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# Notice of ADOPTION, ALTERATION OR REVOCATION OF CONSTITUTION

Section 32(3) of the Companies Act 1993



\*10053517411\*

Company Name **NZ WINDFARMS LIMITED**

Company Number  
**1231708**

**SAVE TIME & POSTAGE:** Adopt or alter a constitution by uploading the new document online at [www.companies.govt.nz](http://www.companies.govt.nz).  
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The above named company has:  
[Place a tick in the appropriate box]

- adopted a constitution
- altered its constitution
- revoked its constitution
- revoked its previous constitution and adopted the attached new constitution

on **6 June 2007**

Please insert the date on which the company adopted, altered or revoked its constitution (as the case may be).

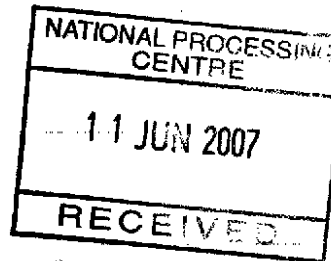
A copy of the constitution as adopted / ~~alteration to the constitution~~ is attached to this notice.  
[\*Delete if not applicable]

Signature of ~~Director~~  
Authorised Person

Date  
**8 June 2007**

Full Legal Name of ~~Director~~  
Authorised Person

**Nigel Oliver**



**11 JUN 2007  
NPC# 03**

Completed by:  
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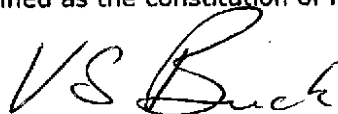
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## CONSTITUTION

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### NZ WINDFARMS LIMITED

Certified as the constitution of NZ Windfarms Limited adopted on



.....  
Name: Vicki Susan Buck  
Director  
Date: 6 June 2007

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## **1 DEFINITIONS**

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1.1 **Defined Terms:** In this constitution, unless the context otherwise requires, the following expressions have the following meanings:

"Act" means the Companies Act 1993;

"alternate director" means a person appointed and continuing for the time being as the alternate of a director as provided in this constitution;

"call" means a call by the board as provided in clause 6 for any money that is unpaid on shares;

"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 NZ Windfarms Limited;

"constitution" means this constitution as it may be altered from time to time;

"director" means a director of the Company;

"Electronic Transactions Act" means the Electronic Transactions Act 2002;

"Equity Security" means an equity security as defined in the Rules, which has been issued or is to be issued by the Company, as the case may require;

"financing statement" has the meaning given to it in the PPSA;

"Independent Director" has the meaning given to it in the Rules;

"legal requirement" has the meaning given to it in the Electronic Transactions Act;

"Listed" has the meaning given to it in the Rules;

"Minimum Holding" has the meaning given to it in the Rules;

"month" means a calendar month;

"NZX" means New Zealand Exchange Limited, its successors and assigns and as the context permits, any duly authorised delegate of NZX (including NZX Discipline (as defined in the Rules));

"ordinary share" means, subject to the provisions of and restrictions in the Rules and any restrictions in this constitution and to the terms on which any shares of any other class are issued, a share which confers on the holder the right to:

- (a) one vote at meetings of shareholders on any resolution, and on any poll thereat;
- (b) an equal share in distributions authorised by the board; and
- (c) an equal share in the distribution of the surplus assets of the Company;

"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;

"PPSA" means the Personal Property Securities Act 1999;

"Rules" means the listing rules applying to the NZSX market (or any successor of that market) operated by the NZX which are in force, as altered or varied from time to time;

"Security" has the meaning given to it in the Rules;

"security interest" has the meaning given to it in the PPSA; and

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

- 1.2 **Terms defined elsewhere:** Terms used in this constitution which have defined meanings in the Act and/or the Securities Act 1978 shall have the same meanings in this constitution unless the context requires otherwise. Terms defined in the Rules shall, where used in this constitution, have the same meaning as is given to those terms in the Rules. Where a term is defined in both the Act and the Rules, or the Securities Act 1978 and the Rules, that term shall have the same meaning as given to the term in the Rules unless this constitution expressly provides otherwise.

## **2 CONSTRUCTION**

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- 2.1 **Construction:** In this constitution, unless the context otherwise requires:

- (a) headings appear as a matter of convenience only, and do not affect the interpretation of this constitution;
- (b) any reference, other than in the Schedules to this constitution, to a clause is a reference to a clause in this constitution other than in such Schedules;
- (c) the words "include" or "including" do not imply any limitation;
- (d) the singular includes the plural and vice versa, and words importing one gender include the other genders;
- (e) the word "person" includes any association of persons whether corporate or unincorporated, and any government or state or agency or department thereof, whether or not having separate legal personality;
- (f) the words "written" or "in writing" include any means of presenting or reproducing words, figures or symbols in a tangible and visible form in any medium, or in a visible form in any medium by electronic means that enables them to be stored in permanent form and retrieved and read;
- (g) any reference to "dollars" or "\$" is a reference to New Zealand dollars;
- (h) any reference to time is a reference to New Zealand time;
- (i) any reference to any document includes all amendments, modifications and replacements thereto or thereof from time to time;
- (j) any reference to any enactment, regulations or other legislative or statutory instrument or requirement is a reference to that enactment, those regulations or

that legislative or statutory instrument or requirement as amended or modified from time to time, or to any enactment, regulations or legislative or statutory instrument or requirement re-enacted or substituted therefor;

- (k) a reference to a Rule includes that Rule as from time to time amended or substituted;
- (l) a working day shall be deemed to commence at 8.30 a.m. and terminate at 5 p.m.; and
- (m) where any act, matter or thing is to be done on a day that is not a working day, that act, matter or thing may be done on the next succeeding working day.

2.2 **Schedules:** The Schedules to this constitution form part of this constitution.

2.3 **Electronic Transactions Act:** Subject to the requirements of any law or the Rules, in the event that a legal requirement under the Act or the Rules is reproduced in or incorporated by reference into this constitution, such requirement in this constitution may be met by using electronic means in accordance with the Electronic Transactions Act in the same manner as is required by the Electronic Transactions Act to meet such requirement under the Act.

2.4 **Documents in Electronic Form;** A document that is in electronic form and communicated by electronic means to the Company is taken to be received as provided in section 11 of the Electronic Transactions Act, or as the Company and the sender otherwise agree upon in writing. For the purposes of such section of such Act, a document that is in electronic form and communicated by electronic means to a shareholder is taken to be received at the time at which it is sent if no error message is received by the information systems used by the Company to send the communication, provided that if such a communication would be taken to be received under the provisions of this clause 2.4 after 5.00 p.m. on any day in the relevant time zone in respect of which the shareholder has given its address details, it shall instead be taken to be received at 8.30 a.m. on the next following working day in that time zone.

### **3 RELATIONSHIP BETWEEN CONSTITUTION, ACT AND RULES**

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3.1 **Rights in this Constitution:** The Company, the board, each director, and each Security holder have the rights, powers, duties, and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this constitution and/or the Rules.

