and the amount determined by applying the following formula (expressed as a percentage):

$$100 \times (N/48)$$

Where, N is the complete number of whole calendar months that have elapsed between the Date of Adoption and the Effective Termination Date in respect of such Early Leaver provided that if N on such basis is less than 12 then N for these purposes will be deemed to be zero.

Remaining Shareholders has the meaning given to that term in clause 12.1.

Representative means a person appointed as a proxy or corporate representative under clauses 16.3 and 16.7 or a Personal Representative.

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

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

Specified Class means the Class of which the Specified Shares form part.

Specified Shares means Shares an Intending Seller intends to sell, transfer or otherwise dispose of.

Specified Trust has the meaning given to that term in clause 10.28(a).

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

Subscription and Shareholders' Agreement means the Subscription and Shareholders' Agreement entered into between *[insert names of parties]* dated *[insert date]*, as may be varied, supplemented or replaced from time to time (the intention being that this definition will refer to any agreement(s) between Shareholders relating to the Company which exist at a relevant time and which contain provisions relevant to the usage of such definition in this constitution).

Tag Along Notice means a notice given under clause 12.2.

Tag Offer Notice has the meaning set out in clause 12.1.

Tagged Shares has the meaning given to that term in clause 12.2.

Tag Price has the meaning given to that term in clause 12.6.

Transfer Notice means a transfer notice given by an Intending Seller in accordance with clause 10.

Interpretation

1.2 In this constitution, unless the context otherwise requires:

- (a) Except as specified in clause 1.1, words or expressions used in this constitution that are defined in the Act have the meaning given by the Act.
- (b) A reference to writing includes facsimile and electronic communications resulting in visible reproduction.
- (c) An expression referring to a natural person includes a company, trust, partnership, association, body corporate or public authority.
- (d) A reference to any legislation or to any provision of any legislation includes:
 - (i) That legislation or provision as from time to time amended, re-enacted or substituted.
 - (ii) Any statutory instruments, regulations, rules and orders issued under that legislation or provision from time to time.
- (e) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this constitution.
- (f) A reference to the word 'include' or 'including' is to be construed without limitation.

Conflict between the Act and this constitution

1.3 The provision, word or expression in this constitution prevails if there is any conflict between either:

- (a) A provision in this constitution and a provision in the Act that is expressly permitted to be altered by the constitution.
- (b) A word or expression defined or explained in the Act and a word or expression defined or explained in this constitution.

Conflict between the Subscription and Shareholders' Agreement and this constitution

- 1.4 If there is any conflict or inconsistency between the terms of this constitution and the Subscription and Shareholders' Agreement, then the terms of the Shareholders' Agreement will prevail.

Removal of conflict or inconsistency

- 1.5 If, and to the extent that clause 1.4 is ineffective to make the terms of the Subscription and Shareholders' Agreement prevail, then each Shareholder is to take the steps that are necessary to remove, or to procure the removal of, the conflict or inconsistency from this constitution.

2 Rights attaching to Shares

Ordinary shares

- 2.1 A Share confers on the holder the rights set out in section 36(1) of the Act.

3 Other matters relating to Shares

Board may issue Shares

- 3.1 Subject to any restrictions contained in the Subscription and Shareholders' Agreement, Act and this constitution, the Board may issue, in such classes and on such terms as the Board thinks fit, any of the following:
- (a) Shares.
 - (b) Securities that are convertible into or exchangeable for Shares.
 - (c) Options to acquire Shares.
 - (d) Redeemable Shares.

Consolidation and subdivision of Shares

- 3.2 Subject to any restrictions contained in the Subscription and Shareholders' Agreement, the Act and this constitution, the Board may do any of the following:
- (a) consolidate and divide the Shares or the Shares of any Class in proportion to those Shares or the Shares in that Class; or
 - (b) subdivide the Shares or the Shares of any Class in proportion to those Shares or the Shares in that Class.

Bonus issues

- 3.3 Subject to any restrictions contained in the Subscription and Shareholders' Agreement, the Act and this constitution, the Board may resolve to apply any amount that is available for Distribution either in paying up in full Shares or other securities of the Company to be issued credited as fully paid up to the Shareholders, or in paying up any amount that is unpaid on any Shares, or partly in one way and partly in the other.

Shares in lieu of dividends

- 3.4 Subject to any restrictions contained in the Subscription and Shareholders' Agreement, the Act and this constitution, the Board may exercise the right conferred by section 54 of the Act to issue Shares to any Shareholders who have agreed to accept the issue of Shares, wholly or partly, in lieu of proposed dividends or proposed future dividends.

Share repurchases

- 3.5 Subject to any restrictions contained in the Subscription and Shareholders' Agreement, the Act and this constitution, the Company may purchase or otherwise acquire Shares issued by it from one or more Shareholders and hold its own Shares.

4 Pre-emptive rights on issue of new Shares

Section 45 does not apply

- 4.1 Section 45 of the Act does not apply to the Company.

Offer to Shareholders

- 4.2 Unless the relevant issue is permitted by the Subscription and Shareholders' Agreement, new Shares issued by the Company must be offered to all Shareholders in proportion to the number of existing Shares held by them. The offer must be made by written notice to each Shareholder stating all of the matters set out below:
- (a) The number of Shares to which that Shareholder is entitled.
 - (b) The consideration for which the Shares will be issued and the terms on which they will be issued.
 - (c) The time (being not less than 10 working days nor more than 20 working days) within which the offer, if not accepted, will be deemed to be declined.
 - (d) That any Shareholder who wishes to acquire Shares in excess of that Shareholder's entitlement must, when accepting the offer, state the number of excess Shares the Shareholder wishes to acquire.
 - (e) That any unclaimed Shares will be used for satisfying the requests for excess Shares, upon the basis that the Shares not claimed will be allocated to those Shareholders who have indicated a wish to acquire excess Shares under clause 4.2(d) and, if there is more than one, in proportion to their respective entitlements under clause 4.2(a).
 - (f) That if any Shares remain unallocated, the Board may offer them to any person whom the Board is prepared to register as a Shareholder provided that the consideration and terms of issue are no more advantageous to that person than those offered to the Shareholders.

- 4.3 In clause 4.2, references to 'Shares' include securities that are convertible into or exchangeable for Shares, and options to acquire Shares. A reference to 'Shareholder' or 'Shareholders' includes the holder or holders of any other securities of the Company who is or are entitled by the terms of issue of such securities to participate in the issue of Shares.

Transfer of Shares by the Company

- 4.4 Clause 4.2 applies to the transfer of Shares held by the Company in itself as if the transfer was an issue of new Shares by the Company.

Approval by all Shareholders

- 4.5 Clause 4.2 will not apply to an issue of Shares approved in writing by all the Shareholders.

5 Alteration of Shareholders' rights

Special Resolution required

- 5.1 Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this constitution, the Act, or the terms on which the Shares were issued, must be approved by a Special Resolution of each interest group.

Meetings of interest groups

- 5.2 The provisions of this constitution relating to meetings of Shareholders will apply to separate meetings of the Shareholders in each interest group, except that the necessary quorum will be a Shareholder or Shareholders or their Representatives holding or representing the holders of not less than one third of the Shares of the relevant interest group. Any Shareholder in the interest group present in person or by Representative may demand a poll.

Issue of further Shares

- 5.3 The issue of further Shares ranking equally with, or in priority to, existing Shares whether as to voting rights, distribution or otherwise, is deemed not to be an action affecting the rights attaching to the existing Shares of that Class provided the issue is made in accordance with clause 4.