3.2 **Incorporation of Rules:** While the Company is Listed, those provisions of the Rules which are required by the Rules from time to time 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.

3.3 **Application of Rules:** Nothing in this constitution is intended to prohibit or restrict any action which is or may be expressly permitted by the Rules or by any Ruling relevant to the Company or the NZX to be taken by the Company, the board, each director or the holders of Securities of the Company. In the event of any inconsistency between the Rules and this constitution, the Rules as modified by any Ruling relevant to the Company shall prevail.

3.4 **Compliance with 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 must, for so long as it Listed, comply with the Rules.

- 3.5 **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 Rules or this Constitution, such act or omission will unless a contrary intention appears in this constitution be deemed to be authorised by the Rules and this constitution.
- 3.6 **Validity of Actions:** Failure to comply with the Rules or this constitution shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the failure to comply with the Rules or this constitution 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 Rules or this constitution.
- 3.7 **Applicability of Rules:** For so long as the Company is Listed, it must comply with the Rules. If the Company is not Listed, references in this constitution to provisions being subject to the Rules shall be deemed not to apply with the intention that the Company need not comply with the Rules if it is not Listed.

#### **4 RIGHTS ATTACHING TO SHARES**

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- 4.1 **Existing Ordinary Shares:** Each ordinary share in the Company at the date of adoption of this Constitution confers on the holder the rights set out in section 36 of the Act (in addition to the rights and subject to the restrictions set out elsewhere in this constitution).
- 4.2 **New Shares:** Subject to clause 5, further shares in the Company (including different Classes of shares) may be issued as the board may determine from time to time and which:
- (a) rank equally with, or in priority to, existing shares in the Company;
  - (b) have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise;
  - (c) confer preferential rights to distributions of capital or income;
  - (d) are redeemable in accordance with the Act;
  - (e) confer special, limited or conditional voting;
  - (f) do not confer voting rights; or
  - (g) are convertible with such rights or restrictions (including as to transfer in conjunction with Securities) as the board may from time to time determine.
- 4.3 **Issue of Prior or Equally Ranking Shares of Equity Shares:** The issue by the Company of any further shares or other Equity Securities which rank equally with, or in priority to, any existing shares or other Equity Securities, whether as to voting rights or distributions, shall not be deemed to be action affecting the rights attached to those existing shares or other Equity Securities.

#### **5 ISSUE OF NEW EQUITY SECURITIES**

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- 5.1 **Issue of Securities:** The board may issue 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 Rules. The provisions of sections 45(1) and 45(2) of the Act shall not apply to any issue or proposed issue of shares by the Company.
- 5.2 **Bonus Issues:** Subject to the Act, this constitution and the Rules, the board may resolve to apply any amount which is available for distribution either:



- (a) **Paying up Securities:** in paying up in full Securities of the Company to be issued credited as fully paid to the Security holders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; or
- (b) **Paying Unpaid Amounts:** in paying up any amount which is unpaid on any shares held by the Security holders referred to in clause 5.2(a).

or partly in one way and partly in the other.

5.3 **Consolidation, Division And Subdivision of Shares:** Subject to any applicable provisions of the Rules, the board may authorise:

- (a) **Consolidation and Division:** the consolidation and division of the Equity Securities of the Company or any Class of shares in proportion to those shares or the shares in that Class; and
- (b) **Subdivision:** the subdivision of the shares or any class of shares in proportion to those shares or the shares in that Class.

## **6 CALLS ON SECURITIES**

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- 6.1 **Ability to Call:** The directors may from time to time make calls upon the holders of Securities in respect of any money which is unpaid on their Securities and which is not by the conditions of allotment made payable at a fixed time or times, provided that no call shall be payable less than one month from the date fixed for the payment of the last preceding call. Subject to receiving at least 14 days' notice specifying the time or times and place of payment, each holder of Securities shall pay to the Company at the time or times and place so specified the amount called on their Securities. A call may be reduced, revoked or postponed as the directors may determine.
- 6.2 **Call Deemed Made:** A call shall be deemed to have been made at the time when the resolution of the directors 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 accordance with the relevant notice, notwithstanding the subsequent transfer of the relevant Security.
- 6.4 **Interest:** If a sum called in respect of a Security is not paid before or on the day appointed for payment thereof the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate as the directors (acting reasonably) may determine, but the directors shall be at liberty to waive payments of that interest wholly 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 **Unpaid Instalments:** Any amount payable on issue of a Security or on any fixed date or as an instalment of a call shall be deemed to be a call and if not paid, the provisions of this clause 6 and clauses 7 and 8 shall apply as if that sum had become payable by the making of a call.
- 6.7 **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.

- 6.8 **Directors' Discretion to Differentiate:** Calls may be made in respect of certain Securities and not others and for different amounts in respect of certain Securities. The directors may on the issue of Securities differentiate between the holders as to the amounts to be paid and the times of any calls or payment.
- 6.9 **Payments in Advance:** The directors may if they think 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 directors 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 directors may decline to pay any interest. The directors may at any time repay the amount so advanced upon giving to the holder of Securities three months' notice in writing.

## **7 FORFEITURE OF SECURITIES**

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- 7.1 **Notice from Directors:** If a holder of a Security fails to pay any call or instalment on the day appointed for payment thereof the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid together with any interest which may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment.
- 7.2 **Due Date Specified:** The notice shall name a further day (not earlier than the expiration of 14 days from the date of the notice) on or before which the payment required by the notice is to be made and shall state that in the event of non-payment at or before the time appointed the Securities in respect of which the call was made will be liable to be forfeited.
- 7.3 **Directors' Resolution:** If the requirements of any such notice as aforesaid are not complied with, any Security in respect of which the notice has been given may at any time thereafter before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited Securities and not actually paid before the forfeiture.
- 7.4 **Note on Register:** When any Security shall have been so forfeited notice of the resolution shall be given to the holder in whose name it stood immediately prior to the forfeiture; and an entry of the forfeiture, with the date thereof, shall forthwith be made in the Register, and the holder in whose name such cancelled Security stood immediately prior to such cancellation shall return any certificate for such Security so forfeited to the Company within 14 days of receiving notice of such resolution as aforesaid; such certificate to be cancelled by the Company immediately after the aforesaid resolution regardless of whether the certificate has been returned.
- 7.5 **Sale of Forfeited Security:** Subject to clause 7.9, a forfeited Security may be sold or otherwise disposed of on such terms and in such manner as the directors think fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.
- 7.6 **Liability Remains Following Sale:** A person whose Securities have been forfeited shall cease to be a holder in respect of the forfeited Securities, but shall, nevertheless, remain liable to pay to the Company all money which at the date of forfeiture was payable by that holder to the Company in respect of the Securities but that holder's liability shall cease if and when the Company receives payment in full of all such money in respect of the Securities.
- 7.7 **Non-payment:** The provisions of this constitution as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a Security becomes payable at a

fixed time on account of the issue price of the Security as if the same had been payable by virtue of a call duly made and notified.