6 Calls on Shares

Board's power

- 6.1 The Board may, by notice in writing to a Shareholder or Shareholders, make calls in respect of all moneys unpaid on Shares and which are not, by the terms applicable to the Shares, payable at fixed times. The Board may revoke or postpone a call before payment is received.

Liability to pay

- 6.2 Each relevant Shareholder is liable (jointly and severally in the case of joint Shareholders) to pay, in accordance with the relevant notice, every call, and will remain liable to do so even if the relevant Shares are subsequently transferred.

Differential calls

- 6.3 The Board may, at the time of issue of any Shares, differentiate between the holders as to the amount of calls to be paid and the time of payment.

Instalments

- 6.4 The Board may determine that a call is payable by instalments.

Time call is made

- 6.5 A call is deemed to have been made at the time the resolution of the Board authorising the call was passed.

Interest on overdue amounts

- 6.6 A call not paid when due bears interest from the due date to the date of actual receipt by the Company at the rate fixed in the notice of call or the terms applicable to the relevant Shares or, if there is no such rate, as the Board determines. The Board may waive payment of interest wholly or in part.

Unpaid instalments

- 6.7 Any amount payable on issue of a Share or on any fixed date or as an instalment of a call, is deemed to be a call and if not paid, this clause 6 and clauses 7 and 8 will apply as if that sum had become payable by the making of a call.

Calls in advance

- 6.8 The Board may, in its discretion, receive any moneys uncalled and unpaid upon any Shares in advance of their due date, and may pay interest on the amount received at such rate (if any) and on such terms as the Board determines.

Evidence

- 6.9 In any proceedings for the recovery of moneys due in respect of any call, a statutory declaration by a Director or any other person authorised by the Board as to the matters set out below will be conclusive evidence of the indebtedness of the Shareholder to the Company in respect of the call:
- (a) The name of the Shareholder is entered in the Share register as the holder (or one of the holders) of the relevant Shares.
 - (b) The resolution making the call is recorded in the records of the Company.
 - (c) Notice of the call was sent to the Shareholder.

7 Liens on Shares

First and paramount lien

- 7.1 The Company will have a first and paramount lien in respect of each Share for all money either:
- (a) Presently payable on that Share.

- (b) Payable at a future date on that Share.
 - (c) Presently payable by the holder to the Company on any other account.
- 7.2 The lien of the Company, if any, on a Share will extend to all dividends, distributions or bonuses declared in respect of the Share. Any dividends or distributions may be either:
 - (a) Applied in reduction or satisfaction of any amount presently payable to the Company in respect of which the lien exists.
 - (b) Held in suspense by the Company to the extent of any amount payable at a future date on a Share in respect of which the lien exists.

Power of sale

- 7.3 The Company may sell, in the manner set out in clause 4 as if the sale constituted an issue of new Shares, any Share on which the Company has a lien if:
 - (a) An amount is presently payable in respect of the Share or to the Company on any other account.
 - (b) The Company demands the amount in writing, and payment is not made within 10 working days after the demand.
- 7.4 To give effect to a sale the Board may authorise a person to execute a transfer of the Share to, or at the direction of, the purchaser.

Application of purchase money

- 7.5 The purchaser will not be bound to see to the application of the purchase money paid for the Shares sold under clause 7.3.

Absolute title of purchaser

- 7.6 The title of the purchaser to any Shares sold under clause 7.3 will not be affected by any irregularity or invalidity affecting the sale or the payment of the proceeds.

Proceeds of sale

- 7.7 The Company must apply the proceeds received from the sale of any Shares sold under clause 7.3 to the amount that is presently payable to the Company when the proceeds are received. Any remaining balance will then be paid to the Shareholder whose Shares were sold under clause 7.3.

Lien under terms of issue of Shares

- 7.8 The lien provided for in clauses 7.1 and 7.2 is in addition to any lien that the Company may have under the terms of issue of the Shares, which will apply according to its terms.

8 Forfeiture of Shares

Notice

- 8.1 If a call on a Share is not paid when due, the Board may give 10 working days' notice to the Shareholder requiring payment of the call, together with interest on the amount of the call. The

notice must specify the place of payment and state that if the notice is not complied with the relevant Share will be liable to be forfeited.

Forfeiture

- 8.2 If the notice is not complied with the Share may, before payment of the overdue amount has been made, be forfeited by resolution of the Board.

Sale of forfeited Shares

- 8.3 A forfeited Share may be sold or otherwise disposed of in the manner set out in clause 4 as if it constituted an issue of new Shares. 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.

Application of sale proceeds

- 8.4 The net proceeds of sale of any forfeited Share will be applied in the same manner as set out in clause 7.7.

Absolute title of purchaser

- 8.5 The title of a purchaser of a forfeited Share will not be affected by any irregularity or invalidity in the forfeiture, sale or other disposal of the Share.

Consequence of forfeiture

- 8.6 A person whose Shares have been forfeited will cease to be a Shareholder in respect of those Shares and will surrender the Share certificate (if any) for cancellation but will remain liable to the Company for all moneys due to the Company at the date of forfeiture in respect of the Shares together with interest thereon.

Evidence of forfeiture

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

9 Transfer of Shares

Right to transfer

- 9.1 Subject to any restrictions contained in the Subscription and Shareholders' Agreement or this constitution, a Shareholder may transfer any Share by an instrument of transfer that complies with the Subscription and Shareholders' Agreement and this constitution.

Transferor to remain holder until registration

- 9.2 The transferor of a Share will remain the holder of the Share until the name of the transferee is entered in the Share register of the Company.

Form of transfer

- 9.3 Every instrument of transfer of Shares must comply with all of the following:

- (a) The form of the instrument of transfer must be any usual or common form or any other form approved by the Board.
- (b) The instrument of transfer must be signed or executed by or on behalf of the transferor.
- (c) Where the Shares being transferred are not fully paid up, the instrument of transfer must also be signed by, or on behalf of, the transferee.

Delivery to Company

- 9.4 An instrument transferring Shares must be delivered to the Company or to the agent of the Company who maintains the Share register of the Company, together with the Share certificate (if any) relating to the Shares to be transferred. If there is no Share certificate for those Shares, or if the Share certificate has been lost, destroyed or damaged, the transferee must provide such evidence as the Board or the agent reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.

Registration of transfer

- 9.5 On receipt of a form of transfer in accordance with clause 9.4, the Company must as soon as practicable enter the name of the transferee on the Share register as holder of the Shares, unless all of the following apply:
- (a) The Board resolves within 30 working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so.
 - (b) Notice of the resolution, including those reasons, is sent to the transferor and to the transferee within five working days of the resolution being passed by the Board.
 - (c) The refusal or delay in the registration is permitted by clause 9.6.

Power of Board to refuse or delay registration

- 9.6 The Board may refuse or delay the registration of a transfer of a Share for any of the reasons set out below:
- (a) The Company has a lien on the Share.
 - (b) The Share is not fully paid up.
 - (c) The form of transfer in respect of the Share relates to more than one Class.
 - (d) The form of transfer is not accompanied by the certificate for the Share to which it relates (if a certificate has been issued) or such other evidence as the Directors may reasonably require demonstrating the right of the transferor to make the transfer.
 - (e) The holder of the Share has failed to comply with the terms of any contract with the Company relating to the Share (including the Subscription and Shareholders' Agreement and this constitution).
 - (f) The Board considers that it would not be in the best interests of the Company to register the transfer of the Share.
- 9.7 The Board must refuse the registration of a transfer of any Share if the transferor has not complied with clause 10.

10 Pre-emptive rights on transfers of Shares

Transfer Notice

- 10.1 Every Shareholder who wishes to sell, transfer or otherwise dispose of any legal or beneficial interest in any Shares (other than pursuant to clause 10.25 or clause 10.28) must give a Transfer Notice in respect of those Shares to the Company.

Contents of Transfer Notice

- 10.2 The Transfer Notice must be in writing and specify all of the following:

- (a) The number of Specified Shares and the Specified Class.
- (b) The Proposed Sale Price.

Board appointed agent

- 10.3 A Transfer Notice constitutes the Board the agent of the Intending Seller for the sale of the Specified Shares in accordance with this constitution. A Transfer Notice is not revocable by the Intending Seller except as set out in clause 10.17.
- 10.4 If a Transfer Notice includes more than one Share, it will not operate as if it were a separate Transfer Notice in respect of each Share.

No obligation to sell lesser amount

- 10.5 The Intending Seller will be under no obligation to sell or transfer Shares less than all of the Specified Shares.

Offer to Shareholders

- 10.6 When the Company receives a Transfer Notice, the Board must promptly give written notice to Shareholders offering the Specified Shares as follows:
- (a) If the Specified Shares comprise all the Shares in the Specified Class, they must be offered to the holders of the Shares in all other Classes in proportion to their existing holdings in the other Class or Classes and in accordance with clauses 10.7 to 10.11.
 - (b) If the Specified Shares comprise part only of the Shares in the Class of which the Specified Shares form part, they will first be offered to the holders of the remaining Shares in that Class in proportion to their existing holding in the Specified Class and, if any of the Specified Shares remain unallocated, they will then be offered to the holders of Shares in all other Classes, in each case, in proportion to their existing holdings in the other Class or Classes and in accordance with clauses 10.7 to 10.11.

Contents of notice

- 10.7 Any notice required by clause 10.6 must state all of the matters set out below:
- (a) The number of Specified Shares that the Shareholder is entitled to purchase.
 - (b) The Proposed Sale Price.
 - (c) The time (being not less than 10 working days nor more than 20 working days) within which the offer, if not accepted in accordance with clause 10.8, will be deemed to be declined.

- (d) That if the Shareholder wishes to purchase Shares in excess of the Shareholder's entitlement, the Shareholder must, when accepting the offer, state the number of excess Shares that the Shareholder wishes to purchase.
- (e) That if the Shareholder does not accept that the Proposed Sale Price represents the value of the Specified Shares and requires the Fair Value to be determined, the Shareholder must, when accepting the offer, give a Notice of Dispute to the Board.

Acceptance of offer

10.8 Each acceptance must be in writing and state all of the following:

- (a) The number of Specified Shares the Shareholder wishes to purchase.
- (b) The number of excess Shares that the Shareholder wishes to purchase (if any).
- (c) Whether or not the Shareholder accepts the Proposed Sale Price or, alternatively, whether a Notice of Dispute accompanies the acceptance.

Allocation of unclaimed Shares to Shareholders

- 10.9 If all the Shareholders do not claim their full entitlements, the unclaimed Specified Shares must first be used to satisfy any requests for excess Shares made by Buyers in the Specified Class.
- 10.10 If there are insufficient unclaimed Specified Shares to satisfy such requests, the unclaimed Specified Shares must be allocated to the Buyers in the Specified Class who requested excess Shares in proportion to their existing holdings in the Specified Class. However, no Buyer may be allocated more excess Shares than the number requested by that Buyer.
- 10.11 If any Specified Shares remain unallocated after this process, the remaining unclaimed Specified Shares must then be used to satisfy requests for excess Shares made by Buyers in the other Class or Classes. If there are insufficient remaining Specified Shares to satisfy such requests, the unclaimed Shares must be allocated to the Buyers in the other Class or Classes in proportion to their existing holdings in the other Class or Classes. However, no Buyer may be allocated more excess Shares than the number requested by that Buyer.

Allocation of remaining unclaimed Shares

- 10.12 If any Specified Shares remain unallocated after the procedures set out in the preceding clauses have been followed, the Board may offer those Specified Shares to any person nominated by any of the following:
- (a) The holders (other than the Intending Seller) of a majority of the Shares in the Specified Class (excluding any Shares in the Specified Class that are held by the Intending Seller), where the Specified Shares comprise part only of the Shares in that Class.
 - (b) The holders (other than the Intending Seller) of a majority of the Shares in the Class or Classes of which the Specified Shares do not form part (excluding any Shares in the Class or Classes that are held by the Intending Seller), where the Specified Shares comprise all of the Shares of the Specified Class.

Determination of Fair Value

- 10.13 If a Buyer gives a Notice of Dispute, the Company must give a copy to the Intending Seller. The Fair Value must then be determined by an independent valuer appointed by the Intending

Seller and the relevant Buyer (or Buyers if more than one Buyer has given a Notice of Dispute) or, if they are unable to agree on the appointment, by the President for the time being of the New Zealand Institute of Chartered Accountants on the application of the Board.

- 10.14 The valuer must certify in writing the amount that the valuer considers to be the Fair Value of the Specified Shares, and will give written notice to the Company of that amount. In certifying the Fair Value, the valuer will act as an expert and not as an arbitrator and the Arbitration Act 1996 will not apply to the determination.
- 10.15 The Board must promptly give a copy of the valuation to the Intending Seller and the relevant Buyer or Buyers.
- 10.16 Subject to clause 10.17, one half of the costs of the valuer are to be borne by the Intending Seller and the other half by the relevant Buyer (or Buyers equally between them, if more than one Buyer has given a Notice of Dispute at the time of the appointment), unless the valuer determines otherwise.

Revocation by Intending Seller

- 10.17 If a Notice of Dispute is given in respect of any Specified Shares and the Fair Value is less than the Proposed Sale Price the Intending Seller may, within 10 working days after receiving the valuation pursuant to clause 10.15, revoke the Transfer Notice by written notice to the Board, in which event the Intending Seller will bear all the costs of determining the Fair Value. If the Intending Seller does not revoke the Transfer Notice it will remain in full force and effect.

Obligation to transfer

- 10.18 If the Board finds Buyers in respect of all of the Specified Shares within two months after receipt of a Transfer Notice, the Company will promptly give notice of that fact to the Intending Seller and the Buyers, and subject to clause 10.17, all of the following will apply:
 - (a) Each Buyer is bound to purchase the Specified Shares that the Buyer has agreed to purchase (or any lesser amount allocated by the Board to that Buyer in accordance with clauses 10.9 to 10.11) either:
 - (i) At the Proposed Sale Price, if no Buyer has given a Notice of Dispute as provided in this clause 10.
 - (ii) At the lesser of the Proposed Sale Price and the Fair Value, if a Buyer has given a Notice of Dispute.
 - (b) The Intending Seller is bound to transfer the Specified Shares to each Buyer upon payment of the price, subject to deduction and payment to the Company of any amount to which the Company is entitled under any lien on the Specified Shares.

Completion

- 10.19 If no Buyer has given a Notice of Dispute, each Buyer must pay the Proposed Sale Price for the relevant Specified Shares in cleared funds within 10 working days of receiving notice from the Company under clause 10.18.
- 10.20 Subject to the right of the Intending Seller to revoke the relevant Transfer Notice under clause 10.17, if any Buyer has given a Notice of Dispute, each Buyer must pay the price for the relevant Specified Shares in cleared funds within 15 working days of the determination of the Fair Value.