- 7.8 **Accounting for Proceeds:** If Securities are forfeited and sold, or are sold to enforce a lien, any residue after the satisfaction of unpaid calls, instalments, premiums or other amounts and interest thereon, and expenses, shall be paid to the previous holder, or to the personal representatives or assigns of the previous holder.
- 7.9 **Evidence of Forfeiture:** A certificate under the hand of a director and countersigned by a second director that the power of sale hereinbefore mentioned has arisen and is exercisable by the Company under this constitution, or that a Security in the Company has been duly forfeited on the date stated therein, shall be conclusive evidence of the facts stated therein.
- 7.10 **Authority to Transfer:** For giving effect to any such sale after forfeiture or for enforcing a lien in purported exercise of the powers hereinbefore given the directors may authorise any person to transfer the Securities sold to the purchaser thereof. The purchaser shall be registered as the holder of the Securities comprised in any such transfer and he shall not be bound to see to the application of the purchase money nor shall such purchaser's title to the Securities be affected by any irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively. If the certificate for forfeited Securities is not delivered up to the Company the directors may issue a new certificate distinguishing it as they think fit from the certificate not delivered up.
- 7.11 **Restriction on Forfeiture:** Equity Securities shall not be liable to forfeiture for the failure of persons entitled thereto (by transmission or otherwise) to submit evidence of title within a specified time.

## **8 LIEN ON SECURITIES**

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- 8.1 **Lien:** The Company shall have a first and paramount lien upon all the Securities registered in the name of each holder of Securities whether solely or jointly with others and upon the proceeds of sale thereof, and on distributions from time to time declared in respect of such Securities for:
- (a) unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, relating to the specific Securities; and
  - (b) such amounts as the Company may be called upon to pay under any legislation in respect of the specific Securities,
- and for the purpose of giving better effect to the provisions of this clause each holder of Securities irrevocably appoints the Company and each officer of the Company as attorney for that holder authorising the Company to complete an assignment to the Company of any moneys owing by that holder under the provisions of this clause and each holder agrees to ratify and confirm any act carried out by the Company in that behalf.
- 8.2 **Sale of Securities Subject to Lien:** The Company may sell in such manner as the directors think fit any Securities on which the Company has a lien but no sale shall be made unless a sum in respect of which the lien exists is presently payable nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable has been given to the registered holder for the time being of the Securities or the person entitled thereto by reason of his or her death or bankruptcy.
- 8.3 **Absolute Title of Purchaser:** The title of a purchaser of any Security sold pursuant to clause 8.2 shall not be affected by any irregularity or invalidity in any sale.
- 8.4 **Application of Sale Proceeds:** The net proceeds of sale of any Security sold pursuant to clause 8.2 after deducting unpaid calls, instalments, premiums or other amounts outstanding in relation to such Security and interest thereon, and 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 previous owner or their personal representative. The remedy of any person aggrieved by such sale shall be in damages only and against the Company exclusively.

- 8.5 **Certificate:** A certificate signed by a director that a Security has been duly forfeited on a specified date or that any power of sale or other disposal has arisen and is exercisable by the Company under this constitution in respect of such Security shall, in the absence of manifest error or fraud, be conclusive evidence of the facts contained in that certificate.

## 9 DISTRIBUTIONS

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- 9.1 **Dividends:** In determining for the purposes of section 53(2) of the Act the amount paid to the Company in satisfaction of the liability of a shareholder under this constitution or under the terms of issue of a share:
- (a) any amount advanced by the shareholder in accordance with clause 6.9 shall not, while it remains as an advance, be taken into account; and
  - (b) the amount of the dividend shall be in proportion to the amount paid to the Company in satisfaction of such liability during any part(s) of the period in respect of which the dividend is authorised, provided that if any share is issued on terms which include the right to participate in dividends only as from a particular date that share shall participate in dividends accordingly.
- 9.2 **Deductions:** The board:
- (a) may deduct from any distribution payable to any shareholder, the amount of any money which the shareholder fails to pay as required under this constitution, and apply any such deduction in reduction thereof; and
  - (b) must deduct from any distribution payable to any shareholder any amount which the board is required by law to deduct.
- 9.3 **Interest:** A distribution shall not bear interest against the Company.
- 9.4 **Payment:** A distribution payable in cash may be paid in such manner as the board thinks fit to the relevant shareholder, or, where two or more persons are registered as the holder of shares, to the person named first in the share register, or to such other person and in such manner as the shareholder or joint holders of such shares, as the case may be, may in writing direct. Any one of two or more joint holders of shares may give a receipt for any payment in respect of such shares and that receipt shall be a full discharge to the Company for that payment.
- 9.5 **Currency:** 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.
- 9.6 **Use by Company:** Any distribution by the Company that has not been claimed within one year after having become payable may be invested or otherwise made use of by the board for the benefit of the Company until it is claimed. The Company shall be entitled to mingle the amount of any such distribution with any other money of the Company or spend the amount of any such distribution, and shall not be required to hold or regard it as being impressed with any trust for any potential claimant.
- 9.7 **Forfeiture:** Any distribution by the Company that has not been claimed within five years after having become payable may be forfeited by resolution of the board for the benefit of the Company. The board may at any time after such forfeiture cancel the forfeiture and

pay the distribution to any person producing evidence satisfactory to the board of that person's entitlement to the distribution.

## **10 SECURITY INTEREST TO COMPANY**

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The creation of or provision for each of the interests and rights in favour of the Company under clauses 7 and 8 constitutes the creation of or provision for a security interest to the Company, in respect of which the Company may register one or more financing statements in terms of the PPSA.

## **11 ACQUISITION OF COMPANY'S OWN SHARES**

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The Company may, in accordance with the provisions and restrictions of the Act and the Rules:

- (a) **Buyback:** purchase or otherwise acquire Securities issued by the Company from one or more shareholders;
- (b) **Differential Buyback:** make an offer to one or more Security holders to acquire Securities issued by the Company, in such number or proportions as it thinks fit including other than on a pro-rata basis;
- (c) **Holding Own Shares:** hold any Securities issued by the Company that it has purchased or acquired; and
- (d) **Redemption:** exercise an option to redeem Securities issued by the Company in relation to one or more holders of Securities of the Company other than on a pro-rata basis.

## **12 FINANCIAL ASSISTANCE**

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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 done in accordance with the provisions of the Act and the Rules.

## **13 TRANSFER OF SECURITIES**

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- 13.1 **Right to Transfer:** Subject to any restrictions contained in this constitution and the terms of issue of any Security that is not Listed, a Security holder may transfer any Security:
- (a) by an instrument of transfer which complies with this constitution; or
  - (b) under a system of transfer approved under section 7 of the Securities Transfer Act 1991 which is applicable to the Company.
- 13.2 **Securities Transfer Act:** A Security which is disposed of in a transaction to which the provisions of the Securities Transfer Act 1991 apply may be transferred in accordance with the provisions of that Act. Where an instrument of transfer executed by a transferor outside New Zealand would have complied with the provisions of that Act if it had been executed in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Company.
- 13.3 **Other Forms of Transfer:** An instrument of transfer of Securities to which the provisions of clause 13.1 are not applicable shall:
- (a) be in any common form or any other form approved by the Company;
  - (b) be signed or executed by or on behalf of the transferor; and

- (c) if registration as holder of the Security imposes a liability on the transferee, be signed or executed by or on behalf of the transferee.
- 13.4 **Delivery to Company:** An instrument transferring Securities must be delivered to the Company together with such evidence (if any) as the Company reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Securities.
- 13.5 **Permitted Transfer Restrictions:** Subject to section 84 of the Act and the Rules, the Company may decline to accept or register:
- (a) a transfer of a Security on which the Company has a lien; or
  - (b) a transfer of Securities if such registration, together with the registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the proposed transferee holding Securities of less than the Minimum Holding.
- 13.6 **Documentation:** Subject to the provisions of this constitution and the Rules, the Company shall not:
- (a) require any documentation relating to transfers other than to establish an entitlement to transfer; or
  - (b) require any information relating to the transferee; or
  - (c) impose any restriction on the acceptability of any common form of transfer.
- 13.7 **Improper Instrument of Transfer:** A transfer of Securities in writing that has not been properly completed shall be promptly returned to the person submitting it, for completion, and (subject to clause 13.6) shall be registered when the errors or omissions have been rectified.
- 13.8 **When Transfer Effective:** A transferor of a Security is deemed to remain the holder of the Security until the name of the transferee is entered in the share register in respect of the Security.
- 13.9 **Company to Retain Transfer:** If the Company registers an instrument of transfer it shall retain the instrument.
- 13.10 **Multiple Registers:** The share register may, by resolution of the board, be divided into two or more registers, which may be kept in different places.
- 13.11 **Sale of Less than Minimum Holding:** Subject to the terms of issue of any Security that is not Listed, the board may at any time give notice to any person holding less than a Minimum Holding of Securities of any Class that, if at the expiration of three months after the date the notice is given the holder still holds Securities which are less than a Minimum Holding, the Board may exercise the power of sale of those Securities set out in this clause. If that power of sale becomes exercisable:
- (a) the board may arrange for the sale of those Securities through the NZX or in some other manner approved by the NZX;
  - (b) the holder of the Securities shall be deemed to have authorised the Company to act on the holder's behalf and to execute all necessary documents for the purposes of that sale;
  - (c) the net proceeds of sale of the Securities (after deduction of reasonable sale expenses and any unpaid calls or any other amounts owing to the Company in respect of the Securities) shall be held on trust for the holder of the Securities by the Company and paid to such holder on surrender of any certificates for the Securities sold; and

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

13.12 **No Cancellation of Rights:** Except as expressly permitted by the Rules and this constitution, no benefit or right attaching to a Security shall be cancelled or varied by reason only of a transfer of that Security.

#### **14 TRANSMISSION OF SECURITIES**

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14.1 **Transmission:** If the holder of a Security dies, the survivor (if the deceased was a joint Security holder), or in all other cases the personal representative, shall be the only persons recognised by the Company as having any title to or interest in the Securities of the deceased Security holder but nothing in this clause shall release the estate of a deceased joint Security holder from any liability in respect of any Security or constitute a release of any lien which the Company may have in respect of any Security.

14.2 **Rights of Personal Representative:** A personal representative of the holder of a Security:

- (a) is entitled to exercise all rights (including without limitation the rights to receive distributions, to attend meetings and to vote in person or by proxy), and is subject to all limitations, attached to the Securities held by that holder of a Security; and
- (b) is entitled to be registered as holder of those Securities, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the personal representative pursuant to this sub-clause.

14.3 **Joint Holders:** 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.

#### **15 SHARE CERTIFICATES**

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15.1 **Replacement of Share Certificates:** If any share certificate that has been issued by the Company is:

- (a) Defaced or worn out, the board, upon production to it of the defaced or worn out certificate, may order that it be cancelled and may issue a replacement share certificate; or
- (b) Destroyed or lost, the board, upon production to it of proof to its satisfaction of the destruction or loss and upon receipt of such indemnity as is required by the board, may issue a replacement share certificate to the shareholder entitled to the destroyed or lost certificate.

15.2 **Fee:** The board may charge a reasonable fee for any replacement share certificate referred to in clause 15.1, and may require payment to the Company of the actual expenses of investigating and dealing with the matter as the board thinks fit.

#### **16 NOTICES AND MEETINGS OF SHAREHOLDERS AND INTEREST GROUPS**

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16.1 **Meeting Provisions:** The provisions of the First Schedule to this constitution govern notices of and proceedings at meetings of Security holders, subject to any applicable provisions of the Rules.

16.2 **Interest Groups:** Proceedings at any meeting of any interest group shall also be governed in the manner set out in the First Schedule, subject to all necessary consequential modifications and any applicable provisions of the Rules.

16.3 **Right to Attend:** Equity Security holders of all Classes shall be entitled to attend general meetings and to receive copies of all notices, reports and financial statements issued generally to holders of Securities carrying votes.

16.4 **Address for Notice:** If a Security holder 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 of 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 posting.

## 17 NUMBER OF DIRECTORS

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17.1 The minimum number of directors (other than alternate directors) is three. At least two directors shall be ordinarily resident in New Zealand. Unless otherwise determined by the board from time to time the maximum number of directors shall be eight.

17.2 The minimum number of Independent Directors shall be two or, if there are eight or more directors, three or one-third (rounded down to the nearest whole number of directors) of the total number of directors, whichever is the greater. The board must in accordance with the Rules identify which directors it has determined, in its view, to be Independent Directors.

## 18 APPOINTMENT AND REMOVAL OF DIRECTORS

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18.1 **Ordinary Resolution:** A director may be appointed or removed by Ordinary Resolution and in accordance with the requirements of the Rules.

18.2 **Term:** The term of a director's appointment is governed by the Rules.

18.3 **Timing:**

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

18.4 **Board Appointment:** Subject to the Rules, 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 re-election at that meeting.

18.5 **Rotation:** Subject to clause 18.6, at least one third of the directors or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office at the annual meeting each year, but shall be eligible for re-election at that meeting. Those to retire shall be those who have been longest in office since they were last elected or deemed elected.