- 10.21 In return, the Intending Seller must deliver to each Buyer the signed Share transfer and relevant Share certificate (if any).

Failure to complete by Intending Seller

- 10.22 If the Intending Seller defaults under any obligation to transfer the Shares, the Board may do any of the following:
- (a) Execute a transfer on behalf of the Intending Seller.
 - (b) Receive the purchase money.
 - (c) Enter the name or names of each Buyer in the register as the holder or holders of those Shares.
 - (d) Hold the purchase money (subject to any lien in favour of the Company) in trust for the Intending Seller.
- 10.23 A Director's receipt will be a good discharge to the Intending Seller for the purchase price. No question can be raised as to the title of the Intending Seller to the Specified Shares after any Buyer is registered as the holder of those Shares.

Pre-emptive rights not exercised

- 10.24 If the Board does not find Buyers for all the Specified Shares within two months of receiving a Transfer Notice, the Intending Seller may, for a further period of three months, sell the Specified Shares to any person provided it is at a price not lower than the Proposed Sale Price and otherwise on terms no more favourable to the purchaser than the terms offered to the other Shareholders.

Transfer with Shareholder approval

- 10.25 The preceding provisions of this clause 10 do not apply to a transfer of Shares if the holders (other than the Intending Seller) of at least 75% of the Shares in each Class (excluding any Shares in the relevant Class that are held by the Intending Seller) consent in writing to the transfer.

Forfeiture Event

- 10.26 If a Forfeiture Event occurs in relation to a Shareholder, then the happening of the Forfeiture Event constitutes the giving of a Transfer Notice in respect of the Shares held by the relevant Shareholder and this clause 10 will apply accordingly.
- 10.27 The Proposed Sale Price will be the Fair Value and will be fixed prior to the offer to Shareholders, and the Intending Seller will have no right to revoke the Transfer Notice under clause 10.17.

Permitted transfers

- 10.28 Any Share may be transferred free of the restrictions in this clause 10 in all of the following circumstances:
- (a) A transfer of any Share by any Shareholder to any of the following:
 - (i) A child, grandchild, wife or husband or Partner of the Shareholder.

- (ii) A trustee of any trust that in the opinion of the Board is principally for the benefit of the Shareholder or one or more of the above persons (**Specified Trust**).
- (iii) If the Shareholder is a company, to any Related Company.
- (b) A transfer of any Share by any trustee of any Specified Trust to any beneficiary of any such Specified Trust.
- (c) A transfer of any Share by any trustee of a Specified Trust to an additional or replacement trustee of the Specified Trust (provided that there is no change to the beneficiaries of the Specified Trust).
- (d) A transfer of Shares to the Company, if made in accordance with this constitution, the Subscription and Shareholders' Agreement and the Act.
- (e) A transfer of Shares to any person with the prior unanimous consent of all of the other Shareholders.
- (f) A transfer of Shares pursuant to a Drag Along Notice (including the transfer of Shares proposed by the Offering Shareholders which entitled the Offering Shareholders to serve that Drag Along Notice) provided that the Offering Shareholders have complied with the terms of clause 11.

Prohibited actions

- 10.29 A Shareholder must not do anything (including constructing the terms of any Transfer Notice) that has the purpose or effect of undermining or circumventing the pre-emptive rights set out in this clause 10.

11 Drag along

Drag Along Notice

- 11.1 If:
- (a) a Shareholder or Shareholders holding more than 75% of the Shares (**Offering Shareholders**) wish to transfer all of their Shares to an Offeror pursuant to an Arm's Length Offer; and
 - (b) the Offeror wishes also to acquire the Shares held by all of the other Shareholders (**Dragged Shareholders**),
 - (c) then the Offering Shareholders will be entitled to require the Dragged Shareholders to transfer to the Offeror (or the Offeror's nominee) all (but not some only) of the Shares held by the Dragged Shareholders (**Dragged Shares**) in accordance with the provisions of this clause 11 by service of a notice (**Drag Along Notice**) specifying that the Dragged Shareholders are required to transfer all of their Shares at the Offer Price, and otherwise in accordance with this clause 11.

Drag Along Notice binding and irrevocable

- 11.2 A Drag Along Notice, once given, is irrevocable but both the notice and all obligations under it will lapse if for any reason the Offering Shareholders do not transfer their Shares to the Offeror (or the Offeror's nominee) within 60 working days of such notice.

- 11.3 On the giving of a Drag Along Notice, the Dragged Shareholders will each be obliged to sell their Shares to the Offeror (or its nominee) at the same price payable for each Share offered by the Offeror (**Offer Price**) and otherwise on no less favourable terms (from a vendor's perspective) applicable to the sale of Shares by the Offering Shareholders.

Completion under the Drag Along Notice

- 11.4 Completion of the sale of the Dragged Shares must take place on the date specified for that purpose by the Offering Shareholders to the Dragged Shareholders provided that the date so specified must be the same date as that proposed for completion of the sale of the shares of the Offering Shareholders and such date must not be less than 15 working days nor more than 60 working days after the date of the Drag Along Notice.
- 11.5 On completion of the sale of the Dragged Shares each Dragged Shareholder must:
- (a) sign a transfer in respect of all of their Shares in favour of the Offeror or its nominee); and
 - (b) deliver up to the Offeror (or its nominee) an executed transfer of their Shares and the relevant certificates (if any).
- 11.6 If any Dragged Shareholder fails to comply with clause 11.5, then that will constitute the appointment of the Board as the agent of such Dragged Shareholder, on a perpetual and irrevocable basis, for the purposes of transferring the Dragged Shareholder's Shares in accordance with this clause 11, and the Board may do all of the following:
- (a) Execute a share transfer on behalf of the Dragged Shareholder.
 - (b) Receive the purchase money and hold it in trust for Dragged Shareholder.
 - (c) Enter the name of the Offeror in the Company's share register as the holder of the Shares.
- 11.7 The Company (on trust for the Dragged Shareholder) will on receipt of the purchase moneys payable for the Dragged Shares, deliver such transfers to the Offeror (or its agents).
- 11.8 A Director's receipt will be a good discharge to the Dragged Shareholder for the purchase price. The parties agree that once the Offeror is recorded in the Company's share register as the holder of the Dragged Shares, the Dragged Shareholder will not, and hereby waives any claim or right it might have to, assert that it is the rightful legal or beneficial owner of, or otherwise has any interest in, the Dragged Shares.

12 Tag along

Tag Offer Notice

- 12.1 If, after first giving a Transfer Notice and going through the procedures in clause 10:
- (a) a Shareholder or Shareholders holding more than 50% of the Shares (**Exiting Shareholders**) wish to transfer all of their Shares to the Offeror pursuant to an Arm's Length Offer; and
 - (b) the Offeror does not wish also to acquire the Shares held by the other Shareholders (**Remaining Shareholders**),

- (c) then the Exiting Shareholders must prior to transferring their Shares to the Offeror serve a notice (**Tag Offer Notice**) on all the Remaining Shareholders specifying all of the following:
- (d) The number of Shares which the Exiting Shareholders propose to sell (which must be all (and not some only) of the Exiting Shareholders' Shares).
- (e) The identity of the Offeror.
- (f) The Tag Price.
- (g) Any other material terms of the proposed sale.