18.6 **Exceptions to Rotation:** The following directors shall be exempt from the obligation to retire pursuant to clause 18.5:

- (a) a director appointed pursuant to clause 18.4 and who is subject to retirement pursuant to that clause and seeks election at the next annual meeting of the Company. That director shall not be included in the number of directors upon which the calculation of the number of directors to retire by rotation at that annual meeting is made;



- (b) one Executive Director in accordance with clause 22. That Executive Director shall be included in the number of directors upon which the calculation of the number of directors to retire by rotation is made.

18.7 **Appointment of Directors to be Voted on Individually:** No resolution to appoint or elect a director (including a resolution to re-elect a director under clause 18.4 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 will be so voted on has first been approved without a vote being cast against it.

Nothing in this clause 18.7 prevents the election of two or more directors by a ballot or poll.

## **19 DIRECTOR CEASING TO HOLD OFFICE**

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19.1 **Vacation of Office:** Without limiting section 157 of the Act or any applicable provisions of the Rules, the office of director is vacated if the person holding that office is absent without the permission of the other directors from three consecutive meetings of the board and has not, in accordance with this constitution, appointed a person to act as an alternate director of the Company in his or her place during such absence.

19.2 **Rules Applying to Term of Office:** The term of appointment of directors must be consistent with the Rules and a director will cease to hold office as such if required by the Rules.

## **20 ALTERNATE DIRECTORS**

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20.1 **Alternate Directors:** A director may appoint another person to be an alternate director during his or her absence or inability to act as director. No director may appoint another person to act as alternate director for him or her, except with the consent of a majority of his or her co-directors. That appointment may be revoked by a majority of his or her co-directors or by the director who appointed the alternate. A director may not be appointed to act as alternate for another director. No director shall appoint a deputy or agent otherwise than by way of appointment of an alternate.

20.2 **Powers:** While acting in the place of the director who appointed him or her, an alternate director:

- (a) has, and may exercise and discharge, unless otherwise restricted by the terms of his or her appointment by the director, and subject to clause 20.2(b) all the duties, powers, privileges and rights of that director, including the right to receive notice of meetings of the board, participate in meetings of the board (including being counted for the purposes of determining whether a quorum is present and the right to vote) and the power to sign any document (including a resolution in writing of directors), but excluding the right to be elected as chairperson of the board and to appoint an alternate, provided that, for avoidance of doubt, the alternate director is not entitled to participate in any meeting of the board at which the director who appointed him or her is present; and
- (b) is subject to the same terms and conditions of appointment as that director (including in respect of reimbursement of expenses, and indemnity and effecting of insurance, by the Company as if he or she were a director), except that he or she is not entitled to receive remuneration other than such proportion, if any, of the remuneration otherwise payable to that director as the director may direct by written notice to the Company.

20.3 **Termination of appointment:** The appointment of an alternate director shall terminate automatically if:

- (a) the director who appointed him or her ceases to be a director;
- (b) the alternate director, if he or she were a director, would become disqualified from being a director pursuant to section 151 of the Act; or
- (c) the majority of the other directors resolve to revoke the alternate director's appointment.

## **21 DELEGATION OF POWERS**

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- 21.1 **Restrictions on Powers:** In exercising any powers delegated by the board, any committee of directors, director, employee of the Company, or any other person, must comply with any regulations or restrictions that the board may impose.
- 21.2 **Procedural Provisions:** The provisions of this constitution governing proceedings, including meetings, of the board also govern proceedings, including meetings, of any committee of directors, with all necessary consequential modifications or except to the extent that they are altered or otherwise determined by the board.

## **22 EXECUTIVE DIRECTORS**

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

- (a) **Appointment by Directors:** the directors may from time to time appoint one or more of the directors to the office of Executive Director. No term of appointment of an Executive Director of the Company or any of its Subsidiaries shall exceed five years. This clause shall not preclude the reappointment of an Executive Director upon the expiry of a term of appointment and shall not affect the terms of the engagement of that Executive Director as an employee of the Company;
- (b) **Remuneration:** the directors may fix an Executive Director's remuneration (except his, her, or their remuneration in his, her or their capacity as a director or directors) which may be in addition to his, her or their remuneration as an ordinary director or directors and may be either by way of salary, commission on profits earned or participation in the profits of the Company or any Security scheme or by a combination of two or more of those modes;
- (c) **Director Rules:** he or she shall be subject to the same provisions as regards resignation, removal and disqualification as the other directors of the Company, and if he or she ceases to hold the office of director for any cause he or she shall ipso facto cease to be an Executive Director. One Executive Director shall be exempted from the requirement in the Rules to retire by rotation (as provided for in clause 18.6) provided that where there are two or more Executive Directors the board shall nominate which Executive Director shall be exempt from the requirement to retire by rotation;
- (d) **Delegation:** the directors may entrust to and confer upon an Executive Director any of the powers exercisable by the directors (except the power to make calls, forfeit Securities, borrow money or issue debentures) upon such terms and conditions and with such restrictions as they may think fit and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of those powers.

## **23 PROCEEDINGS OF BOARD**

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The provisions of the Second Schedule to this constitution govern the proceedings of the board, subject to any applicable provisions of the Rules.

## 24 NOTICES

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- 24.1 **Board Notice:** For the purpose of a notice of a meeting of the board being sent to a director, or an alternate director, as the case may be:
- (a) a notice delivered to that person is deemed to be received at the time of delivery;
  - (b) a notice posted to that person shall be sent by fastpost (by airmail if to a country other than New Zealand), and if sent to within New Zealand is deemed to be received on the third working day after the date of posting or if sent to a country other than New Zealand is deemed to be received on the tenth working day after the date of posting;
  - (c) a notice sent by facsimile to that person is deemed to be received upon production by the Company's facsimile machine of a confirmation of the completion of transmission without any error or indication of incomplete transmission; and
  - (d) a notice sent by electronic mail to that person is deemed to be received as provided in section 11 of the Electronic Transactions Act, or as the Company and that person otherwise agree upon in writing,

provided that if a notice would be deemed to be received under the provisions of this clause 24 after 5.00 p.m. on any day in the relevant time zone in respect of which the address, facsimile number and electronic mail address have been provided to the Company for the director, or alternate director, as the case may be, for the purpose of service of such notice, it shall be deemed instead to be received at 8.30 a.m. on the next following working day in that time zone. In the case of a notice sent by facsimile or electronic mail, such notice shall, but for avoidance of doubt without prejudice to any effective giving of the notice in terms of clause 24.1(c) or 24.1(d), be confirmed by the Company by sending a copy of the notice by delivery or post in accordance with the provisions of this clause 24.

- 24.2 **Method of Service:** All notices, reports, accounts or documents required to be sent to a Security holder 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 (subject to the express provisions of this constitution and the Rules).

## 25 OTHER OFFICES WITH COMPANY HELD BY DIRECTOR

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- 25.1 **Other Offices:** Subject to any applicable provisions of the Rules, in particular relating to transactions with related parties, any director may act personally, or any firm of which any director is a member may act, in a professional capacity for the Company and such director or firm shall be entitled to remuneration for professional services as if the director were not a director of the Company, provided that nothing in this clause shall authorise any director, or any firm of which any director is a member, to act as auditor of the Company.
- 25.2 **Office Within Company:** Subject to any applicable provisions of the Rules, in particular relating to transactions with related parties, any 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.
- 25.3 **Related Parties:** Subject to any applicable provisions of the Rules, in particular relating to transactions with related parties, a director is not disqualified by virtue of his or her office from entering into any transaction with the Company. Any such transaction shall be valid and enforceable to the same extent as if he or she were not a director and not in a fiduciary relationship with the Company. Any such director shall not be liable to account to the Company, by reason of the director holding such office or such fiduciary relationship, for any profit realised by such transaction.

## **26 REMUNERATION**

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The board may, in accordance with the provisions of and restrictions in the Rules, exercise the power provided in section 161 of the Act to authorise remuneration and other benefits including payments upon cessation of office to and for the directors.

## **27 INDEMNITY AND INSURANCE**

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- 27.1 **Indemnity:** The Company may give any indemnity of the nature or type provided in sections 162(3) or (4) of the Act.
- 27.2 **Insurance:** The Company may (with the prior approval of the board) effect any insurance of the nature or type provided in section 162(5) of the Act.

## **28 REIMBURSEMENT TO DIRECTORS OF EXPENSES**

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Each director shall be entitled to be reimbursed by the Company for all travelling, accommodation and other expenses incurred by him or her in connection with the business of the Company, including attendance at meetings.

## **29 METHOD OF CONTRACTING**

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

- (a) **Director:** A director; or
- (b) **Another Person:** Another person, or class of persons, authorised by the board for that purpose,

whose signature or signatures must be witnessed. For avoidance of doubt, nothing in this clause 29 shall limit the other methods of contracting provided in section 180 of the Act.

## **30 DISTRIBUTION OF SURPLUS ASSETS**

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Subject to the rights of the holders of any Securities, the terms of issue of any shares and to clause 31, upon the liquidation of the Company any assets of the Company remaining after payment of the debts and liabilities of the Company and the costs of liquidation shall be distributed among the holders of the ordinary shares in proportion to their shareholdings, provided that a holder of shares that are not fully paid up shall receive only a proportionate share of what would otherwise have been that shareholder's entitlement, being an amount which is in proportion to the amount paid to the Company in satisfaction of the liability of such shareholder to the Company in respect of such shares.

## **31 DISTRIBUTION OF ASSETS IN KIND**

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Upon the liquidation of the Company, the liquidator may, with the sanction of an ordinary resolution and any other sanction required by the Rules and the law, divide amongst the shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as the liquidator deems fair upon any assets to be divided as aforesaid and may determine how the division shall be carried out as between the shareholders, or shareholders holding different classes of shares. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the shareholders as the liquidator thinks fit. Notwithstanding the foregoing provisions of this clause, no shareholder shall be compelled to accept any shares or other securities in respect of which there is any liability.

## FIRST SCHEDULE – MEETINGS OF SECURITY HOLDERS

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

### 1 Methods of Holding Meetings

A meeting of Security holders may be held either:

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

### 2 Powers Exercisable by Ordinary Resolution

Unless otherwise specified in the Act or this constitution, a power or right of approval reserved to Security holders may be exercised by an Ordinary Resolution.

### 3 Meetings of Security holders

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

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

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

- (a) may be called by the board at any time;
- (b) shall be called by the board on the written request of Security holders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting.

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

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

3.6 **Meetings of Interest Groups:** A meeting of the Security holders constituting an Interest Group (as defined in section 116 of the Act) may be called by the board at any time. All the provisions of this constitution relating to meetings of Security holders shall apply, with all necessary modifications, to meetings of Interest Groups, except that:

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

and proper arrangements are made to distinguish between the Votes of the Security holders in each Interest Group.

#### 4 Notice

4.1 **Written Notice:** Written notice of the time and place of a meeting of Security holders shall be sent to every Security holder entitled to receive notice of the meeting, to every director, and to the auditor of the Company, not less than 10 Working Days before the meeting, but with the consent of all Security holders entitled to attend and vote at a meeting, it may be convened by such shorter notice, and in such manner, as those Security holders agree.

4.2 **Contents of Notice:** A notice of meeting shall:

- (a) state the nature of the business to be transacted at the meeting in sufficient detail to enable a Security holder to form a reasoned judgment in relation to it;
- (b) state the text of any Special Resolution to be submitted to the meeting;
- (c) state that a Security holder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of the Security holder and that a proxy need not be a Security holder;
- (d) if in relation to a proposed change to this constitution;
  - (i) state sufficiently explicitly the effect of such changes to be understood without reference to the existing or proposed constitution, and
  - (ii) state that the changes have been approved by NZX; and
- (e) if the passing of the resolution would confer the right to require the Company to acquire a Security holder's Securities by virtue of section 110 or 118 of the Act, prominently display the rights conferred by those sections.

4.3 **Form of Resolutions:** So far as reasonably practicable, the resolutions to be proposed at a meeting shall be framed in a way which facilitates the giving of two way voting instructions to proxies.

4.4 **Waiver of Notice Irregularity:** An irregularity in a notice of a meeting is waived if all the Security holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Security holders agree to the waiver.

4.5 **Accidental Omission of Notice:** The accidental omission to give notice of a meeting to, or the non-receipt or late receipt of notice of a meeting by, any person entitled to receive notice, does not invalidate the proceedings at the meeting.

4.6 **Notice of Adjourned Meeting:** If a meeting of Security holders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clause 4.1.

4.7 **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.

#### 5 Quorum

5.1 **Requirement for quorum:** Subject to clause 5.3, no business may be transacted at a meeting of Security holders if a quorum is not present.

- 5.2 **Quorum:** Subject to clause 5.3, a quorum for a meeting of Security holders is present if ten Security holders having the right to vote at the meeting, are present in person or proxy or have cast postal votes (if available).
- 5.3 **Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called by the board on the written request of Security holders entitled to exercise that right, the meeting is dissolved;
  - (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Board may appoint and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Security holders or their proxies present are a quorum.

## 6 Regulation of Procedure

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

## 7 Adjournment

- 7.1 **Adjournment of meeting:** The chairperson may, with the consent of a meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the relevant meeting.
- 7.2 **Adjournment or Dissolution of Disorderly Meeting:** If a meeting becomes so unruly, disorderly or inordinately protracted that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this constitution and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving any reason therefore, either adjourn or dissolve the meeting.
- 7.3 **Completion of Unfinished Business if Meeting Dissolved:** If a meeting is dissolved by the chairperson pursuant to clause 7.2, the unfinished business of the meeting shall be dealt with as follows:
- (a) in respect of a resolution concerning the approval or authorisation of a distribution, the board may, in the exercise of the powers conferred on it by the Act or this constitution, authorise such distribution;
  - (b) in respect of a resolution concerning the remuneration of the auditors, the meeting shall be deemed to have resolved that the board be authorised to fix the remuneration of the auditors;
  - (c) the chairperson may direct that any other item of uncompleted business, which in his or her opinion requires to be voted upon, be put to the vote by a poll without further discussion, in accordance with clause 11.