Tag Offer Notice binding and irrevocable

- 12.2 If a Tag Offer Notice is so given, then within 10 working days following receipt of the Tag Offer Notice, any Remaining Shareholder can by written notice require the Exiting Shareholders to procure that all of that Remaining Shareholder's Shares (**Tagged Shares**) are purchased by the Offeror or its nominee (**Tag Along Notice**) at the same price per Share and otherwise on the same terms specified in the Tag Offer Notice.
- 12.3 A Tag Along Notice, once given, is irrevocable but both the notice and all obligations under it will lapse if for any reason the Exiting Shareholders do not transfer their Shares to the Offeror (or the Offeror's nominee) within 60 working days of such notice.
- 12.4 If a Tag Along Notice is given under clause 12.1 the Exiting Shareholders will be bound to take all reasonable steps to cause the Tagged Shares to be purchased by the Offeror (or its nominee) for the Tag Price and otherwise in accordance with clauses 12.1 to 12.8.
- 12.5 If the Exiting Shareholders are unable to cause the Offeror (or its nominee) to buy all of the Tagged Shares in accordance with clause 12.4 and to complete that purchase in accordance with clauses 12.1 to 12.8, then the Exiting Shareholders will not be entitled to sell or otherwise transfer any of their Shares (or any interest in them) to the Offeror.

Tag Price

- 12.6 The purchase price for the Tagged Shares will be the price per Share to be paid to the Exiting Shareholders by the Offeror in respect of their Shares (**Tag Price**) and the sale must be on no less favourable terms (from a vendor's perspective) than those applicable to the sale of Shares by the Exiting Shareholders.

Completion under the Tag Offer Notice

- 12.7 Completion of the sale of the Tagged Shares must take place on the date specified for that purpose by the Exiting Shareholders to the Remaining Shareholders provided that the date so specified must be the same date as that proposed for completion of the sale of the shares of the Exiting Shareholders and such date must not be less than 15 working days nor more than 60 working days after the date of the Tag Along Notice.
- 12.8 On completion of the sale of the Tagged Shares each Remaining Shareholder who has given a Tag Along Notice must:
 - (a) sign a transfer in respect of all of their Shares in favour of the Offeror; and
 - (b) deliver up to the Offeror an executed transfer of their Shares and the relevant certificates (if any).

13 Transmission of Shares

Transmission on death of Shareholder

- 13.1 If a Shareholder dies, the survivor, if the deceased was a joint Shareholder, or the Shareholder's Personal Representative, will be the only person recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder. Nothing in this clause will release the estate of a deceased joint Shareholder from any liability in respect of any Share or constitute a release of any lien which the Company may have in respect of any Share.

Rights of Personal Representatives

- 13.2 A Shareholder's Personal Representative is entitled to do all of the following:
- (a) Exercise all rights (including without limitation the rights to receive distributions, to attend meetings and to vote in person or by Representative), and is subject to all limitations, attached to the Shares held by that Shareholder.
 - (b) Be registered as holder of those Shares but this registration will not affect any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative as holder of the Shares.

Joint Personal Representatives

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

Change of trustees

- 13.4 Shares in the Company registered in the name of the Personal Representative of a deceased Shareholder may be transferred to the new Personal Representative upon any change of Personal Representative of the deceased Shareholder and the provisions of clause 10 will not apply.

Transfer of Shares by Personal Representatives

- 13.5 Not later than six months after the death of the Shareholder, the Personal Representative of a deceased Shareholder must give a Transfer Notice in respect of all the Shares held by the deceased Shareholder and all the provisions of clause 10 will apply accordingly.
- 13.6 If the Personal Representative fails to give a Transfer Notice then, at the expiration of the six month period, the Personal Representative will be deemed to have given a Transfer Notice in respect of all of the Shares held by the deceased Shareholder unless the requirements of clause 13.5 have previously been waived by written notice to the Company signed by all of the Shareholders.
- 13.7 The Proposed Sale Price will be the Fair Value and will be fixed prior to the offer to the Shareholders. The Intending Seller will have no right to withdraw the Transfer Notice under clause 10.17.

14 Departing employees

Bad Leaver

14.1 If at any time an Employee becomes a Bad Leaver:

- (a) he/she will, subject to clause 14.4, be deemed to have given a Transfer Notice in respect of all the Employee Shares on the Effective Termination Date; and
- (b) the aggregate purchase price for all the Employee Shares in respect of which a Transfer Notice is deemed to have been given will be \$1.00.

Good Leaver

14.2 If a Leaver is a Good Leaver, he/she will either (as determined by the Board with Investor Majority Consent):

- (a) be allowed to retain 100% of his/her Employee Shares;
- (b) be deemed to have given a Transfer Notice in respect of all of his/her Employee Shares; or
- (c) be allowed to retain some of his/her Employee Shares and will be deemed to have given a Transfer Notice in respect of the remainder,

and, in each such case, the purchase price for any Employee Shares in respect of which he/she is deemed to have given a Transfer Notice will be their Fair Value.

Early Leaver

14.3 If a Leaver is an Early Leaver:

- (a) in respect of the Relevant Proportion of his/her Employee Shares, he/she will either (as determined by the Board with Investor Majority Consent):
 - (i) be allowed to retain such Employee Shares; or
 - (ii) be deemed to have given a Transfer Notice in respect of such Employee Shares; and
- (b) he/she will, subject to clause 14.4, be deemed to have given a Transfer Notice in respect of the remaining proportion of Employee Shares on the Effective Termination Date;
- (c) the aggregate Transfer Price for all those Employee Shares in respect of which he/she is deemed to have given a Transfer Notice pursuant to clause 14.3(b) will be \$1.00; and
- (d) the Transfer Price of any of the Relevant Proportion of his/her Employee Shares in respect of which he/she is deemed to have given a Transfer Notice pursuant to clause (a) will be their Fair Value.

General

14.4 The Board (acting with Investor Majority Consent) may determine (at their respective absolute discretions) to permit a Bad Leaver or an Early Leaver to retain any part of the Employee

Shares in respect of which he/she is deemed to give a Transfer Notice pursuant to clauses 10.13 to 10.16.

- 14.5 For the purposes of this clause 14, Fair Value will be as agreed between the Board and the relevant Employee, or failing agreement within five working days of seeking to agree such price, will be as determined in accordance with clauses 10.13 to 10.16.

Suspension of voting rights

- 14.6 All voting rights attached to Employee Shares held by a Leaver will at the Effective Termination Date be suspended unless the Board notify the Leaver otherwise.
- 14.7 Unless otherwise determined by the Board acting with Investor Majority Consent, Employee Shares held by any Leaver shall not give the holder any right to receive notice of, attend, speak at or vote at general meetings or Class meetings of the Company or to receive and vote on proposed written resolutions of the Company.

15 Meetings of Shareholders

Annual meetings

- 15.1 An annual meeting of Shareholders is to be held not later than six months after the balance date of the Company and not later than 15 months after the previous annual meeting.
- 15.2 It will not be necessary for the Board to call, or for the Company to hold an annual meeting of Shareholders under clause 15.1 if:
- (a) everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with clause 15.4; or
 - (b) both of the following requirements are satisfied:
 - (i) there is nothing required to be done at that meeting; and
 - (ii) the Board has, in reliance on section 120(5) of the Act, resolved that it is in the interests of the Company not to hold an annual meeting (having regard to whether there is any particular issue that the Shareholders should be given the opportunity to discuss, comment on, or ask questions about).

Special meetings

- 15.3 A special meeting of Shareholders entitled to vote on an issue:
- (a) may be called at any time by the Board; and
 - (b) must be called by the Board on the written request of Shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on the issue.

Resolution in lieu of meeting

- 15.4 A resolution in writing signed in accordance with section 122 of the Act is as valid as if it had been passed at a meeting of Shareholders.