## 8 Chairperson

- 8.1 **Chairperson:** If the directors have elected a chairperson of the board and he or she is present at a meeting of Security holders, he or she shall chair the meeting, unless or except to the extent that the chairperson considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting.
- 8.2 **Directors may appoint chairperson:** If no chairperson of the board has been elected or if, at any meeting of Security holders, the chairperson of the board is not present within 15 minutes after the time appointed for the commencement of the meeting, or considers it

not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting, the directors present may elect one of their number to chair the meeting or that part of the meeting which relates to the particular business, as the case may require.

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

## 9 Voting

- 9.1 **Voting at Meeting in One Place:** In the case of a meeting of Security holders held under clause 1.1(a), unless a poll is demanded in accordance with clause 11, voting at the meeting shall be by the Security holders signifying individually their assent or dissent by voice.
- 9.2 **Voting at Audio Visual Meeting:** In the case of a meeting of Security holders held under clause 1.1(b), unless a poll is demanded in accordance with clause 11, voting at the meeting shall be by the Security holders signifying individually their assent or dissent by voice.
- 9.3 **Postal Votes:** Unless the board determines otherwise, Security holders may not exercise the right to vote at a meeting by casting postal votes. If the board determines that postal voting will be permitted at a meeting, the provisions of clause 7 of the first schedule to the Act shall apply, with such modifications (if any) as the board thinks fit.
- 9.4 **Entitlement to Vote:** A Security holder may exercise the right to vote either in person or by proxy or by postal vote if available.
- 9.5 **Number of Votes:** Subject to clauses 10.1 and 10.2 and to any rights or restrictions for the time being attached to any Security:
- (a) where voting is by show of hands or by voice every Security holder present in person or by representative has one vote;
  - (b) on a poll every Security holder present in person or represented by proxies has:
    - (i) in respect of each fully paid Security held by that Security holder, one vote;
    - (ii) in respect of each Security held by that Security holder which is not fully paid, a fraction of the vote or votes which would be exercisable if that Security were fully paid equivalent to the proportion which the amount paid (excluding amounts credited as paid) on that Security bears to the total amount paid and payable thereon (excluding amounts credited as paid and amounts paid in advance of calls).
- 9.6 **Vote of Overseas Protected Persons:** A Security holder who is not living in New Zealand, and who is of unsound mind or in respect of whom an order has been made by any court having appropriate jurisdiction, may vote in respect of any Shares held by that Security holder, by his or her committee, manager, or other person of a similar nature appointed by that court, voting in person or by proxy.
- 9.7 **Declaration by Chairperson:** A declaration by the chairperson of a meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 11.1.
- 9.8 **Chairperson's Casting Vote:** The chairperson of a meeting of Security holders is not entitled to a casting Vote.
- 9.9 **Joint Security Holders:** Where two or more persons are registered as joint Security holders, 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.



## 10 Restrictions on Voting

- 10.1 **No Vote when Amount Owing on Security:** A Security holder is not entitled to vote at any meeting of Security holders (including a meeting of an Interest Group) in respect of any Security if any amount is due and payable on that Security by the Security holder to the Company.
- 10.2 **Voting Restrictions:** Notwithstanding anything to the contrary in this constitution or the Rules, a person is not entitled to cast a Vote in favour of a resolution when that person is disqualified from doing so by virtue of the voting restrictions specified in the Rules.
- 10.3 **Deadline for Challenge:** Without prejudice to any remedy (other than those which take legal effect against the Company) which any holder of Securities may have against any disqualified person who casts a Vote at a meeting in breach of clause 10.2, no resolution of, or proceeding at, that meeting may be impugned on the basis of a breach of that clause. Any objection by a holder of Securities to the accuracy or completeness of any list of holders of Securities who are disqualified from voting on a resolution pursuant to clause 10.2, which has been supplied by the Company to NZX or to any holder of Equity Securities on request pursuant to the Rules, shall be disregarded by the Company and the chairperson of the relevant meeting if it is notified to the Company later than one full Business Day before the time fixed for commencement of the meeting.

## 11 Polls

- 11.1 **Right to Demand Poll:** At a meeting of Security holders a poll may be demanded by:
- (a) the chairperson; or
  - (b) not less than five Security holders having the right to vote at the meeting; or
  - (c) a Security holder or Security holders representing not less than 10% of the total voting rights of all Security holders having the right to vote at the meeting; or
  - (d) a Security holder or Security holders holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Shares that confer that right.
- 11.2 **When Poll May be Demanded:** A poll may be demanded either before or after the Vote is taken on a resolution. The demand for a poll may be withdrawn.
- 11.3 **When Poll Taken:** A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll.
- 11.4 **Poll Procedure:** A poll shall be taken in such manner as the chairperson directs and the result of the poll is deemed to be a resolution of the meeting at which the poll is demanded.
- 11.5 **Votes:** On a poll:
- (a) Votes may be given either personally or by proxy;
  - (b) Votes shall be counted according to the Votes attached to the Shares of each Security holder present in person or represented by proxy and voting in respect of those Shares;
  - (c) a Security holder need not cast all the Votes to which the Security holder is entitled and need not exercise in the same way all of the Votes which the Security holder casts.

11.6 **Scrutineers:** The auditors shall be scrutineers unless they are unable or unwilling to act, or the chairperson of the meeting directs otherwise, in which case the scrutineers shall be appointed by the chairperson.

11.7 **Declaration of Result:** The chairperson is entitled to declare the result of a poll upon receipt of a certificate from the scrutineers stating that sufficient Votes to determine the result of the resolution have been counted and setting out the basis of that determination.

## 12 Proxies

12.1 **Right to Appoint:** A Security holder may appoint a proxy to vote on behalf of the Security holder at a meeting of Security holders. The proxy is entitled to attend and be heard at the meeting, and to demand or join in demanding a poll, as if the proxy were the Security holder.

12.2 **Notice of Appointment:** A proxy shall be appointed by written notice signed by the appointing Security holder and the notice shall state whether the appointment is for a particular meeting or for a specified term. The notice shall (so far as the subject matter and form of the resolutions to be proposed at the relevant meeting reasonably permit) provide for two-way voting on all resolutions, enabling the Security holder to instruct the proxy as to the casting of the Vote.

12.3 **Proxy Form to be Sent with Notice of Meeting:** The Company shall send with the notice convening the meeting a form of notice of appointment of proxy to every Security holder entitled to attend and vote at a meeting.

12.4 **Proxy Form Must Not Name Proxy:** The Company shall not issue any form of notice of appointment with a proxy named in it, either by name or by reference to an office which that proxy holds, but the Company may indicate that certain persons or officers are willing to act as a proxy if a Security holder desires to appoint them or any of them.