Chairperson

- 15.5 If the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of Shareholders, he or she must chair the meeting.
- 15.6 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 meeting, the Shareholders present may choose one of their number to be chairperson of the meeting.

Management of the Company

- 15.7 The chairperson of a meeting of Shareholders must allow a reasonable opportunity for Shareholders at the meeting to question, discuss or comment on the management of the Company.
- 15.8 A meeting of Shareholders may pass a resolution relating to the management of the Company. A resolution relating to the management of the Company passed by a meeting of Shareholders is not binding on the Board.

Notice of meetings

- 15.9 The Company must give written notice of the time and place of a meeting of Shareholders to every Shareholder entitled to receive notice of the meeting and to every Director and any auditor of the Company not less than 10 working days before the meeting.
- 15.10 The notice must state all of the following:
- (a) The nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgement in relation to it.
 - (b) The text of any Special Resolution to be submitted to the meeting.
 - (c) The text of any resolution for the purpose of section 207I or 207J of the Act to be submitted to the meeting.
 - (d) In the case of Special Resolutions required by section 106(1)(a) or (b) of the Act, the right of a Shareholder under section 110 of the Act.
- 15.11 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.
- 15.12 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at that meeting.
- 15.13 If a meeting of Shareholders is adjourned for less than 20 working 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.

Entitlement to notice of meetings

- 15.14 The Shareholders who are entitled to receive notice of a meeting of Shareholders are:
- (a) If the Board fixes a date for that purpose, those Shareholders whose names are registered in the Share register on that date.

- (b) If the Board does not fix a date for that purpose, those Shareholders whose names are registered in the Share register at the close of business on the day immediately preceding the day on which the notice is given.

Methods of holding meetings

15.15 A meeting of Shareholders may be held by any of the following means:

- (a) By a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting.
- (b) By means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.
- (c) By a combination of both of the methods described in 15.15(a) and 15.15(b).

Quorum

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

15.17 Subject to any contrary provisions in the Subscription and Shareholders' Agreement, a quorum for a meeting of Shareholders is present in either of the following circumstances:

- (a) Where there is a sole Shareholder, that Shareholder or its Representative is present.
- (b) Where there is more than one Shareholder, two or more Shareholders or their Representatives are present who between them hold or represent the holders of a majority of the Shares in each Class.

15.18 If a quorum is not present within 30 minutes after the time appointed for the meeting, the following will apply:

- (a) In the case of a meeting called by the Board on the written request of Shareholders pursuant to 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. If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their Representatives present are a quorum.

15.19 For the avoidance of doubt, a Shareholder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.

Voting

15.20 In the case of a meeting of Shareholders assembled together in accordance with clause 15.15(a), unless a poll is demanded, voting will be by whichever of the following methods is determined by the chairperson of the meeting:

- (a) Voting by voice.
- (b) Voting by show of hands.

- 15.21 In the case of a meeting of Shareholders assembled together in accordance with clause 15.15(b) or 15.15(c), unless a poll is demanded, voting at the meeting shall be by any method permitted by the chairperson of the meeting.
- 15.22 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 15.23.

Poll

- 15.23 At a meeting of Shareholders a poll may be demanded by any of the following:
- (a) Not less than five Shareholders having the right to vote at the meeting.
 - (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.
 - (c) A Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Shares that confer that right.
 - (d) The chairperson of the meeting.
- 15.24 A poll may be demanded either before or after the vote is taken on a resolution. A demand for a poll may be withdrawn.
- 15.25 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.
- 15.26 The chairperson of a Shareholders' meeting is not entitled to a casting vote.
- 15.27 For the purposes of clauses 15.23 to 15.26, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll. A demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.

Votes of joint holders

- 15.28 Where two or more persons are registered as the holder of a Share, the vote of the person named first in the Share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

Loss of voting rights if calls unpaid

- 15.29 If a sum due to the Company in respect of a Share has not been paid, the vote attaching to that Share must not be exercised at a Shareholders' meeting other than a meeting of an interest group.

Minutes

- 15.30 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.
- 15.31 Minutes that have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

Other proceedings

- 15.32 Except as provided in this constitution or the Subscription and Shareholders' Agreement, a meeting of Shareholders may regulate its own procedure.

Shareholder participation by electronic means

- 15.33 For the purposes of this constitution, a Shareholder or its Representative, may participate in a meeting by means of audio, audio and visual, or electronic communication if:
- (a) the Board approves those means; and
 - (b) the Shareholder or its Representative complies with any conditions imposed by the board in relation to the use of those means (including, for example, conditions relating to the identity of the Shareholder or its Representative and that person's approval or authentication (including electronic authentication) of the information communicated by electronic means).
- 15.34 For the avoidance of doubt, participation in a meeting includes participation in any manner specified in this constitution.

16 Proxies and corporate representatives

Proxies

- 16.1 A Shareholder may exercise the right to vote either by being present in person or by proxy.
- 16.2 A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.
- 16.3 A proxy must be appointed by notice in writing signed by, or in the case of an electronic notice, sent by, the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.
- 16.4 A Shareholder may appoint more than one proxy for a particular meeting, provided that more than one proxy is not appointed to exercise the rights attached to a particular share held by the Shareholder.
- 16.5 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at either its registered office, or at any other address (including an email address) that is specified for that purpose in the notice convening the meeting, not later than 48 hours prior to the start of the meeting.
- 16.6 Unless written notice of the event has been received by the Company prior to the meeting, a vote given by proxy will be valid even if any of the following occurs:
- (a) The principal has died or has become mentally disordered.
 - (b) The proxy, or the authority under which the proxy was given, has been revoked.
 - (c) A transfer of the beneficial ownership of the Share in respect of which the proxy was given has occurred.

Corporations may act by corporate representatives

- 16.7 A Shareholder that is a body corporate may appoint a corporate representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy and all the provisions of this constitution that apply to a proxy will apply to the corporate representative.

17 Postal votes

Casting a postal vote

- 17.1 A Shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with clauses 17.2 to 17.8. For the avoidance of doubt, a postal vote may be cast using electronic means permitted by the Board.

Notice of meeting

- 17.2 The notice of a meeting at which Shareholders are entitled to cast a postal vote must state the name of the person authorised by the Board to receive and count postal votes at that meeting.

Authorisation

- 17.3 If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every Director is deemed to be so authorised.

Notice

- 17.4 A Shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which the Shareholder's Shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.

Duties

- 17.5 It is the duty of a person authorised to receive and count postal votes at a meeting to do all of the following:
- (a) Collect together all postal votes received by him or her or by the Company.
 - (b) In relation to each resolution to be voted on at the meeting, do all of the following:
 - (i) Count the number of Shareholders voting in favour of the resolution and the number of votes cast by each Shareholder in favour of the resolution.
 - (ii) Count the number of Shareholders voting against the resolution, and the number of votes cast by each Shareholder against the resolution.
 - (iii) Sign a certificate that he or she has carried out the duties set out in clauses 17.5(b)(i) and 17.5(b)(ii) and which sets out the results of the counts required by clauses 17.5(b)(i) and 17.5(b)(ii).
 - (iv) Ensure that the certificate required by clause 17.5(b)(iii) is presented to the chairperson of the meeting.

Chairperson

- 17.6 If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must do the following:
- (a) On a vote by show of hands, count each Shareholder who has submitted a postal vote for or against the resolution.
 - (b) On a poll, count the votes cast by each Shareholder who has submitted a postal vote for or against the resolution.

Poll

- 17.7 The chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient postal votes that he or she believes that if a poll is taken the result may differ from that obtained on a show of hands.
- 17.8 The chairperson of a meeting must ensure that a certificate of postal votes held by him or her is annexed to the minutes of the meeting.

18 Shareholder proposals

Notice to the Board

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

Notice to the Board at the Company's expense

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

Notice to the Board at the proposing Shareholder's expense

- 18.3 If the notice is received by the Board 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 Shareholders is required to be given by the Board, the Board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

Late notice

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

Written statement

- 18.5 If the Directors intend that Shareholders may vote on the proposal by Representative or by postal vote, they must give the proposing Shareholder the right to include with the notice given

by the Board a statement of not more than 1,000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.

18.6 The Board is not required to include with the notice given by the Board any of the following:

- (a) Any part of a statement prepared by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous or vexatious.
- (b) Any part of a proposal or resolution prepared by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992).

Costs

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

19 Appointment and removal of directors

Minimum number

19.1 The minimum number of Directors is two.

Directors

19.2 [On registration of the Company, the first Directors are those persons named as Directors in the application for registration of the Company. **OR** The persons holding office as Directors on the Date of Adoption continue in office and are deemed to have been appointed under this constitution.] [**Select appropriate option depending on whether the Company is being incorporated or the constitution is being adopted for the first time.**]

Appointment

19.3 Other than those Directors holding office by virtue of clause 19.2 or pursuant to the provisions of the Act, the Subscription and Shareholders' Agreement or this constitution, all Directors of the Company must be appointed by an ordinary resolution of Shareholders.

19.4 Shareholders of the Company may vote on a resolution to appoint a Director of the Company only if the resolution is for the appointment of one Director and a separate resolution is moved in respect of each Director proposed to be appointed.

19.5 Nothing in clause 19.4 prevents the election of two or more Directors by ballot or poll.

Removal

19.6 Subject to the provisions of the Subscription and Shareholders' Agreement, a Director of the Company may be removed from office by an ordinary resolution passed at a meeting called for the purpose of, or for purposes that include, the removal of the Director.

Vacation of office

19.7 A Director vacates office if any of the following occurs:

- (a) The Director resigns by notice in writing to the Company. The notice is to be effective when it is received by the Company or at a later time specified in the notice.
- (b) The Director is removed from office in accordance with clause 19.6.
- (c) The Director becomes disqualified from being a Director pursuant to section 151 of the Act.
- (d) The Director dies.

Appointment of Directors by the Board

- 19.8 Where a Director vacates office, the continuing Directors may appoint any other qualified person to hold office as a Director in that Director's place until the next annual meeting.

Alternate Directors

- 19.9 Each Director may at any time appoint any person who is not already a Director to be the Director's Alternate Director. No Director may appoint a deputy or agent otherwise than by way of appointment of an Alternate Director.
- 19.10 Any appointment or removal of an Alternate Director must be by notice in writing to the Company signed by the relevant Director.
- 19.11 A nominating Director and his or her Alternate Director will be counted as one Director for the purposes of clauses 19.1 and 20.6.
- 19.12 Unless otherwise provided by the terms of the appointment, the Alternate Director will be entitled to all of the following:
- (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.
 - (c) In the absence of the Director who appointed the Alternate Director, perform all the functions, and exercise all the powers, of that Director.
- 19.13 An Alternate Director must discharge all the duties and obligations of the Director in whose place he or she acts.
- 19.14 An Alternate Director will cease to be an Alternate Director in each of the following instances:
- (a) The Director who appointed the Alternate Director ceases to be a Director or revokes the appointment.
 - (b) 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.
- 19.15 Each Alternate Director's:
- (a) Remuneration (if any) must be paid by the Director who appointed the Alternate Director.

- (b) Expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties will be paid by the Company.

Appointment of Managing Director

- 19.16 The Board may from time to time appoint one or more Directors to be a Managing Director either for a fixed term or otherwise and on such other terms (including remuneration) as the Board determines.
- 19.17 The Board may from time to time remove any such Managing Director and appoint another or others in his or her place. Any Managing Director who is removed by resolution of the Board will have no right or claim to continue in office and his or her only remedy against the Company (if any) will be in damages.
- 19.18 Any Director holding the office of Managing Director at the Date of Adoption will continue in office.
- 19.19 Subject to the provisions of any contract between a Managing Director and the Company, a Managing Director will be subject to the same provisions concerning resignation, removal and disqualification as the other Directors.
- 19.20 If a Managing Director ceases to hold the office of Director for any reason, he or she immediately ceases to be Managing Director.

20 Directors' meetings

Third Schedule to the Act not to apply

- 20.1 The Third Schedule to the Act relating to the proceedings of a board does not apply to the Company except to the extent included in this constitution.

Notice of meeting

- 20.2 A Director or, if requested by a Director to do so, an Employee, may convene a meeting of the Board by giving notice in accordance with clause 20.3.
- 20.3 The following provisions apply in relation to meetings of the Board:
 - (a) Not less than two working days' notice of a meeting of the Board is to be sent to each Director, unless the Director waives that right.
 - (b) Notice to a Director of a meeting of the Board may be either:
 - (i) Delivered to the Director.
 - (ii) Posted to the address given by the Director to the Company for that purpose.
 - (iii) Sent by facsimile transmission to the facsimile number given by the Director to the Company for that purpose.
 - (iv) Sent by electronic means in accordance with any request made by the Director from time to time for that purpose.

- (c) A notice of meeting will specify the date, time and place of the meeting and, in the case of a meeting by means of audio, or audio and visual communication, the manner in which each Director may participate in the proceedings of the meeting.
- (d) A notice given to a Director pursuant to this clause 20.3 is deemed to be given in the following circumstances:
 - (i) In the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director.
 - (ii) In the case of posting, three days after it is posted.
 - (iii) In the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director.
 - (iv) In the case of electronic means, at the time of transmission.

20.4 An irregularity in the notice of a meeting or a failure to give notice is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors agree to the waiver.

Methods of holding meetings

20.5 A meeting of the Board may be held by any of the following means:

- (a) By a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting.
- (b) By means of audio, or audio and visual, communications by which all Directors participating and constituting a quorum can simultaneously hear each other during the meeting.

Quorum

20.6 A quorum for a meeting of the Board, other than an adjourned meeting, is a majority of the Directors.

20.7 No business may be transacted at a meeting of the Board if a quorum is not present.

Chairperson

20.8 The Directors may elect one of their number as chairperson of the Board to hold office until he or she dies or resigns or until the Directors elect a chairperson in his or her place.

20.9 If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within 10 minutes after the time appointed for the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

Voting

20.10 Every Director has one vote. An Alternate Director may not vote at a meeting if the person for whom he or she is an Alternate Director also attends.

20.11 The chairperson does not have a casting vote.

- 20.12 A resolution of the Board is passed if a majority of the votes cast on it are in favour of it.
- 20.13 A Director present at a meeting of the Board will be presumed to have voted in favour of a resolution of the Board unless he or she either:
- (a) Expressly abstains from voting.
 - (b) Dissents from or votes against the resolution.

Minutes

- 20.14 The Board must ensure that minutes are kept of all proceedings at meetings of the Board.