12.5 **Production of Notice:** No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at its registered office, at such address as is specified for that purpose in the form of notice of appointment or in the notice convening the meeting, not later than 48 hours before the start of the meeting.

12.6 **Validity of Proxy Vote:** A Vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, or the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Security in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Company at its registered office, before the commencement of the meeting or adjourned meeting for which the proxy is appointed.

## 13 Corporations May Act by Representatives

A corporation which is a Security holder may appoint a person to attend a meeting of Security holders on its behalf in the same manner as that in which it could appoint a proxy.

## 14 Persons Entitled

Where two or more persons are entitled to the rights of a deceased or bankrupt Security holder the right of one of them to vote shall be determined by the order in which their names appear in the probate, letters of administration, order of Court or other documents evidencing their rights.

## 15 Mental Disorder

15.1 **Mentally Disordered Person:** A Security holder who is a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 may vote by any person having authority to administer such person's estate. Subject to the

provisions of any Court order or other order to administer property made pursuant to the Protection of Personal and Property Rights Act 1988 a Security holder may vote in respect of any shares that are subject to the order by any person appointed in that order. Any such person may vote either on a show of hands or on a poll and may vote by proxy.

- 15.2 **Application Outside New Zealand:** The provisions of this clause 15.2 apply in respect of Security holders who are not living in New Zealand and to whom the provisions of clause 15.1 are accordingly not applicable. Every such Security holder who is mentally disordered or in respect of whom an order has been made by any Court having jurisdiction in respect of such a mentally disordered person may vote whether on a show of hands or on a poll by any person in the nature of a manager appointed by that Court and any such manager appointed by that Court and any other person may on a poll vote by proxy.

## SECOND SCHEDULE - PROCEEDINGS OF THE BOARD

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

### 1 Meeting of Directors

1.1 **Procedure:** The directors may meet together for the dispatch of business, adjourn, or otherwise regulate their meetings and proceedings as they may think fit and may determine the quorum necessary for the transaction of business.

1.2 **Quorum:** The quorum for meetings of directors shall be three directors unless:

- (a) a majority of the directors for the time being otherwise determine; or
- (b) in respect of a matter to be considered by the board, there would be less than three directors eligible to be counted in a quorum and vote, in which case the quorum shall be the number of directors present at the meeting and eligible to vote on the relevant matter.

1.3 **Adjournment:** If a quorum shall not be present at a meeting then the meeting may be adjourned for at least 48 hours and notice of the day, time and place for such adjourned meeting shall be given to all directors at least two days prior to the time of such adjourned meeting. If at that further meeting a quorum is not present within 30 minutes after the time appointed for the meeting any director present is a quorum.

### 2 Notice

2.1 **Usual Notice for Meetings:** Every director shall be given not less than five clear days' notice of a meeting unless the director waives that right or a shorter period of notice is required to enable the board to comply with its obligations under this constitution. Notice may be given to a director by:

- (a) delivery of the notice to the director in which case the notice will be deemed to be given when delivered;
- (b) sending the notice by facsimile transmission to the facsimile number given by the director to the Company for the purposes of receiving notices, in which case the notice will be deemed to be given when sent; or
- (c) posting the notice to the address given by the director for the purpose of receiving notices, in which case the notice will be deemed to be given three days after it is posted.

2.2 **Urgent Meeting:** If, in the opinion of the chairperson or in his or her absence the deputy chairperson (if any) or in the absence of both the executive director (if any), a meeting is required in the interests of the Company to be convened on less than five clear days' notice, the meeting may be convened on short notice provided that:

- (a) not less than three-quarters of the directors entitled to be given notice consent to such shorter notice; or
- (b) the chairperson, or in his or her absence the deputy chairperson (if any), or in the absence of both the executive director (if any) and at least one other director reasonably consider that by reason of extreme urgency, a meeting on short notice is required in the interests of the Company and that it is not practicable to give five clear days' notice.

2.3 **Short Notice:** In the case of a meeting convened on short notice pursuant to this clause:

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

2.4 **Powers of Quorum:** A meeting of the directors at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under this constitution or the Act for the time being vested in or exercisable by the directors generally.

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

2.6 **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.

2.7 **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.

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

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

- (a) all the directors for the time being entitled to receive notice of a meeting of the directors (including any alternate for any director) shall be entitled to notice of such a meeting and to be linked by such means for the purposes of such meeting. Notice of any such meeting may be given by such means.
- (b) each of the directors taking part in such a meeting must be able to hear each of the other directors taking part throughout the meeting.
- (c) at the commencement of the meeting each director must acknowledge his or her presence for the purpose of a meeting of the directors of the Company to all the other directors taking part.

3.2 **Consent to Leave:** A director may not leave the meeting by disconnecting unless he or she has previously obtained the express consent of the chairperson of the meeting and a director shall be conclusively presumed to have been present and to have formed part of the quorum at all times at such a meeting unless he or she has previously obtained the

express consent of the chairperson to leave the meeting as aforesaid. Neither the meeting nor any business conducted at the meeting shall be invalidated if a director does leave a meeting conducted in this manner without the express consent of the chairperson.

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

#### **4 Calling of Meeting**

The chairperson of directors, the executive director or any two directors may at any time summon a meeting of the directors.

#### **5 Voting**

- 5.1 **One Vote:** Questions arising at any meeting of the directors shall be determined by vote of the directors. On any such vote each director shall have one vote.

- 5.2 **Interested Directors:** A director shall not vote in respect of any matter in which that director is interested, nor shall the director be counted in the quorum for the purposes of consideration of that matter; provided that a director may vote in respect of and be counted in the quorum for the purposes of a matter in which that director is interested if that matter is one in respect of which, pursuant to an express provision of the Act, directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Act. For this purpose the term "interested" bears the meaning assigned to that term in section 139 of the Act.

#### **6 Chairperson**

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

- 6.2 **Restrictions on Casting Vote:** In cases where two directors form a quorum, the chairperson of a meeting at which only two directors are present shall not have a casting vote.

#### **7 Proceedings of Committee**

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

#### **8 Defects**

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

**9 Resolution in Writing**

A resolution in writing signed by a majority of the directors for the time being entitled to vote on that resolution (or their alternate directors) shall be as valid and effective as if it had been passed at a meeting of the directors duly called and constituted provided prior notice of the resolution has been given to directors not entitled to vote and those directors have acknowledged in writing that they do not require a meeting to be held. Any such resolution may consist of several documents in like form each signed by one or more directors.

**10 Minutes**

The directors shall cause minutes to be made in books provided for the purpose of recording:

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

Any such minutes of any meeting of the directors or of any committee if purporting to be signed by the chairperson of such meeting or by the chairperson of the next succeeding meeting shall be receivable as prima facie evidence of the matters stated in such minutes.