Written resolution

- 20.15 A resolution in writing, signed or assented to in written form by a majority of Directors (including Alternate Directors when the person for whom he or she is appointed is unable to act), is as valid as if it had been passed at a meeting of the Board duly convened and held.
- 20.16 A resolution pursuant to clause 20.15 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.
- 20.17 A copy of any such resolution must be entered in the minute book of Board proceedings. The Company must, within five working days after any resolution is passed in accordance with clause 20.15, send a copy of the resolution to each Director (other than any Director whose Alternate Director signed instead) who has not signed or consented to the resolution, but failure to do so does not invalidate the resolution.

Committees

- 20.18 A committee of Directors must, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.

Validity of actions

- 20.19 The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.

Other proceedings

- 20.20 Except as provided in this constitution, the Board may regulate its own procedure.

21 Powers of directors

Management of Company

- 21.1 Subject to any restrictions contained in the Subscription and Shareholders' Agreement, the Act and this constitution, the business and affairs of the Company must be managed by, or under the direction or supervision of, the Board.

Exercise of powers by Board

- 21.2 The Board may exercise all the powers of the Company which are not required, either by the Subscription and Shareholders' Agreement, the Act or this constitution, to be exercised by the Shareholders.

Delegation of powers

- 21.3 Subject to any restrictions contained in the Subscription and Shareholders' Agreement, the Act and this constitution, the Board may delegate to a committee of Directors, a Director, an Employee, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Act.

Appointment of attorney

- 21.4 Subject to any restrictions contained in the Subscription and Shareholders' Agreement, the Act and this constitution, the Company may exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. A power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

Ratification by Shareholders

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

22 Interested transactions

Disclosure of interests

- 22.1 A Director must comply with the disclosure requirements of section 140 of the Act and the Subscription and Shareholders' Agreement but failure to so comply with that section does not affect the validity of any contract or arrangement entered into by the Company.

Personal involvement of Directors

- 22.2 Despite any rule of law or equity to the contrary and subject to the Subscription and Shareholders' Agreement, but subject to the provisions of the Subscription and Shareholders' Agreement and sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a director is interested), section 161 of the Act (relating to director's remuneration and other benefits) and section 199(2) of the Act (prohibiting a director from acting as auditor of a company), a Director may do any of the following:
- (a) Contract with the Company in any capacity.
 - (b) Be a party to any transaction with the Company.
 - (c) Have any direct, or indirect personal involvement or interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved.

- (d) Become a director or other officer of, or otherwise interested in, any corporation promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise.
 - (e) Retain any remuneration, profit or benefits in relation to any of the matters referred to in 22.2(a) to 22.2(d),
- 22.3 No contract or arrangement of any kind referred to in clause 22.2 may be avoided by reason of a Director's interest.

Interested Directors may vote

- 22.4 A Director who is interested in a transaction entered into, or to be entered into, by the Company may do any of the following as if the Director were not interested in the transaction:
- (a) Vote on any matter relating to the transaction.
 - (b) Attend a meeting of the Board at which any matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum.
 - (c) Sign a document relating to the transaction on behalf of the Company.
 - (d) Do any other thing in his or her capacity as a Director in relation to the transaction.

23 Directors' remuneration and other benefits

Authorisation of payment or other benefit

- 23.1 The Board may only exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section.

Expenses

- 23.2 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 Indemnity and insurance

Indemnity for Directors

- 24.1 Every Director will be indemnified by the 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.

Indemnities and insurance

- 24.2 The Company may with the prior written approval of the Board do any of the following:
- (a) Indemnify a Director or Employee or a Related Company for any costs referred to in section 162(3) of the Act.

- (b) Indemnify a Director or Employee or a Related Company in respect of any liability or costs referred to in section 162(4) of the Act.
- (c) Effect insurance for a Director or Employee or a Related Company in respect of any liability or costs referred to in section 162(5) of the Act.

Definitions

- 24.3 Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 24.

25 Dividends

Power to authorise

- 25.1 Subject to the Act and this constitution, the Board may authorise the payment of dividends by the Company at times, and of amounts, and in such form as it thinks fit and may do everything that is necessary or expedient to give effect to the payment of such dividends. Prior to authorising the payment of a dividend, the Board must be satisfied on reasonable grounds that the Company will satisfy the solvency test immediately after payment of the dividend.

Method of payment

- 25.2 Any dividend or other money payable to a Shareholder may be paid by cheque sent through the post to the registered address of the Shareholder or in any other manner determined by the Board and directed by the person entitled to the payment. In the case of joint Shareholders, cheques may be sent to the registered address of the person named first on the register.

Currency of payment

- 25.3 The Board may, in its discretion, differentiate between Shareholders as to the currency in which dividends are to be paid. In exercising that discretion, the Board may have regard to the registered address of a Shareholder, the register on which a Shareholder's Shares are registered or any other matter the Board considers appropriate. In any case where a dividend is to be paid in a currency other than New Zealand currency, the amount payable will be converted from New Zealand currency in a manner, at a time and at an exchange rate determined by the Board.

Deductions

- 25.4 The Board may deduct from dividends payable to any Shareholder in respect of any Shares any of the following:
- (a) Unpaid calls, instalments or other amounts, and any interest payable on such amounts, relating to the specific Shares.
 - (b) Amounts the Company may be called upon to pay under any legislation in respect of the specific Shares.

Entitlement date

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

Unclaimed dividends

- 25.6 Dividends or other monetary distributions unclaimed for one year after having been authorised may be used for the benefit of the Company until claimed. All dividends or other monetary distributions unclaimed for five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board must at any time after such forfeiture, and subject to satisfying the solvency test, annul any such forfeiture and pay the dividend or distribution to a claimant who produces evidence of entitlement.

26 Method of contracting

Deeds

- 26.1 A deed to be entered into by the Company may be signed on behalf of the Company by any of the following:
- (a) By two or more Directors of the Company.
 - (b) If there is only one Director, by that Director whose signature must be witnessed.
 - (c) A Director, or other person or persons authorised to do so by the Board, whose signature or signatures must be witnessed.
 - (d) One or more attorneys appointed by the Company in accordance with section 181 of the Act.

Written contracts

- 26.2 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 Company's express or implied authority.

Other contracts

- 26.3 An obligation or contract may be entered into on behalf of the Company orally by a person acting under the Company's express or implied authority.

27 Liquidation

Distribution of surplus

- 27.1 Subject to the rights of any Shareholders and to clauses 27.2 and 27.3, if the Company is liquidated, the surplus assets of the Company (if any) must be distributed among the Shareholders in proportion to their shareholding. If any Shareholder's Shares are not fully paid up, the liquidator of the Company may require those Shares to be fully paid up before the Shareholder receives any distribution of surplus assets of the Company in respect of those Shares.

Distribution in kind

- 27.2 With the approval of the Shareholders by ordinary resolution, the liquidator of the Company may divide amongst the Shareholders in kind the whole or part of the assets of the Company

(whether or not they are of the same kind) and for that purpose the liquidator may do all of the following:

- (a) Attribute values to assets as the liquidator considers appropriate.
- (b) Determine how the division will be carried out as between the Shareholders or different Classes of Shareholders.

Trusts

- 27.3 With the approval of the Shareholders by ordinary resolution, the liquidator may vest the whole or any part of the surplus assets of the Company in trustees for the benefit of Shareholders. The liquidator may determine the terms of the trust.

28 Notices

Method of service

- 28.1 Any notices, reports, accounts or documents required to be sent to a Shareholder must be sent in the manner set out in section 391 of the Act. Notices to any other person must be sent in the same manner as if that person was a Shareholder.

Joint holders

- 28.2 The Company may give a notice to the joint holders of a Share in the Company by giving the notice to the joint holder named first in the Share register in respect of the Share.